(2011) 09 CAL CK 0049

Calcutta High Court

Case No: GA No. 3490 of 2007, GA No. 3637 of 2010, GA No. 643 of 2011, GA No. 2766 of 2011 and CS No. 248 of 2004

Mrigan Maity and Others		APPELLANT
	Vs	
Daridra Bandhab Bhandar and Another		RESPONDENT

Date of Decision: Sept. 15, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 6 Rule 4, 151
- Constitution of India, 1950 - Article 162, 226, 227, 296, 32
- Government of India Act, 1858 - Section 54
- Government of India Act, 1915 - Section 20(3)
- West Bengal Clinical Establishments (Registration and Regulation) Act, 2010 - Section 12, 18, 25, 27, 7
- West Bengal Clinical Establishments Act, 1950 - Section 2, 3, 7
- West Bengal Societies Registration Act, 1961 - Section 23, 24

Hon'ble Judges: Sanjib Banerjee, J

Bench: Single Bench

Advocate: Anindya Kumar Mitra, General, Supriyo Bose, Anup Kumar Mukhopadhyay, Paritosh Sinha, Jayanta Mitra, Ranjan Bachawat, Rajarshi Dutta and Sudarsan Roy, for Picasona Health Care Private Limited, for the Appellant; Indrajit Sarkar, A.N. Ganguly, Jiban Ratan Chatterjee Sukumar Bhattacharyya, Dipendra Nath Chunder, for Defendant No. 1 and Joy Saha, for Applicant in GA No. 2766 of 2011, for the Respondent

Judgement

Sanjib Banerjee, J.

Several years after the horse has bolted, the state government appeals to the inherent sense of justice of the court by wielding the parents pateriae doctrine to both chase the horse back into the stable and bolt the door. The primary application, GA No. 3637 of 2010, is the one carried u/s 151 of the Code of Civil Procedure, 1908 by the State for recalling orders dated October 8, 2004 and

December 23, 2004 by which the suit stood disposed of. GA No. 3490 of 2007 is a previous application by the State seeking leave to take over the assets and liabilities of the seven hospitals that belong to the first Defendant. GA No. 643 of 2011 is by the added Defendant seeking a clarification of the recent orders made on the State''s principal application and, in effect, seeking to continue in management of the hospitals as permitted by the orders passed in the year 2004. GA No. 2766 of 2011 is by a person claiming to be an erstwhile employee of one of the hospitals and a member of the first Defendant society.

2. As is almost inevitable in a matter of the present nature, a question of the locus standi of the state government to maintain its prayers has been raised. The real tussle is between the state government and the added Defendant, Picasona Health Care Private Limited. The Plaintiffs have not been represented in course of the present proceedings despite service. The existence of the first Defendant society is in serious doubt and though some persons claiming to be the members of the first Defendant society have either used an affidavit or have applied to be heard, they appear to be unabashed supporters of added Defendant Picasona and have hardly made any bones about it.

3. Before embarking on the question of the State''s locus to apply and have the orders passed in the year 2004 recalled, the scope of the suit and the orders made therein must be noticed without comment. In the plaint relating to the suit, the third Plaintiff is claimed to be a registered trade union; the first Plaintiff is said to be the general secretary of such union; and, the second Plaintiff is described as the chief adviser to the third Plaintiff union. The avowed purpose of the suit, as evident from the opening paragraph of the plaint, is "to enable (members of the third Defendant union) to recover the dues from the Defendant No. 1." The second Defendant is described as the special officer "appointed in respect of the said Society by this Hon''ble Court by an order dated September 29, 2000 ..." The plaint says that in 1992 the employees of the first Defendant society instituted proceedings under Article 226 of the Constitution and, by an order dated December 23, 1996, this Court directed payment of the salaries to the employees of the relevant hospitals within a particular time. The plaint reveals that on a subsequent writ petition a similar order was made on January 28, 2002. The business end of the plaint and the reliefs claimed therein need to be seen in the Plaintiffs'' words:

8. However, the Defendants have not paid the salaries 1.12.99 to 30.4.2002 and other dues of the workmen of the said hospitals. Full particulars of such dues are as follows:

P A R T I C U L A R S

1.	On account of salaries of the staffs and Employees	Rs. 85,00,000.00
2.	On account of Provident funds	Rs. 65,25,363.00

3.	On account of Gratuities and other benefits	Rs. 55,00,000.00
4.	On account of other dues including All suppliers	Rs.47,00,000.00
		Total Rs. 2,52,24,363.00

"9. The workmen of the said hospitals are living in chill penury and are unable to sustain themselves and their families and dependants anymore.

"10. The Defendants are thus liable to pay the said dues of the said workmen with interest at the rate of 12 per cent per annum.

"11. The workmen are also entitled to interest At the rate of 12% percent per annum on their said dues till realization.

"12. The Plaintiffs have valued the reliefs claimed in the instant suit at Rs. 2,52,24,363.00. The Plaintiffs have paid appropriate ad-valorem Court fees on the instant suit.

"13. Inasmuch as the instant suit is valued At over Rs. 10 lakhs, this Hon''ble Court only have the jurisdiction to tertian, try and determine the instant suit and the City Civil Court does not have pecuniary jurisdiction to try and determine this instant suit.

The Plaintiff claims: -

a) A decree for Rs. 2,52,24,363.00 as stated in paragraph 8 thereof;

b) Interim interest and interest on judgment at the rate of Rs. 12%.

c) Injunction:

d) Receiver;

e) Attachment before judgment f) Costs;

g) Further and/or other reliefs.

3. Since the second Defendant in the suit is referred to in the plaint as a special officer appointed by this Court, the circumstances that led to such appointment and the brief of the special officer need to be ascertained. Matter No. 1680 of 1992 was instituted before this Court under Article 226 of the Constitution complaining of the arbitrary appointment of an administrator over the seven hospitals of the first Defendant society by the state government. The writ petition was launched by a member of the society and the assertion therein was that the state had illegally usurped control over the hospitals by a memorandum of October 10, 1975 which did not have any legal mandate. In the order dated September 11, 1992 allowing the writ petition, the court noticed the recital to the memorandum which reflected the

State''s understanding that upon most of the members of the executive committee of the first Defendant society having resigned "a vacuum has been created ... in the management of the hospitals" and that "in public interest, viz., the treatment and care of the T.B. Patients lying admitted in the ... hospitals and under the care of the Outdoor treatment centres, it is necessary to take immediate suitable steps to run and manage the institutions pending formation of the new Executive Committee in accordance with the rules of the Society." By the memorandum, certain officers of the state government were appointed administrators and, at the time that the writ petition was filed, the second Respondent to the proceedings was the administrator. The points canvassed in support of the writ petition, as noticed in the order dated September 11, 1992, were that the State had no power under any law to appoint an administrator over or in respect of the affairs or assets of the society; and, even it were accepted that the state government had any modicum of authority to issue the memorandum, the administrators had continued endlessly without any effort to have the executive committee of the society reconstituted. A third, unrelated charge levelled was that the administrator then in control was attempting to dispose of the assets of the society. The State did not use any affidavit to contest that petition, but the administrator did. The administrator asserted that the society had become defunct and the State had the legal sanction to step in.

4. The order recorded that the Respondents had not been able to "justify the impugned Notification by reference to any provision of law." The court noticed the limited ambit of Section 23 of the West Bengal Societies Registration Act, 1961 which provides that in certain circumstances the State may appoint a person to investigate into the affairs of a society and report to the State, whereupon the State may direct the society to remove the defects or irregularities within a specified time, and in default, the State may direct the registrar under the 1961 Act to move the court for dissolution of the society. The order also refers to the other provisions of the 1961 Act that provides for dissolution of a society by court, either by a resolution of its members or by the registrar seeking the same.

6. Upon consideration of the provisions of the 1961 Act, the court held that there was "no provision for the appointment of an Administrator over the affairs of the Society. The State Government control over the affairs of a registered Society is limited to Section 23 of the Act. It cannot be argued that the impugned action and Notification is justifiable by reference to any of the provisions of Section 23 of the Act." Apropos a contention that the affairs of the society needed to be taken charge of by the State for the larger good, the court opined that "public interest cannot by itself and without reference to any statutory provisions empower the State Government to take over the assets and administration of any organisation leave alone a registered Society." The order proceeded to hold that the "submission on behalf of the Respondents that the Society is defunct is based upon a mis-appreciation of the law. The Society continues to exist until dissolved. It is nobody''s case that the society has been dissolved under the Act. The mere fact that

members of the Executive Committee may have resigned does not affect the existence of the society." The operative part of the order dated September 11, 1992 stated as follows:

Accordingly, I dispose of this application setting aside the impugned Notification/Memo. dated 10th October, 1975 under which the Respondent No. 2 is claiming to be authorised to operate as Administrator of the Society. The Respondent No. 2 is directed to forthwith handover the charge of the assets and records relating to the Society to the Director of Health Services and to Mr. Sunil Kumar Mukherjee, Advocate, who are appointed Joint Special Officers for the purpose of maintaining the continuity in the administration of the affairs of the society. The Joint Special officers will hold election of the members of the Society on the basis of the Register of Members as existed in 1975. Any other member claiming to be a member must produce the proof of membership before the Joint Special Officers. The election of the members of the Executive Committee shall be held strictly in accordance with the provisions of the Regulations of the Society within 8 weeks from the date of communication of this order to them.

