

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

&

THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN

FRIDAY, THE 13TH DAY OF JANUARY 2023 / 23RD POUSHA, 1944

SP.JC NO. 3 OF 2020

PETITIONER/S:

ADVOCATE CHERUNNIYOOR V. JAYAPRAKASH
AGED 71 YEARS
S/O.VAMADEVAN, AKAASH, MUNDAYIL, VARKALA P.O.,
THIRUVANANTHAPURAM-695141.

BY ADVS.
M.BALAGOVINDAN
SRI.S.SHIBU KUMAR
SRI.A.ANOOP

RESPONDENT/S:

- 1 SREE NARAYANA TRUST
REPRESENTED BY ITS SECRETARY, K.NATESAN ALIAS
VELLAPPALLY NADESAN, S.N.TRUST OFFICE, KOLLAM-
691001.
- 2 K.NATESAN ALIAS VELLAPPALLY NATESAN,
MANAGER, S.N.TRUST, S.N.TRUST OFFICE, KOLLAM-
691001.
- 3 K.NATESAN ALIAS VELLAPPALLY NATESAN,
AGED 80 YEARS
S/O.KESAVAN, VELLAPPALLIL HOUSE, MARARIKULAM
NORTH VILLAGE, KANICHUKULANGARA P.O., CHERTHALA,
ALAPPUZHA-688544.
- 4 P.K.JEGDEV,
AGED 54 YEARS
S/O.KAYIATH PREMDEV, KAYIATH HOUSE, KANNUR, NOW
RESIDING AT KAYIATH HOUSE, ULİYACOVIL P.O.,
KOLLAM.

ADDL. R4 IMPEADED AS PER ORDER DATED 24/03/2021
IN IA.1/2021 IN SPJC 3/2020.

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5 ADVOCATE.K.GOPINATHAN
 AGED 88 YEARS
 S/O.KOCHUKRISHNAN, SREERANGOM, PUTHUPPALLY SOUTH,
 PUTHUPPALLY P.O., ALAPPUZHA-690 527.

ADDL. R5 IMPEADED AS PER ORDER DATED 24/03/2021
IN IA.2/2021 IN SPJC 3/2020.

6 B. SHINIL,
 AGED 40 YEARS
 S/O.BABU RAJENDRAN, PARAMESWARA VILASAM,
 KADAKKAVOOR P.O., TRIVANDRUM DISTRICT-695 306.

ADDL. R6 IMPEADED AS PER ORDER DATED 24/03/2021
IN IA.3/2021 IN SPJC 3/2020.

ADDL.R7 T.P.SUNDARESAN, S/O.PEETHAMBARAN, SUNDARA BHAVAN,
MURUGAL P.O., KODAL, PUNALUR-680316.

ADDL.R8 D.ANILKUMAR, S/O.LATE DAMODARAN, PLAVELIYIL,
MANORAJYAM, KONNI-689691.

ADDL.R9 A.N.ANURAG, S/O.A.C.NARENDRANATH, AZHICHIRA,
MUTHALAMADA P.O., PALAKKAD-678507.

ADDL.R10 K.R.GOPINATH, S/O.RAMAKRISHNAN, KOZHIPARAMBU,
VADAKKETHARA, PALAKKAD-678012.

ADDL.R11 M.P.SEN, S/O.PEETHAMBARAN, MANALILPARAMBIL, ENADI
P.O., VAIKOM-686608.

ADDL.R12 P.K.PRASANNAN, S/O.KANNAPPAN, POOVATHUMKADAVIL
HOUSE, IRINJALAKUDA-680121.

ADDL.R13 ADV.SINIL MUNDAPPALLY, S/O.M.G.GOPALAN,
MUNDAPPALLIL, THAZHAKKARA P.O., MAVELIKKARA-
690102.

ADDL.R14 RAJESH KUMAR S.P., SHEEJA COTTAGE, ISRO JUNCTION,
CHULLIMANNOOR, THIRUVANATHAPURAM-695541.