The Joint Special Officers, however, will not have any authority to dispose of or encumber any of the assets of the Society. After the election is held, the Joint Special Officers shall hand over the control of the assets and administration of the Society to such newly elected Executive Committee.

5. The administrator carried the order dated September 11, 1992 in appeal. In course of the appeal, a report was sought from the Director of Health Services, Government of West Bengal. The report is quoted in the appellate order of September 29, 2000 wherein it was clearly stated that the State had accepted the judgment and order dated September 11, 1992 and it was only the administrator, without any authority of the State, who had preferred the appeal. By the time the appeal was heard, the administrator had also been transferred. An argument was made on behalf of the Appellant that the State had the mandate under Article 162 of the Constitution to appoint an administrator over the society to protect the interest of the patients and the employees at the hospitals. The appellate court observed that any action against the society had to be taken in terms of the 1961 Act and not by taking recourse to the provisions of Article 162 of the Constitution. The order observed that as the administrator had been appointed by the State and the State was not desirous of the administrator continuing in such capacity, the administrator had lost his locus to maintain the appeal. The appellate order directed as follows:

For the reasons aforementioned this appeal must be dismissed. However, having regard to the fact that some members of the Society might not be interested in the matter any further, we are of the opinion that for the purpose of holding election a Special Officer may be appointed. The learned Counsel appearing on behalf of the Respondent Mr. Amar Nath Ganguly is appointed as a Special Officer. The learned Special Officer shall out of the income of the Hospitals would be paid a

remuneration i.e. 3000 GMs. per month. The Special Officer should complete the election within a period of three months from date. Having regard to the conduct of the Appellant herein we are of the opinion that he is liable to pay costs. It is so directed. Counsels fee assessed at 500 GMs.

The State is also directed to bear the costs of the writ application as also the appeal. The Administrator, the Drawing and Disbursing Officer and all other concerned persons are directed to hand over the charge as also the cash balance, all documents, papers relating to the hospitals to the Special Officers within one week from date.

Till the election of the office bearers is held, the Special Officer shall be entitled to operate the Bank Account, if any.

6. To return now to the present suit and the orders passed therein, it appears that the suit was filed on or about September 16, 2004. Within days of the suit being launched, GA No. 3748 of 2004 was filed by the second Plaintiff, inter alia, for a direction on the second Defendant "to proceed with the rehabilitation and/or revival of the activities of the hospitals and/or to raise and/or accumulate necessary funds to clear the dues of the members of the Petitioner No. 3, who are the employees of the said seven hospitals together with all legitimate claims on account of their provident funds dues, gratuities etc." An affidavit of service affirmed on September 21, 2004 accompanied the notice of motion in GA No. 3748 of 2004. Such affidavit recorded that both the Defendants had been served. However, when GA No. 3748 of 2004 was taken up on September 27, 2004, the applying Plaintiff was directed to serve the first Defendant and inform it that the matter would appear on October 11, 2004. An affidavit-of-service was also directed to be filed.

7. Within a week of the second Plaintiff''s application, Picasona, which was not a party to the suit, applied by way of GA No. 3883 of 2004, seeking the following orders:

a) Leave be given to your Petitioner to move this application and be added as a party to this proceedings.

b) Direct the Special Officer, the Respondent No. 2 Mr. Amarnath Ganguli to accept the proposal made by the Petitioner in their letter being the annexure "A" herein.

c) Mr. Amarnath Ganguli, the Special Officer, the Respondent No. 2 herein be directed to grant leave to your Petitioner to start the said hospitals afresh under the supervision and control of the Respondent No. 2.

d) The Special Officer, the Respondent No. 2 herein be directed to receive and/or accept the money from the Petitioner as offered in their letter in Annexure "A" herein within the time as fixed by this Hon''ble Court.

e) Upon receipt of the said sum of Rs. 2,52,24,363.00 from the said M/s. Picasona Health Care Pvt. Ltd. the said Mr. Amar Nath Ganguli disbursed the said amount among the employees of the said seven hospitals of their actual dues upon proper scrutiny and verification and also be directed to pay all arrears Provident Fund dues of the employees and also other dues of the said seven hospitals and the provident fund authority be directed to accent the said actual dues from the Respondent No. 2 in terms of this order.

f) An appropriate direction be given to your Petitioner to pay all the amounts as mentioned in their letter and also other amounts if necessary, within a period fixed by this Hon''ble Court to enable the Special Officer to disburse the same amongst the employees of the said hospitals and meet up the other dues of the hospitals.

g) Leave be given to the Special Officer and/or the Petitioner to utilise and/or use the existing licence and facilities in the said hospitals and pay the authorities concern all fees and charges for using the existing benefits like electricity, telephone all statutory licences etc. and also be directed further to pay the enhanced charges as and when imposed by the said authority concern from time to time.

h) Leave be given to the Special Officer to disburse the lease rent or licence fees as mentioned in the said letter by M/s. Picasona Health Care Pvt. Ltd. for the benefit of mankind in the name of Sree Mohananda Brahamachari and/or his Parampita Sree Balananda Brahamachari.

i) Such further and/or other order or orders as Your Lordships may deem fit and proper.

8. Annexure ''A'' to Picasona''s petition in GA No. 3883 of 2004 was a letter dated September 15, 2004 issued by Picasona to the second Defendant. The rest of the letter is printed but the date is written in hand. Coincidentally, paragraph 5 of Picasona''s petition in GA No. 3883 of 2004 carried a blank space when it was originally printed wherein the date of the letter has been written in hand. As aforesaid, the suit appears to have been filed on or about September 16, 2004. Parts of the letter dated September 15, 2004 issued by Picasona to the second Defendant need to be noticed:

So far our information goes, the present condition of the hospitals and/or medical units run and managed by the society have been suffering from disastrous condition because of paucity of funds and proper management and/or nursing.

We are engaged in social welfare activities and being a leading social organisation, we are interested to engage ourselves to run and promote such hospitals and/or medical units situated at several important positions in and around Kolkata and suburbs for the welfare of the poor and downtrodden section of communities irrespective of casts, creed and/or colour in all possible ways and means. Under the perspective as stated herein above, we would like to offer the following activities

and/or facilities to materialise the dream of the holy Brahmachari into reality.

1 We would establish and promote a Modern-updated well equipped hospital with Maternity-cum-child care unit, Dispensaries, Health Museum clinics, Dignostic centres, medicine supply counter (payble), including general words for the poor and distressed people in particular.

2 We would use the present establishment not only for the medical care but also for the spread of mass education, to promote the study of arts, science, commerce and also technical subjects by establishing the primary schools or secondary schools or medical college or old age home.

3 We would clear of all staff dues for the stipulated period i.e., upto 30�4-2002 (Thirtieth April, Two thousand two) as agreed by the majority of the staff and try to accept the request of the majority of the staff as far as practicable and also try to meet up the pending dues of the supplies and other concern accordingly on taking over the charge of the said Hospital.

4 On enquiry we came to know that about a sum of Rupees Two Crores, be a little more or less, remains outstanding for clearing all such dues. In this regard we are to say that we shall pay you a sum of Rupees 20 lakhs on/or after passing necessary order/orders from the Hon''ble High Court in W.P. No. and the rest amount would be paid within 30 days after passing the said order to enable you to disburse the same towards employees'' dues, suppliers'' dues and dues to others as you find fit and proper. ...

5. (a) We would pay a sum of Rupees Two lakhs per year for 1st and 2nd. Year to you after taking over charge and responsibility under the guidance of you being the Special Officer of the said society to be utilized for the benefit of mankind in the name of Sree Mohannanda Brahmachari and/or his ''Param Pita'' Sree Balananda Brahmachar. On and from 3rd year, we shall increase the said yearly amount of Rupees 2 lakhs by 10% each year and enhancement will be ceased and stopped and there will be no enhancement after the enhancement will reach Rupees 3 (three) lakhs.

(b) We shall act and carry out the activities in accordance with the terms and conditions as contained in this letter in consultation with you being the Special officer and if there be any difference or deviation, the shall will be rectified and settled through mutual agreement.

In order that the above mentioned objects of the society are fulfilled in the true sense, it is necessary for us to obtain complete control over the entire premises with authority to expand the activities by making substantial fresh investments. In view of this, we would request you to kindly move the Hon''ble High Court, Calcutta, to pass necessary and specific order and/or orders on the following points: -

1 Necessary orders allowing for complete control over the management and income made from Hospital source. In any event, the nomenclature and/or objective of the hospital, any unit of the hospital be changed and/or altered.

2 Necessary orders to the effect that no interference of other/outsiders in day to day affairs after taking over charge of the present management.

3 Necessary orders for authority to construct new buildings on the vacant lands, maintain or later may House Building or works necessary or convenient for the purpose of present management.

4 Necessary orders for authority to utilise and/or renew the existing facilities and licence and/or licences of the authority concerned for running these medical units/Hospital and also be entitled to obtain necessary permission and/or licence as and when required from the competent authority concerned.

5 Necessary orders for authority to offer the property as security with the Statutory/Nationalised Banks/Financial Institution for procuring the funds for the betterment, improving, developing and smooth running of the Hospital and/or Hospital management. We will, however, from time to time communicate to you the details of funds procured from any Bank/or financial institution and also utilisation of the same in due course.

6 Necessary orders from the Hon''ble High Court, Calcutta, to the State Government/Central Government to pay the pending dues to the newly formed Company, which was otherwise payable by them.

7 Necessary orders for lease of the respective premises and land initially for 36(Thirty six) years with an option for renewal for ten times, 10 (ten) years each from the date of expiry of initial lease term.

8 Necessary orders for the ejection of Tresspassers, if any, who have occupied a part of the hospital premises or a part of vacant land of the hospital.

9 Necessary orders for the ejection of the possessor and/or possessors, if any, who have unlawfully and/or illegally gained, possessed and/or occupied a part of vacant land of the hospital along with a part of the hospital premises.

We offer only 10 (ten) free beds/or seats which will be reserved in general ward of the hospital when prepared, for any society or organization established by Sree Mohananda Brahmachari ...

9. On October 8, 2004, both the applications, GA No. 3748 of 2004 and GA No. 3883 of 2004, were taken up and dealt with by the following order:

The Court: By consent of the parties, this application is allowed and I grant prayers (a) to (h) of this application.

I trust and hope that payments will be released as early as possible.

Liberty is granted to the learned Special Officer to open a bank account in any nationalised bank to enable him to carry out the direction contains in this order.

The learned Special Officer will get 600 GMs. at his remuneration per month. Such remuneration are to be paid by Mrs. Bhadra''s client to the learned Special Officer. Costs and expenses of the learned Special Officer are, also, to be borne by Mrs. Bhadra''s client.

In view of the order passed today learned advocate appearing for the Petitioner in G.A. No. 3748 of 2004 submits that this application has become infructuous. Therefore, the application is dismissed as infructuous.

It is suggested by the parties that in view of the order passed today virtually nothing remains to be decided in the suit.

The suit is treated as on day''s list and is disposed of.

I make no order as to costs.

10. Though it does not appear that any money was immediately tendered by Picasona to the second Defendant in terms of its letter dated September 15, 2004 notwithstanding the order dated October 8, 2004 requiring Picasona to adhere to the proposal contained in such letter, Picasona made a second application, GA No. 4496 of 2004, on or about December 22, 2004 seeking the following orders:

a) Leave be given to move this application.

b) The Respondent No. 2 be directed to take all necessary steps to proceed with the rehabilitation and/or revival of the activities of the hospitals and/or raise and/or accumulate necessary funds to run the said seven hospitals smoothly and efficiently after payment of all employees dues on account of salary, provident fund dues etc. including other dues like food, suppliers, electricity, medicine etc. upto the tune of Rs. 2,52,24,363/- out of the fund be deposited by the Picasona Health Care (P) Ltd. in terms of the order dated 08.10.2004.;

c) The Respondent No. 2 be directed to take necessary steps to revive and rehabilate the hospitals for the benefit of the poor and distress people;

d) The Respondent No. 2 be directed to take all necessary steps to proceed with the rehabilitation and/or revival and/or run afresh with the all modern equipments of the said hospitals and/or Respondent No. 2 may also be directed and authorised to raise necessary funds from the nationalized bank and/or other Govt. financial institution by creating charge and/or mortgaging the movable and/or immovable properties of the said Society for procuring necessary machineries, equipments renovations etc. for running the said seven hospitals afresh with all modern equipment facilities for the benefit of the poor and distress people and the Petitioner shall run the said hospitals property with the said machineries and the Petitioner undertakes to clear off the said dues of the said bank and/or financial

institution and Respondent No. 2 be also directed to appoint any efficient and/or eminent doctors, nurses, staffs for the said hospitals in consultation with the Petitioner and also be at liberty to discharge them, if necessary and Special Officer be also directed to repair renovate and/or extend the existing buildings of the Hospitals and temples situated at Dunlop known as Jugal Mandir.

e) The order dated 08.10.2004 be modified to the extend in terms of the prayer (b), (c) and (d) above.

f) Such further order or orders and/or other direction or directions be passed as this Hon''ble Court may deem fit and proper.

Picasona''s second application was disposed of thus by an order dated December 23, 2004:

By consent of the parties including the learned Special Officer, let there be an order in terms of prayers (b), (c) and (d) of the application.

The application, is thus, disposed of. No costs.

10. The State has also referred to a petition filed under Article 226 of the Constitution by Picasona in this Court being WP No. 24004(W) of 2009. The State and the second Defendant herein were, among others, Respondents to such proceedings. The challenge in such proceedings was to a notice dated September 6, 2009 issued by the officer-in-charge of Burtolla Police Station requiring Picasona to stop all repair work at one of the hospitals in view of a direction by the State issued in the light of a Bill passed in the Assembly for the takeover of the administration of the hospitals of the society. The State has collated from such petition the payments as said to have been made by Picasona to the second Defendant herein and claims that despite the proposal in Picasona''s letter of September 15, 2004, payments are said to have been made by Picasona to the second Defendant beginning July 25, 2007. The State says that Picasona''s assertion in WP No. 24004(W) of 2009 was false in that it claimed, at paragraph 9 of the petition, that the "company after clearing all arrears in respect of the seven hospitals, took over management of the seven hospitals in the year 2004 ..." whereas the particulars as furnished in annexure P4 to the petition revealed all alleged payments being made to and received by the second Defendant herein on or after July 25, 2007.

11. The State insists that it has the right to seek recalling of the orders dated October 8 and December 23, 2004 by reason of its position as the State and acting pro bono public Company The State contends that since the society was set up in 1922 and ran the seven hospitals for the benefit of the less privileged sections of the society, the State is eminently qualified to bring it to the notice of the court that an order had been obtained from it which prejudices the interests of those that the society and the hospitals had been set up to serve. The State relies on the principle of parents pateriae and the doctrine of eminent domain. The State asserts that even

if it is accepted that the society is not legally defunct, it is practically non-existent. The State refers to Article 296 of the Constitution and relies on the principles of bona vacantia and escheat in suggesting that if the society is not in existence it would fall upon the State to run and manage the hospitals. The State urges that a technical objection as to locus raised against the State should be summarily brushed aside when a fraud of such mammoth proportions is reported to the court. The State almost appears to make out that a wrong done by court has been brought to the notice of the court and it is the court''s duty to right it, never mind the status or locus of the informant. The State submits that the orders passed were without jurisdiction and when the court''s attention is drawn to such a matter, it ought not look at technical objections to lose out the opportunity to correct itself. The State refers to the provisions of the West Bengal Clinical Establishments Act, 1950 that was in force in 2004 and the 2010 avatar of the same statute to make the point that by virtue of the orders passed, the salutary checks and balances embodied in the statute were given a complete go-by and the State as the licensing authority can bring such matter to the notice of the court.

12. Picasona retorts that the State cannot have any say in the matter. Picasona suggests that every ground urged on behalf of the State to establish its locus to seek recalling of the orders of October, 8 and December 23, 2004 is flawed. It says that since the order of September 11, 1992 was passed in proceedings in which the State was a party and returned a definitive finding that the first Defendant society was not defunct, the State''s present attempt to effectively seize the administration and assets of the society by flashing the parents pateriae or the bona vacantia or the escheat cards should not be countenanced. It argues that the State cannot get control of the society or its hospitals by a side wind when its endeavour to administer the society was negated by the trial court and appellate orders. Picasona also raises a question of delay, though the more technical objection on the ground of limitation is not squarely taken. The immediate relevance of the point is that since the orders were passed in the year 2004 and the principal application was made only in the year 2010 despite the State being put on notice of the orders of 2004 in the year 2005, the court should not accede to the prayers now made. In the larger scheme of things, Picasona says that the State could not make it convenient to have the executive committee of the society put in place for the 17 years that it "temporarily" remained in control of the hospitals, for the most parts letting them go to seed. The State was, according to Picasona, waiting in the wings and only when Picasona had invested substantial sums to renovate two of the hospitals and bring in expensive medical equipment and other material thereat did the State attempt to pounce upon the enhanced facilities by trumpeting the hackneyed charge of fraud to camouflage its design of again usurping control over the hospitals.