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ADDL.R15 SANDEEP KUMAR S., S/O.SASIDHARAN,
PACHAYIL HOUSE, AYAKUZHAY P.O., CHITHARA, KOLLAM-
691559.

ADDL.R16 JAYAN P.S., S/O.SURENDRAN, JYOTHI BHAVAN,
MARUTHORVATTOM, CHERTHALA-688545.

ADDL.R17 M.B.SREEKUMAR, S/O.BHASKARAN, MOHANAVILASOM,
THENGUKAVU P.O., PATHANAMTHITTA-689646.

ADDL.R18 ADV.P.S.JYOTHIS,
JYOTHI BHAVAN, MARUTHORVATTOM, CHERTHALA-688545.

ADDL.R19 S.SATHEESH,
CHARUVILA PUTHENVEEDU, EDAKKIDAM P.O.,
KOTTARAKKARA-670731.

ADDL.R20 K.PADMAKUMAR, S/O.KUTTAPPAN, LAKSHMI VILASOM,
MALLASSERY P.O., PATHANAMTHITTA-689646.

ADDL.R21 ABHILASH M.D., S/O.DASAPPAN, MANGANAYIL, MARADU
P.O., ERNAKULAM-682304.

ADDL.R22 P.A.SOMAN, S/O.ACHUTHAN, PAYYANA, PINDIMANA P.O.,
KOTHAMANGALAM-686698.

ADDL.R23 KARAYIL ANEESH, S/O.SUNDARESAN, KARAYIL,
PUTHENTHARA P.O., NEENDAKARA, KOLLAM-691588.

ADDL.R24 C.S.SWAMINATHAN, S/O.SIVARAMAN,
CHALLIYIL, KANICHUKULANGARA P.O., CHERTHALA-
688544.

ADDL.R25 K.N.PREMANANDAN, S/O.N.K.NAYANAN,
KURATHUPARAMBIL, PATHIRAPPALLY, ALAPPUZHA-688521.

ADDL.R26 K.C.MURALEEDHARAN, S/O.CHINNAPPAN, KAVUNGAL
VEEDU, PADINJAREMURI, ELEVANCHERY, PALAKKAD-
678508.

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- ADDL.R27 S.DIVAKARAN, S/O.SUKUMARAN, ANACHIRA KALAM,
PANAGATARIL, KOLLENGODE-695601.
- ADDL.R28 K.DEVADAS, S/O.KRISHNAN,
MUNALIPADAM, NENMENI, KOLLENGODU, PALAKKAD-
695601.
- ADDL.R29 U.PRABHAKARAN, S/O.UNNIKRISHNAN,
CHELLANKAVILKALAM, KANJIKKOD P.O., PIN-678621
- ADDL.R30 B.VISWANATHAN, S/O.BALAKRISHNAN, AKKARAKADU
VEEDU, VARANI, KADUKKAMKUNNAM P.O., PIN-678005.
- ADDL.R31 UNNIKRISHNAN T.P., S/O.T.V.PUSHPANGATHAN,
THASHNATHA HOUSE, CHENTRAPPINNI P.O., PIN-680687.
- ADDL.R32 R.REGHU, S/O.KRISHNAN, KRISHNA NIVAS, C.B.E.ROAD,
KALMANDAPAM P.O., PIN-678731.
- ADDL.R33 M.BALAKRISHNAN, S/O.MURUKANDI, HARIHRITH,
ELAVENCHERY P.O., PALAKKAD-678508.
- [ADDL.R7 TO R33 IMPEADED VIDE ORDER IN
I.A.NO.3/2022 DATED 12/1/2023]
- ADDL.R34 E.N. UNNIKRISHNAN, AGED 54 YEARS, S/O. NARAYANAN,
EDACHALIL HOUSE, CHAMAKKALA PO, VALAPPATTU
VILLAGE, CHAVAKKAD TALUK, THRISSUR DISTRICT -
680687.
- ADDL.R35 P.V. SUDEEPKUMAR, AGED 53 YEARS, S/O. P.K.
VELUNNI, PUTHOOR HOUSE, KAIPAMANGALAM PO,
KAIPAMANGALAM VILLAGE, KODUNGALLOOR TALUK,
THRISSUR DISTRICT - 680681.
- ADDL.R36 K.C. MOHANAN, S/O CHATHU, KANNAMPULLY HOUSE,
PERUMPADAPPU, CHENDRAPPINNI PO, CHANDRAPPINNI
VILLAGE, KODUNGALLOOR, THRISSUR DISTRICT -
680687.
- ADDL.R37 M.P. PRASANTH, AGED 40 YEARS, S/O. PRABHAKARAN
M.S., MENOTH HOUSE, KANNAMPILLIPPURAM PO,
CHENDRAPPINNI VILLAGE, KODUNGALLOOR TALUK,
THRISSUR DISTRICT - 680687.

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ADDL.R38 NARENDRAN T.K., S/O. KUNJIVELU, THAYYIL HOUSE,
KARAYAMUTTAM PO, VALAPPAD VILLAGE, CHAVAKKAD
TALUK, THRISSUR DISTRICT - 680567.

ADDL.R39 KRISHANUNNI K.G., S/O. GOPALAN, KAMPALAPPARAMBIL
HOUSE, EDATHIRUTHY PO, EDATHIRUTHY VILLAGE,
KODUNGALLOOR TALUK, THRISSUR DISTRICT 680703. -

ADDL.R40 K.V. JAYARAJAN, S/O. VELAYUDHAN, KODUKKAL HOUSE,
VALAPPAD PO, VALAPPAD VILLAGE, CHAVAKKAD TALUK,
THRISSUR DISTRICT - 680567.

ADDL.R41 P.K. PRASANNAN, S/O. KANNAPPAN, PUVATHUMKADVIL
HOUSE, VALLIVATTOM PO, VALLIVATTOM VILLAGE,
MUKUNDAPURAM TALUK, THRISSUR DISTRICT - 680123.

ADDL.R42 UNNIKRISHNAN K.A., AGED 48 YEARS, S/O.
ARAVINDAKSHAN, KOOVALAMNIKARTHIL HOUSE,
CHALAKKUDI PO, KIZHAKKE CHALAKKUDI VILLAGE,
CHALAKKUDI TALUK, THRISSUR DISTRICT - 680307.

[ADDL.R34 TO R42 IMPEADED VIDE ORDER IN
I.A.NO.7/2022 DATED 12/1/2023]

ADDL.R43 S.SALIKUMAR, S/O.SUKUMARAN S., REVATHY, MUTTOM
P.O., CHEPPADU VILLAGE, KARTHIKAPALLY TALUK, PIN-
690516.

ADDL.R44 D. KASINADHAN, S/O.DIVAKARAN, VALELPUTHUVAL,
MANGALAM, ARATTUPUZHA, KARTHIKAPALLY TALUK, PIN-
689123.

ADDL.R45 N.ASOKAN, S/O.NANU, PUTHENCHERAYIL, MUTHUKULAM
NORTH P.O., MUTHUKULAM VILLAGE, PIN-690560.

ADDL.R46 M.K.SREENIVASAN, S/O.K.KUNJUPILLAI, SREERAGAM,
NANJIARKULANGARA, CHEPAD VILLAGE, PIN-690507.

ADDL.R47 BINU K., AGED 46 YEARS, S/O.M.KARUNAKARAN, BINU
MANDIRAM, KAREELAKULANGARA P.O., PIN-690572,
MALAMELBHAGAM, KEERIKKAD VILLAGE, KARTHIKAPPALLY
TALUK.