13. Picasona questions the State''s motive and, in particular, refers to a prayer in the earlier application made by the State that the State be permitted to run the hospitals

through a franchisee. It submits that if the running of the hospitals is to be outsourced by the State, the present arrangement should not be disturbed since Picasona has paid in excess of Rs. 2.5 crore on account of the dues of the hospital employees and has expended several more crores to upgrade the facilities at the two hospitals at Raja Dinendra Street and Dunlop. Picasona criticises the underlying suggestion of the State that the court may not have applied its mind in passing the orders which have been sought to be recalled. It asserts that there is no room to presume that any court would make an order without going through the entirety of the records and taking into account all relevant considerations. It says that there is no indication in either order that the court was not aware of the import or impact of its decision.

14. Picasona asserts that the bogey of lack of jurisdiction that the State has raised is devoid of merit. Surely, it contends, the court had the authority to receive the suit and pass orders therein. Picasona maintains that since the second Defendant herein was appointed as the special officer over the society and its hospitals, he had the implicit authority of the court to represent the society. It urges that since the parties to the action had consented to the order and the effect of the order was that it satisfied the claim that had been made in the suit, it is immaterial that the affairs or the assets of the society did not form the subject-matter of the suit. It submits that if a Defendant to an action offers a property of the Defendant in lieu of the claim of the Plaintiff in the suit and the Plaintiff agrees to accept the same or nominate another to receive it, neither would such matter be capable of being complained against by a non-party to the action nor could the court''s authority to sanction such arrangement be called into question.

15. The more robust challenge by Picasona to the State''s prayers is its attempt to call the State''s bluff on the charge of fraud. Picasona cites Order VI Rule 4 of the CPC and quotes the venerable Kerr on Fraud (7th Ed.) to insist that fraud must be pleaded with utmost particularity and it will not be inferred from the circumstances pleaded if the circumstances be consistent with innocence. Picasona submits that fraud is a conclusion of law that stands on the facts pleaded in support thereof with clarity and precision; a general cloud of suspicion raised is no substitute for the assertion and proof of the state of things that would inevitably lead to an inference of fraud. Picasona has placed copiously from the petition in GA No. 3637 of 2010 and, in particular, paragraphs 19 to 21 thereof that the State has relied on in support of its case. It says that the allegations contained in the relevant paragraphs are far too general and, at any rate, amount to an inference rather than the assertion of or the attempt to establish any fact. Picasona suggests that since hindsight is always 20-20, it is easy for a person to arrange the sequence of events that took place several years back and read a motive or mischief therein; but the motive or mischief has to be founded on firmer stuff than mere conjecture or surmise.

16. Since all the issues that have arisen and all aspects of the matter that have been canvassed need to be dealt with, the case of fraud as made out by the State has to be seen in some detail. The State has first run a high case: that the sequence of events and the facts as evident from the records cry out fraud through every pore and the mere narration thereof would lead to the inescapable inference of fraud. Climbing down from such high horse, the State says that there is fraud in the obvious collusion between Picasona and the second Defendant on the one hand and the fraud perpetrated on court by the parties represented at the time that the two orders were made.

17. The State suggests that the entire charade was enacted by Picasona and the second Defendant and craftily presented before the court to give it a false impression and obtain undue benefits at the expense of the society which was either not represented at all or altogether sold short by a custodian who owed a greater duty of care than any ordinary manager. The State asserts that the second Defendant had no authority to represent the first Defendant society or consent to the assets of the first Defendant society being sold out to an outsider. In the alternative, the State says that even if the second Defendant had the requisite authority to represent the society, he had no power to deal with the society''s assets or give any consent for the assets to be transferred. It suggests that since the assets have been alienated at a pitiably low consideration, it should shock the court''s conscience. The State submits that as to what was considered by court and weighed with it in making an order has, per force, to be reflected in the relevant order. The State says that just as it may not be presumed that a court did not apply its mind in making an order, it may equally not be presumed that matters not reflected in the order were, in fact, taken into consideration in passing the order. The State contends that when an order is passed by consent with the parties demonstrating apparent authority to consent, a court would scarcely question the authority; but it would be more demanding if it were subsequently brought to the court''s notice that someone''s property had been dealt with by another and the court''s imprimatur obtained thereon by misleading the court to believe that the appearing parties had due authority to form the contract embodied in the consent order. The State is particularly scathing on the second Defendant and uncharitable as to his conduct. The State refers to the sweeping clauses of Picasona''s letter of September 15, 2004 and doubts the integrity of the second Defendant in causing the court to accept the same. No reasonable person in the management of the society, according to the State, could have acceded to the veritable sale of the valuable properties of the society at such a throwaway price. At paragraph 19 of the petition the State has pleaded that it was both the duty of the second Defendant to bring the limited scope of his authority over the society to the notice of the court and, if the second Defendant was the custodian of the society, to resist the extraordinary demand of Picasona against the pittance that it offered. Later in the paragraph, the State has insinuated that the order dated October 8, 2004 was a product of collusion

between the second Defendant and Picasona "for their vested interest." Paragraphs 20 and 21 of the State''s petition of GA No. 3637 of 2010, in their essential parts, read as follows:

20. It is also stated that by the said impugned order dated October 08, 2004 the said Company in collusion with each other were able to get order of taking lease for 136 years (initial 36 years with an option for renewal for ten times, 10 years each) in respect of the entire properties of the said Society, which comprising of a total landed area of 12 (twelve) Big has 14 (fourteen) Cottahs 11 (eleven) Chittaks and 371/2 Sq. Ft., be the same a little more or less, with 10 (ten) buildings situated in and around the city of Kolkata, simply on commitment of marginal payment of Rs. 2,52,24,363.00 on account of the liabilities of the said Society and further a sum of Rs. 2,00,000/- rent per year (which will have an option of enhancement upto the maximum limit of Three Lakhs only) to be payable to the Defendant No. 2 herein on some vague account, i.e. for benefit of Sree Mohananda Brahmachari and/or his ''Param Pita'' Sree Balananda Brahamachari. As it appears, no payment was made in terms of the said order dated October 08, 2004 and commitment made in the said Offer Letter. Even no payment on account of lease rent has been made despite of expiry of about 7 years from the date of said order dated October 08, 2004. It also appears that the very first payment of Rs. 25,00,000/- was made by the said Company only on July 25, 2007 in contradiction of the offer made in the said Offer Letter. ...

21. It is further significant to note the nature of expeditious persuasion of the impugned suit proceedings, right from the institution of suit, service of summons to the respective parties, appearance of the respective parties, coming into knowledge of the said Company, filling of intervener applications, compromise held and ultimately passing of consent decree. The entire episode was covered with a span of about a single month, ...

18. The State says that there was both fraud perpetrated on court and an illegal order obtained by providing that Picasona would be entitled to run the hospitals on the existing licences granted in respect thereof in favour of the first Defendant society. The State says that both orders were clearly without jurisdiction in the court effectively granting licence to persons to run clinical establishments without the requisite statutory qualifications. This, the State maintains, the court could not have done without inviting the views of the State as the licencing authority. The State submits that, in any event, such an order is opposed to public policy and is liable to be recalled on it being brought to the notice of the court since it gives a charter to unskilled and unlettered persons to do business in healthcare and cause havoc to the persons that they profess to serve.

19. At the time that the relevant orders were passed in the year 2004, the West Bengal Clinical Establishments Act, 1950 was in force. The 1950 Act was replaced by the West Bengal Clinical Establishments (Registration and Regulation) Act, 2010 in or

about October, 2010. The 1950 Act defines a clinical establishment in the widest terms in Section 2(a) thereof. Section 3 of the 1950 Act, which has been substantially reproduced in the subsequent legislation, mandates that no person shall keep or carry on a clinical establishment without being registered in respect thereof and except under and in accordance with a licence granted therefor. Section 7 of the 1950 Act covers offences and penalties for contravention of, inter alia, Section 3 of the Act. The State says that the 1950 Act was enacted for public good and the provisions thereof are mandatory in nature. The State refers to the rules under the 1950 Act and, in particular to Rule 11 thereof that provides that a licence granted in respect of a clinical establishment would not be transferable. Section 6 of the 2010 Act substantially reproduces Section 3 of the previous statute. Section 12 of the 2010 Act lays down the procedure for registration and obtaining licence under such Act. Section 18 of the 2010 Act stipulates that in the event of change of ownership or proprietorship or change of management or on ceasing to function as a clinical establishment, the relevant licence shall be surrendered and the new owner or management, if such is the case, shall apply for a fresh grant. Section 27 of the 2010 Act provides for penalties for non-registration and licensing. The State contends that it does not appear from either order that the court''s notice was drawn to the applicable provisions of the 1950 Act or the rules thereunder or that the court was afforded any opportunity to apply its mind to the effect of allowing Picasona to run the hospitals on the basis of the previous licences granted. The State says that Picasona exploited such generous clause approved by the court to the hilt in citing the order to thwart the application of the mandatory provisions of statutes engrafted for public safety and good. The State submits that to such extent the order dated October 8, 2004 is opposed to public policy and should be undone.

20. Before proceeding to appreciate the law that the State and Picasona have cited, a final factual matter which has attracted substantial comment from either side needs to be noticed. In the year 2005, a member of the State Legislative Assembly, possibly from the Burtolla constituency, wrote a letter to the Department of Health and Family Welfare of the Government of West Bengal recording a meeting between the special secretary in the department and the legislator regarding the hospitals of the society. The legislator suggested that the State may, under the Land Acquisition Act, "acquire the entire property with the permission of the Court and no compensation has to be paid because the Organisation does not exist and the management of the said Organisation is in the hands of the State Government." The legislator followed up with another letter on July 23, 2007 complaining of the hospitals being "totally inoperative" and the staff thereat "not getting their salaries and entitlements ..." The legislator alleged that some persons "in collusion with (the second Defendant herein) are trying to grab the said hospital properties for their private interest, basically for commercial purpose."

21. Picasona suggests that the legislator''s interest in the matter was not altogether altruistic and insinuates that he might either have been opposed to Picasona getting

control of the hospitals or he wanted a private entity of his choice to be put in Picasona''s place. To make its point, Picasona refers to allegations in such regard carried in a Bengali newspaper. The further suggestion of Picasona is that since the concerned legislator has a substantial say in the present dispensation in the State, there is renewed vigour on the part of the State to dislodge Picasona. The State laughs at a political colour being given to its effort. The State says that both its applications were made before the present dispensation, which may understandably be more favourably disposed towards the concerned legislator, had been put in place. The State scorns at the argument of prejudice on the ground that a Bill for the takeover of the management of the hospitals and the ultimate acquisition thereof was passed by the State Legislative Assembly in the year 2009 and awaits Presidential assent. The preamble to the Bill is of relevance:

Whereas it is expedient, in the public interest, to make better provisions for the development, control, management and maintenance of the institution commonly known as the Daridra Bandhav Bhandar, Kolkata, a Society, registered under the Societies Registration Act, 1860, having Registration No. 3378/68 of 21 of 1860. 1926-1927 with its erstwhile registered office at 19/5, Narayan Chandra Dutta Street, Kolkata - 700 006 and subsequently at 65/2B, Beadon Street, Kolkata - 700 006, under Burtolla Police Station, Kolkata, together with the Daridra Bandhav Bhandar Group of Hospitals consisting of seven units established by it and is practically defunct now, with a view to promoting public health and to provide for that purpose for the taking over for a limited period of the management and subsequent acquisition of all properties belonging to the said institution or held for the benefit thereof;

21. On the question of locus, the State says that the strict rule of locus standi has long been diluted. It is true that in the matter of public interest litigation courts have recently been more liberal in accepting complaints; but the analogy may not strictly apply in the present case. To begin with, this is not a public interest litigation where some deficiencies of the State are pointed out and the court is urged to step in. Here, it is the State which has applied, citing public interest. The State says that the relaxation of the strict rule of locus standi is exemplified by the judgment reported at M.S. Jayaraj Vs. Commissioner of Excise, Kerala and Others, . A bidder in an auction for vending foreign liquor within a circumscribed range failed to find a suitable place to locate his shop within such range. At his request, he was permitted by the excise authorities to locate his shop in another range. A hotelier holding a general licence for vending foreign liquor in the latter range challenged the order before the Kerala High Court. A single Judge dismissed the writ petition. In the hotelier''s appeal before a Division Bench, the relocated bidder questioned the locus standi of the writ Petitioner. The Division Bench brushed aside the objection and quashed the order of the excise authority. The relocated bidder took the matter to the Supreme Court which noticed that the strict interpretation regarding locus standi of a person to move a High Court in the writ jurisdiction had been

considerably watered down. The Supreme Court held that in the light of "the expanded concept of locus standi" and since the charge was one of violation of law, the matter could not be decided on the ground that the writ Petitioner may not have had the locus standi to maintain the action.

22. As to the principles of escheat and bona vacantia, the State refers to a judgment reported at Sheo Nand and Others Vs. The Deputy Director of Consolidation Allahabad and Others, The Supreme Court traced the history of the principles to observe as follows at paragraph 10 of the report:

10. The above provision thus dealt with two situations, namely, (i) where there was no heir or successor; and (ii) where there was even no owner of the property. The first of the two situations was described in terms of "Escheat or lapse" and the second in terms of "bona vacantia". This provision was retained in Section 54 of the Government of India Act, 1858. The successor Act, namely, the Government of India Act, 1915, provided in Section 20(3)(iii) that the revenues of India received for His Majesty would include all moveable or immovable property in British India escheating or lapsing for want of an heir or successor and all property in British India devolving as bona vacantia for want of a rightful owner. Thus, the dichotomy between Escheat or lapse and bona vacantia was retained in this Act.

23. Picasona claims that the case is inapposite in the present context since the decision was rendered in the backdrop of a government land, the alleged civil death of the person who claimed rights in respect thereof and the operation of the principle of escheat. It must be remembered that the State does not today assert its title in respect of the hospitals of the first Defendant society. The State only hints that the society may be defunct and there is a likelihood of both the assets and the administration of the society falling upon the State. Escheat implies "to revert to the State"; and though the society has not been dissolved, it is plain to see that the members of the society have not stepped forward to claim the assets or the administration of the society from the year 1975.

24. As to the doctrine of parents pateriae, the State refers to the Constitution Bench judgment in the Bhopal gas tragedy matter reported at Charan Lal Sahu Vs. Union of India, . In upholding the legislation that gave the Union of India the right to process the claims on behalf of the gas victims, the Supreme Court referred to the parents pateriae jurisdiction of the sovereign and observed that "the parents pateriae theory is the obligation of the State to protect and takes into custody the rights and privileges of its citizens for discharging its obligation" since the "Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens."

25. The State says that the society is in the nature of a public charitable trust and the State cannot be a silent spectator and allow the facilities meant for charitable purpose to be commercially exploited by defeating the very object for which the hospitals were earmarked. A judgment reported at K.K. Baskaran Vs. State rep. by its Secretary, Tamil Nadu and Others, has been placed in such context where, at paragraph 33 of the report, the court observed that the "State being the custodian of the welfare of the citizens as parents pateriae cannot be a silent spectator without finding a solution for this malady." The judgment was rendered in the context of a complaint relating to non-banking financial companies deceiving gullible depositors and then doing the vanishing act. Picasona says that the observation cannot be read out of context to give the State any locus to barge in on a matter pertaining to the administration or control of a private society. Picasona comments that the Supreme Court referred to the parents pateriae doctrine to impel the State to remedy a malady and not to give the State a charter to claim the assets and administration of a private body.

26. The State has referred to the judgments reported at Surajdeo Vs. Board of Revenue, U.P., Allahabad and Others, State of West Bengal Vs. Union of India and others, and, Punjab Mercantile Bank Ltd. Vs. Sardar Kishan Singh, for the proposition that when it is a case of fraud and the fraud is brought to the notice of court, the rule of locus standi becomes irrelevant. In the Allahabad case, which is the most apposite of the three in the present context, the Respondents before the High Court had filed suits claiming sirdari rights in respect of a pond which were decreed ex parte. On the strength of such decrees, the Respondents resisted others from irrigating their fields with the water drawn from the pond. One of the neighboring farmers, who was not a party to the suits, applied u/s 151 of the Code for setting aside the ex parte decrees on the allegation that they had been fraudulently obtained in connivance with the pradhan of the village council. The trial court set aside the decrees against which revision petitions were carried, which succeeded. The orders passed on revision were taken to the Allahabad High Court which observed, at paragraph 14 of the report, as follows:

14. ...There may be cases where a third person can bring correct facts to the notice of the courts concerned and the courts concerned will be fully justified in acting upon the information received and in exercising powers u/s 151 CPC In the present case I think that the Petitioner was fully justified in bringing correct facts to the notice of the trial court which rightly proceeded on the information received and has rightly set aside the ex parte decrees in favour of the contesting opposite parties.