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- ADDL.R48 P.K.DHANESAN, S/O.K.KESAVAN,
POZHICKAL HOUSE, KANICHUKULANGARA P.O., PIN-
688544, MARARIKULAM NORTH VILLAGE, CHERTHALA
TALUK.
- ADDL.R49 UPPILYAPPAN V.U., S/O.V.K.UDAYABHANU,
VELIYILPARAMBIL, KANICHUKULANGARA P.O., PIN-
688544. MARARIKULAM NORTH VILLAGE, CHERTHALA
TALUK.
- ADDL.R50
BAIJU T.P., S/O.PARTHAN, THEKKEVELI,
KANICHUKULANGARA P.O., CHERTHALA, ALAPPUZHA-
688582.
- ADDL.R51
SUNIL T., S/O.THANKAPPAN, KARUVELIL, S.N.PURAM
P.O., CHERTHALA-688582.
- ADDL.R52 R.RAVINDRAN, S/O.RAMAN, "SOUMYA", MARARIKULAM
NORTH P.O., CHERTHALA, ALAPPUZHA-690516.
- ADDL.R53
G.THAMPAN, S/O.P.G.GANGADHARAPANICKER,
KARTHIYAYINI NIVAS, PALLIPPATTU MURI,
THRIKKUNNAPUZHA P.O. THRIKKUNNAPUZHA VILLAGE,
MAVELIKKARA TALUK, ALAPPUZHA DISTRICT, PIN-
690515.
- ADDL.R54
P.M.KESAVADEV, S/O.N.MADHAVAN, POOVANNAL HOUSE,
NADUVATTOM P.O., ALAPPUZHA-690512.
- ADDL.R55 MURALEEDHARAN K., S/O.KUNJUPILLA MURALEEDHARAN,
POOVATHIL, NANGIARKULANGARA P.O., PALLIPPADU
VILLAGE, KARTHIKAPALLY TALUK, ALAPPUZHA DISTRICT,
PIN-690513.
- ADDL.R56 P.G.GOPI, S/O.GOPALAN,
PADAMUTTATHU HOUSE, THAMALLACKEL THEKKUMURI,
THAMALLACKEL P.O., KUMARAPURAM VILLAGE,
KARTHIKAPALLY TALUK, ALAPPUZHA DISTRICT, PIN-
690548.

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ADDL.R57 SATHEESH VADAKARA, S/O.GANGADHARAN, VADAKARA
HOUSE, KARTHIKAPALLY P.O., ALAPPUZHA-690516.

[ADDL.R43 TO R57 IMPEADED VIDE ORDER IN
I.A.NO.8/2022 DATED 12/1/2023]

BY ADVS.

SRI.A.N.RAJAN BABU, SC, S.N.TRUST

V.R.KESAVA KAIMAL

P.B.SAHASRANAMAN R5

R.RAJASEKHARAN PILLAI R6

S.SUJIN R7-R33

JOSE PALLATTUKARAN R34-R42

M.G.KARTHIKEYAN R43-R57

SRI.P.GOPALAKRISHNAN (MVA)

SRI.A.R.EASWAR LAL

P.J.ANILKUMAR R4

T.S.HARIKUMAR

THIS SPECIAL JURISDICTION CASES HAVING BEEN
FINALLY HEARD ON 12.01.2023, THE COURT ON
13/1/2023 DELIVERED THE FOLLOWING:

A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ.

SP.J.C. No.3/2020

Dated this the 13th day of January, 2023

J U D G M E N T

A.Muhamed Mustaque, J.

This matter is related to modification of a scheme approved by this Court in respect of the Sree Narayana Trust (for short, the 'S.N.Trust). The S.N.Trust is a public trust.

2. A scheme for S.N.Trust was framed pursuant to the judgment of this Court in A.S.No.689/1972 and 813 of 1972.

3. Clause 34 of the scheme permits any member of the Board of Trustees to move this Court for appropriate modification of the scheme.

4. The petitioner is one of the Board of Directors of S.N.Trust. In this petition for

modification, he seeks the following to be incorporated:

If any office bearer under the trust is charge sheeted for an offence of breach of trust by a Competent Court in a Criminal Proceedings, the office bearer/bearers shall abstain from continuing in the office till the final disposal of the case filed against him/them.