27. The State cites a judgment reported at Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others, for the principle that it is the court''s duty to undo a wrong or fraud when it is brought to its notice. Paragraph 13 of the report has been placed:

Respect for law is one of the cardinal principles for an effective operation of the Constitution, law and the popular Government. The faith of the people is the source and succour to invigorate justice intertwined with the efficacy of law. The principle of justice is ingrained in our conscience and though ours is a nascent democracy which has now taken deep roots in our ethos of adjudication - be it judicial, quasi-judicial or administrative as hallmark, the faith of the people in the efficacy of judicial process would be disillusioned if the parties are permitted to abuse its process and allowed to go scot free. It is but the primary duty and highest responsibility of the court to correct such orders at the earliest and restore the confidence of the litigant public, in the purity of the fountain of justice; remove stains on the efficacy of judicial adjudication and respect for rule of law, lest people would lose faith in the courts and take recourse to extra constitutional remedies which is a death-knell to the rule of law.

28. The State says that an act of fraud can be undone by court however belated the complaint. A judgment reported at K.D. Sharma Vs. Steel Authority of India Ltd. and Others, has been placed in such context. The matter related to Steel Authority of India Ltd tenders for raising, transporting and loading of iron ore lumps and fines into railway wagons at the Kalta iron mine. The allegation in the writ petition before the Orissa High Court was that SAIL had cancelled four notices inviting tenders to oblige the Appellant before the Supreme Court. The writ petition by a perceived ineligible bidder was dismissed. The writ Petitioner subsequently discovered that he was eligible and yet his case had not been considered. He applied for review of the order dismissing his writ petition. The review succeeded and SAIL was directed to consider the case of the writ Petitioner and the Appellant before the Supreme Court in accordance with law. Special leave petitions filed by SAIL and the Appellant before the Supreme Court from the order allowing the review were dismissed. The Appellant alleged that the bid of the original writ Petitioner was opened, appraised and negotiated with him and he was awarded the work behind the back of the Appellant. The Appellant levelled a serious charge of fraud. Paragraphs 26 and 27 of the report summarise the law in such regard:

26. It is well settled that "fraud avoids all judicial acts, ecclesiastical or temporal" proclaimed Chief Justice Edward Coke of England about three centuries before. Reference was made by the counsel to a leading decision of this Court in S.P. Chengalvaraya Naidu v. Jagannath wherein quoting the above observations, this Court held that a judgment/decree obtained by fraud has to be treated as a nullity by every court.

"27. Reference was also made to a recent decision of this Court in A.V. Papayya Sastry v. Govt. of A.P. Considering English and Indian cases, one of us (C.K. Thakker, J.) stated: (SCC p. 231, para 22) "22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or

order - by the first court or by the final court - has to be treated as nullity by very court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings."

The Court defined "fraud" as an act of deliberate deception with the design of securing something by taking unfair advantage of another. In fraud one gains at the loss and cost of another. Even the most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam.

29. The State next relies on the celebrated judgment reported at Official Trustee, West Bengal and Others Vs. Sachindra Nath Chatterjee and Another, for the proposition that for a court to be regarded as having jurisdiction to decide a particular matter, it must not only have the jurisdiction to try the action but also have the authority to pass the orders sought. The settlor of a trust reserved unto himself the authority to vary the terms of the trust deed of 1930 in respect of a particular matter. However, the deed made out that the variation could be made by the settlor "by Will alone and in no other way or act." The settlor had a change of heart and wanted to incorporate the change by a deed inter vivos and took out an originating summons under Chapter XIII of the rules on the Original Side of this Court in 1937 for two reliefs: to appoint the official trustee as the trustee in place and stead of the settlor; and, to make the relevant change by way of a deed inter vivos by revoking the clause in the trust deed that such change would be "by Will alone." The court permitted the change within days of the originating summons being taken out and the authority of the court came up for consideration before the Supreme Court in an order arising out of a suit pertaining to the trust filed in the year 1950. The Supreme Court relied on the accepted definition of "jurisdiction" - to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it - and opined, at paragraph 15 of the report, as follows:

15. From the above discussion it is clear that before a Court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the orders sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties. Therefore the fact that Ramfry, J., had jurisdiction to pass certain orders either under the Indian Trusts Act, 1882 or under the Official Trustees Act, 1913 or under the Trustees and Mortgagees Powers Act, 1866 or under his inherent power is not conclusive of the matter. What is relevant is whether he had the power to grant the relief asked for in the application made by the settlor. That we think is the essence of the matter. It cannot be disputed that if it is held that the learned Judge had competence to pronounce on the issue presented for his decision then the fact that he decided that issue illegally or incorrectly is wholly besides the point. See

Ittavira Mathai Vs. Varkey Varkey and Another, .

30. Picasona says that the judgment has no bearing in the facts of the present case. According to Picasona, there can be no dispute that the court had the authority to receive the civil suit; and, that it had authority to allow one or more properties of a Defendant to a money suit to be made over to the claimant in lieu of the money owed, subject to the consent of the parties. Picasona repeats that the second Defendant herein was duly authorised to represent the first Defendant society and if the parties to the suit had the right to agree to the form of the order or decree by which the claimants'' claim was to be satisfied, it defies logic to suggest that the court had no jurisdiction to make an order on the basis of the consent of the parties or give its imprimatur thereto.

31. The argument made by Picasona is echoed, in such regard by the second Defendant. Both Picasona and the second Defendant are agreed that the joint special officers appointed by the order of September 11, 1992 were replaced by the second Defendant in the appellate order of September 29, 2000. They emphasise that the trial court directed the joint special officers to maintain continuity in the administration of the affairs of the society, to hold an election among the members of the society to set up the executive committee of the society and to hand over control of the assets and administration of the society to the elected executive committee. The appellate court dismissed the appeal but observed that "having regarding to the fact that some members of the Society might not be interested in the matter any further, we are of the opinion that for the purpose of holding election a Special Officer may be appointed." Advocate appearing on behalf of the Respondent in the appeal was appointed special officer and was directed to complete the election within a period of three months from the date of the order. However, the appellate order directed the second Defendant herein to take charge of the cash balance, documents and papers relating to the hospitals and even permitted the second Defendant to operate the bank account till the executive committee election was completed.

32. The argument is that if the election could not be held, the assets or the administration of the hospitals could not be left in a limbo and, notwithstanding the fact that the election could not be held within the time directed by the appellate order, it does not follow that the second Defendant herein had lost authority to retain control over or administer the hospitals of the Defendant society. The second Defendant has urged no other ground except to suggest that no case of fraud has been made out against him and the entire transaction was transparent and upon the approval of the court.

33. Some persons claiming to be members of the first Defendant society have sought to intervene and have been heard. One set of persons claiming to be members of the society has used two affidavits to oppose the State''s plea. They have claimed that Picasona''s taking over the assets of the society was as per the

wishes of Mohanananda Brahamachari whose followers were members of the society. They say that as members of the society they are "satisfied and not prejudiced by the order passed in the Suit, therefore, we did not show any interest to contest the Suit." They are fiercely critical of the role of the State in the administration of the society and laud the efforts of the second Defendant herein to clear the huge liability created by the State-appointed administrators. They appear to be grateful to Picasona for having paid the society in excess of Rs. 2 crore to clear the dues of the hospitals. They point out that the present attempt by the State is to negate the effect of the orders passed on September 11, 1992 and September 29, 2000 and take over control of a society that the State had admitted to have wronged by accepting the trial court order. Another person, claiming to be a former employee and a member of the society, has carried GA No. 2766 of 2011 and, much like the other persons claiming to be members of the society and have its interest at heart, has waxed eloquent on the contribution of both Picasona and the second Defendant herein in carrying forward the aspirations of founder of the society.

34. In addition to questioning both the authority and the motives of the State to make this extraordinary application in a suit to which it was not a party and in respect of matters over which it can have no say, Picasona maintains that there is no case made out to exercise the inherent powers of the court u/s 151 of the Code. It says that if the society is not defunct - and there is nothing more than a suspicion raised that it is - the State should engage itself in trying to better the pitiable healthcare system under its control and not play a busybody in matters pertaining to private hospitals owned and meant to be run by a private body. Picasona says that no case of fraud has been made out and the petition in GA No. 3637 of 2010 is singularly lacking in particulars. The judgments reported at Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath, and Md. Yunus Vs. Nabi Hossain, have been pressed into service on such score. In Bishundeo Narain the contention before the Supreme Court was that a declaration in a compromise decree made in a previous suit for partition did not bind the Plaintiffs in the subsequent suit. Paragraphs 28 and 32 of the report have been placed:

28. It is also to be observed that no proper particulars have bee furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4 of the Code of Civil Procedure."