5. This was apparently moved in the wake of implication of the Secretary of the Trust, Shri Vellappally Nadesan for various offences under the Indian Penal Code. It is alleged that he has misused the funds of the Trust. We are not here to decide upon any matter relating to individual trustee, whether a particular individual has committed breach of trust or he is not fit to continue as a trustee, which are all matters to be considered by an appropriate Court in proceedings under Section 92 of the Civil Procedure Code. The point that has arisen for consideration before us is whether any modification is required in the scheme approved by this Court.

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6. There cannot be any doubt as to the competency of this Court to modify the scheme in the light of Clause 34 of the Scheme which reads thus:

Any member of the Board of Trustees may move the Hon'ble High Court of Kerala for appropriate modification of the Scheme.

7. It is to be noted that, in the past, this Court had also occasion to modify the scheme after its approval. Accordingly, the original clause 34 was amended by deleting certain portions. Thereafter, in yet another proceedings before this Court, dated 15/12/2016, this Court incorporated clause 34A. Clause 34A permits members of the Board of Trustees to move against office bearers of Trust or the executive committee for violation of Trust scheme or on breach of trust. Clarificatory notes mention that remedy in such a situation is to approach the civil court by filing regular suit invoking Section 92 CPC. In the above order, this Court clearly observed that

modification is permissible for the purpose of administration of the Trust.

8. We note that there is no provision in the scheme to keep a trustee or office bearer of the Trust in suspension till such trustee or office bearer is cleared of criminal charges levelled against them for the offences committed in respect of the Trust property. As seen from the Scheme, a provision has been made to make a person ineligible to become a trustee, if such person is convicted by the criminal court for the offence involving moral turpitude. No doubt, a trustee can be removed for breach of trust by a regular suit. However, we are wondering if a person is charge sheeted for committing offence in respect of trust property, can he continue to officiate in Trust till he is cleared of the charges? In a fair trial before the criminal court, it matters; as the witnesses and documents will be in the control and the custody of the office bearers of

the Trust. Is it not detrimental to the interest of the Trust, if such office bearer is permitted to continue in the office? We have to answer this pointed question by considering the claim for modification.

9. Shri A.N.Rajan Babu and other counsel, who resisted the modification, argued that it is easy to implicate a trustee into a criminal case and to keep him away from administration and, therefore, if such a modification is allowed, it will result in chaos in administration of the trust. We are afraid to countenance this argument. Merely by incorporating a clause in a scheme, no Trustee can be prevented from functioning as an office bearer or a Member of Board of Trustees. However, we must remind ourselves that the trustee is fiduciary and he must not place himself in a position wherein his interest may conflict with his duties. The duty of the trustee is to uphold the objectives of the Trust. The very criminal

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prosecution can be derailed, if a trustee, who is implicated in criminal charges in respect of the Trust property is permitted to have control over the administration of the Trust. It is not necessary to wait till final report is filed or charge is framed to take action against such an officer. Having regard to the nature of the allegations in such crime, he should not be permitted to continue to hold the office. The Court, in such a situation, in a regular suit will have to address whether the continuation of such office bearer or board of trustee is having conflict with interest of the Trust or is detrimental to the interest of the Trust. If the Court forms an opinion that fair trial will not be possible, the Court can very well act upon such clause to desist the trustee from functioning. The new clause is necessary to secure the objective and integrity of the Trust. Thus, we are of the view that the request of modification

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can be acceded with a slight modification as follows as clause 34B:

If an office bearer of a Trust is involved in a criminal offence of breach of trust or in an offence relating to the property of a Trust and, his continuation in the office is having conflict with the interest of the Trust, or is detrimental to the interest of the Trust, the office bearer shall abstain to hold the office till he is discharged or acquitted in such case.

Modification permitted as above.

Sd/-

A.MUHAMED MUSTAQUE, JUDGE

Sd/-

SHOBA ANNAMMA EAPEN, JUDGE

ms