"32. We will deal with the case of coercion first. It will be seen that the Plaintiffs'' case regarding that is grounded on the single allegation that their father was threatened with death. When all the verbiage is cleared away, that remains as the

only foundation. The rest, and in particular the facts set out in paras 8 to 12 about the ferocious appearance of Firangi Rai and his allegedly high-handed and criminal activities and his character, are only there to lend colour to the genuineness of the belief said to have been engendered in Ghughuli Rai''s mind that the threat of death administered to him was real and imminent. But as regards the threat itself, there is not a single particular. We do not know the nature of the threat. We do not know the date, time and place in which it was administered. We do not know the circumstances. We do not even know who did the threatening. Now, when a court is asked to find that a person was threatened with death, it is necessary to know these particulars, otherwise it is impossible to reach a proper conclusion.

35. In Md Yunus, a Division Bench of this Court held that in order to set aside an ex parte decree by way of a subsequent suit, the alleged fraud must be actual and positive, a mediated and intentional contrivance to keep the parties and the court in ignorance of the facts and obtain the decree by that contrivance. Picasona relies on the judgment for the proposition that a mere general allegation of fraud or collusion will not suffice and it must be shown how, when, where and in what way the fraud was committed. It must be noticed, however, that the judgment was rendered in a subsequent suit for setting aside an ex parte decree in a previous suit. Though an application by a third party to recall a decree must be founded on fraud or impropriety with adequate particulars in support thereof, the decision in Md Yunus would not apply in terms to the matter at hand. Likewise, the dictum in Bishundeo Narain may also be inappropriate in the present context since the parties to a compromise decree or the successor-in-interest of a party to a compromise decree attempted to have the same set aside in a subsequent suit without furnishing adequate particulars in support of the case of fraud or coercion that was run.

36. Picasona says the argument made by the State by citing the West Bengal Clinical Establishments Act, 1950 is of no avail since the court must have considered, in passing the order dated October 8, 2004, that it was in the larger good that Picasona revive and run the hospitals without complying with the provisions of such Act. Picasona contends that if the court has granted it the authority to continue the hospitals on the basis of previous licences granted in respect thereof, the State cannot question the court''s authority or Picasona''s right in such regard. It submits that the 2010 Act is irrelevant in the circumstances since the effective orders were made in the suit several years before the 2010 Act came into force. Picasona has referred to the provisions of the West Bengal Societies Registration Act and says that as to whether the society is defunct would be a matter that may fall for the consideration of the court upon an application u/s 25 of the Act being brought before it. Picasona says that it has made the out-patients'' departments at the Raja Dinendra Street and Dunlop hospitals functional and it is in the process of renovating the rest of the buildings at these two hospitals. Picasona attaches no importance to the State''s assertion that in Picasona''s application for registration

and licence of February 23, 2010 in respect of the Raja Dinendra Street property, it has claimed that the establishment was a nursing home which had a pathological laboratory, an X-ray clinic and an ECG Centre but had omitted to mention that it had an out-patients'' department thereat. Picasona also treats with disdain the State''s insinuation that doctors'' chambers for affluent patients are being run from the two hospitals without catering to the needs of the less privileged which the society has been founded to serve.

37. Picasona says that the court must have examined the conditions that Picasona imposed in its letter of September 15, 2004 which was referred to in the body of the application on which the order dated October 8, 2004 was made and the prayers therein. It says that it is no fly-by-night operator and it has neither used the hospital lands for real estate purposes nor mortgaged or otherwise alienated any of the properties. Picasona is distraught at the State''s attempt to dislodge it from the hospitals after Picasona has seemingly paid an amount in excess of Rs. 2.52 crore against employees'' dues and apparently deployed many more crores for renovating two of the hospitals and upgrading the facilities thereat. Picasona has relied on the several photographs appended to the petition relating to GA No. 643 of 2011 and to other affidavits used by it to demonstrate that modern equipment and gadgets have been acquired and installed at the two hospitals and that its case of spending large sums of money is not an empty assertion.

38. On the principle of escheat invoked by the State, Picasona has carried a judgment reported at State of Bihar Vs. Radha Krishna Singh and Others, for the observation at paragraph 272 of the report that when a claim of escheat is put forward by the government, the onus lies heavily on it to prove the absence of any heir of the original owner of the property and the court frowns on the estate being taken by escheat unless the conditions essential for it are completely satisfied. On the State''s contention that the orders of which recall has been sought were passed without jurisdiction, Picasona relies on a judgment reported at Life Insurance Corporation of India Vs. M/s. Indian Automobiles and Co. and others, for the proposition recognised in paragraph 23 of the report that the extensive jurisdiction conferred on civil courts u/s 9 of the Code "should not be curtailed without a specific statutory warrant or except on some clear principle."

39. As to the State''s locus standi to maintain the principal application, Picasona has referred to the judgments reported at Baldev Singh Vs. Surinder Mohan Sharma and Others, Krishna Swami Vs. Union of India and another, and, V. Sannasi Konar Vs. The Commissioner, Pudukottai Municipality and Another, . In Baldev Singh, a third party preferred an appeal from an ex parte decree in furtherance of a separate pending dispute between him and one of the parties. It was found to be not maintainable. The brother of a property dealer brought a suit for permanent injunction in respect of an immovable property against the first Respondent before the Supreme Court. The suit was withdrawn, but before its withdrawal, the first Respondent entered into

an agreement for sale of the property with the father of the Appellant before the Supreme Court. The first Respondent thereafter filed a suit for possession against the bother of the property dealer by treating him as the tenant and the Appellant before the Supreme Court as the sub-tenant. He refused to honour the agreement to sell the property to the father of the Appellant. In course of the oral evidence in such subsequent suit, the Appellant before the Supreme Court claimed to have married a second time during the apparent subsistence of his first marriage. The first Respondent before the Supreme Court complained to the employer of the Appellant and his second wife, who were both government servants, and departmental proceedings were initiated. A subsequent suit was filed by the first wife against the Appellant for a declaration that they had been divorced some 17 years before the suit was filed. Such suit was decreed, declaring the marriage to have been dissolved. The first Respondent before the Supreme Court challenged the judgment and decree before the High Court under Article 227 of the Constitution. The revisional application was disposed of by permitting the first Respondent before the Supreme Court to prefer an appeal before the competent court to assail the judgment and decree. It was in such context that the Supreme Court observed that nothing that the first Respondent before the Supreme Court had said in his revisional application disclosed "any cause of action so as to confer on him ''locus standi'' to maintain the same."

40. The judgment in Krishna Swami was rendered on two petitions under Article 32 of the Constitution, moved by a member of Parliament and a lawyer in public interest, relating to the proceedings for removal of a Judge of the Supreme Court. It was held that if a person is aggrieved and directly affected by the matter complained of, he must himself seek the relief unless disabled from doing so for a good reason. In v. Sannasi Konar, a failed bidder challenged a government auction on the ground that there was a violation of the conditions under which it had been held. When the locus standi of the writ Petitioner was questioned, he suggested that if the auction were to be set aside because of the alleged violations complained of, there was then a possibility of the Petitioner having a chance to succeed in the fresh auction. The court held that for a challenge of such kind the Petitioner must have a legal interest and "expectancies cannot be substitutes for rights."

41. None of the aforesaid cases cited by Picasona appeals in the present context. The attempt by a third party - not claiming to be married to either of the parties or otherwise related to them - to challenge a decree for dissolution of a marriage cannot be equated with the right that the State canvasses in the present proceedings. Similarly, the observation in course of the perception of the Supreme Court that a vicarious complaint had been carried before it cannot be the yardstick for assessing the right that the State asserts here. Though a part of the State''s argument here is based on its expectation to ultimately own and administer the hospitals of the presumably defunct society, it must be acknowledged that the applicant here is the State which would stand on a different footing than any private

person.

42. The final authority brought by Picasona is a judgment reported at A.R. Antulay Vs. R.S. Nayak and Another, in support of its case founded on the maxim actus curiae neminem gravabit that implies that an act of court shall prejudice no man. Picasona says that since it invested large sums of money on the strength of the orders of court, the court should protect its interest. Picasona says that the expression, "act of court" means the court as an institution and not a particular Judge or any one court in the hierarchy.

43. The basis for deciding the matter has first to be understood. This is not an appeal or a revision or even a review. The principal application is for recalling the orders dated October, 8 and December 23, 2004 made by a non-party to the suit by invoking the inherent powers of the court. In principle, a person who is not a party to the proceedings but is affected by an order passed therein can maintain an application u/s 151 of the Code for recalling the order. Such person has first to establish the locus standi to complain, demonstrate that the order prejudices such person and make out cogent grounds why the order ought to be recalled. There is an added aspect in the present matter in that the decree has not been drawn up or completed. Further, the mandatory provisions of Order XXIII of the Code in the matter of recording consent decrees appear clearly to not have been followed in passing the orders dated October, 8 and December 23, 2004. There appear to be further jurisdictional errors in the orders having been made in derogation of mandatory provisions of the West Bengal Clinical Establishments Act without reference to the licensing authority and in directions having been issued to the State and the Union in an action where they were neither parties nor had been given any notice.

44. The point of delay that has been raised by Picasona amounts to a suggestion of acquiescence or acceptance. It appears from the documents relied upon by both the State and Picasona that the matter relating to the state of the hospitals was brought to the notice of the State by a letter issued in the year 2005 by a legislator. A subsequent letter of July 23, 2007 issued by the legislator referred to some persons, in collusion with the second Defendant, "trying to grab the said hospital properties for their private interest, basically for commercial purpose." By November 30, 2007 the State applied by way of GA No. 3490 of 2007 seeking leave to take over the assets and liabilities of the seven hospitals run by the first Defendant society and administer the same "by themselves and or in franchise with a suitable firm/organisation." The State claimed in the relevant petition that the second Defendant was running the affairs of the society and there was no reconstitution of the executive committee thereof. It claimed that it had issued grants to the society till the administrators appointed by the State were in control, but since the executive committee of the society could not be reconstituted no grant was disbursed subsequently. Paragraph 6 of the petition relating to GA No. 3490 of 2007 recorded

that the State proposed to take over the management of the hospitals with all its assets and employees'' liabilities in public interest. It does not appear from the petition relating to the application that the State was aware of the orders passed in the suit on October 8 and December 23, 2004 at the time that the State''s earlier application was made. The subsequent application was filed by the State in December, 2010 but no act on the part of the State has been cited such as would amount to the State accepting or consenting to the state of things brought about by the orders dated October 8 and December 23, 2004 without protest.

45. The facts here are all too plain to see. The Plaintiffs may have had no valid or personal claim against either Defendant in the suit. The third Plaintiff is claimed to be a registered trade union presumably espousing the cause of some of its members who were employees at the hospitals run by the first Defendant society. The first Plaintiff describes himself as the general secretary of the third Defendant union and the second Plaintiff calls himself the chief advisor to the union. The plaint does not disclose the break-up of the amounts claimed under several heads. More importantly, the first Defendant was not effectively represented before the court at the time that either order of October 8 or December 23, 2004 was passed. It is possible to interpret the orders dated September 11, 1992 and September 29, 2000 to imply that only the personnel of the special officers appointed by the trial court was changed by the appellate order. It is equally possible to read the appellate order to imply that this special officer''s brief was only to hold the assets, books and records of the hospitals and the society merely as a custodian for the purpose of the handing over the same to the executive committee, the election for which was directed to be completed within a specified time. It is true that the appellate order permitted the special officer to operate the bank account of the hospitals or the society, but such direction has to be understood in the context and has necessarily to be seen as an authority to be exercised in extreme exigency. Even if the authority of the special officer appointed by the appellate order is accepted as the continuation of the authority conferred by the trial court order to administer the society and its hospitals before the executive committee of the society was elected and put in place, the trial court order came with this unambiguous caveat that the special officers appointed by it "will not have any authority to dispose of or encumber any of the assets of the Society."

46. At any rate, neither the trial court order nor the appellate order gave a charter to the joint special officers or the special officer to administer the society and its hospitals indefinitely. Both orders set time-frames for the election of the executive committee of the society to be completed and the authority of the special officers was only for the interregnum. That the joint special officers continued or the administrator did not give up charge of the society till the appellate order of September 29, 2000 was on account of the pending appeal and the orders passed therein. It was the bounden duty of the special officer appointed by the appellate order to bring it to the notice of the court that appointed him that the election to

form the executive committee of the society had not been or could not be conducted within the time stipulated for it. The second Defendant herein has not written or said a word as to what steps he took to conduct the election and have the executive committee constituted. The second Defendant took the appellate order as his right to lord over the assets and the administration of the society, including its hospitals.

47. It is evident from the order dated September 27, 2004 passed on the second Plaintiff''s interlocutory application in the suit that the court was not satisfied that the first Defendant society had been served a copy of the papers relating to such application. Despite an affidavit-of-service, showing apparent receipt of the papers on behalf of the first Defendant, being filed along with the notice of motion relating to GA No. 3748 of 2004, the court directed the applying second Plaintiff to serve the first Defendant society and adjourned the matter till October 11, 2004. The second Defendant did not deem it fit to either bring it to the notice of the court when it passed the orders dated October 8 and December 23, 2004 that the first Defendant was not represented or that though the first Defendant was represented by the second Defendant, he had no authority to deal with the assets of the first Defendant society. Indeed, the second Defendant in seeking to act as a special officer appointed by the court owed a duty to point out to the court on October 8, 2004 that the court was not previously satisfied as to service on the first Defendant in passing the order on September 27, 2004.

48. The order dated September 11, 1992 recorded that the first Defendant society was established in 1922 for charitable and benevolent objects. The State has referred to the provisions of the West Bengal Societies Registration Act and certain rights that the State has in a matter pertaining to a society under such Act. Section 24 of the Act permits a society to be dissolved by the votes of three fourths of its members upon a resolution for such dissolution at a general meeting convened for the purpose. However, Sub-section (7) of Section 24 provides that where any government has made any contribution to the funds or other assets of a society, such society shall not be dissolved unless the State has given its assent to the dissolution. In case of this society, the State had administered it for a substantial period of time and, though it has not been conclusively demonstrated, it is not unlikely that the State contributed to the funds of the society and other assets during the undisputed run that it had over the society''s hospitals from 1975. Section 24 of the Act provides for dissolution of a society without reference to court. The assets of a society which was set up for charitable and benevolent purposes would ordinarily not be dissipated by right-thinking members of the society and, in any event, its surplus assets upon dissolution would never be available for distribution among its members in view of Section 27 of the Act. Section 25 of the Act provides for the dissolution of a society by court. Section 26 of the Act provides for the dissolution of a society by the registrar of societies but the registrar has to apply to court for the dissolution. Section 27(a) mandates that the surplus of the

assets of a dissolved society after meeting its liabilities shall not be paid to or distributed among the members of the society but shall be given to any other society. The beneficiary society has to be determined, in a case of dissolution without intervention of court, by the votes of three-fourths of the members of the dissolving society, or in default thereof, by the registrar, with the approval of the state government. In case of dissolution of a society by court, whether u/s 25 or u/s 26 of the Act, the distribution of the surplus assets of a dissolved society is to be decided by the court.

49. Though only a few members of the society have shown any interest in matters pertaining to the society for the last 36 years or so, it may still not be presumed that the society is defunct that would warrant dissolution u/s 25 of the Act. That is the point that Picasona harps on. The society is not defunct and the court must proceed on such basis. Yet, it cannot be lost sight of that save the solitary member who complained of the State usurping the authority to administer the society and at whose behest the order dated September 11, 1992 was passed, the six persons claiming to be members of the society who have filed affidavits in the present proceedings and another person claiming to be a member who has applied by way of GA No. 2766 of 2011, no other member of the society has made any effort to be heard or noticed. Again, the seven persons claiming as members of the society who have participated in the present proceedings have unequivocally assented to the arrangement under the October 8 and December 23, 2004 orders being continued and have betrayed their allegiance to Picasona ahead of the society. The point is not whether the State is today entitled to the assets of the society or the administration thereof; the more pertinent question is whether there is a reasonable likelihood of the State having a say in the assets or the administration of the society, given the apparent state of the society. Even without taking into account the principles of escheat or bona vacantia, the State here may have a say in the ultimate destination of the assets of the society, or the surplus thereof over the liabilities, even if a members'' resolution for dissolution of the society were carried. Further, the State, by virtue of its possible contribution in the funds or other assets of the society, could even successfully thwart a members'' resolution for the dissolution of the society. This should, without going into the other aspects of the matter, give the State a toehold to complain to court that the assets of the society have been unscrupulously parked with a rank outsider on the strength of an arrangement approved by court. There is also a connected point of jurisdiction, though the State has not urged it. The society could not have been dissolved or its assets distributed by this Court in exercise of its original jurisdiction since the court as defined in the 1961 Act, in respect of a society which has its registered office within the presidency town of Calcutta, is the City Civil Court.

50. The onus, surely, will be heavy on the State to make out a case of escheat or bona vacantia, but those principles cannot be wished away and the present state of the society would warrant the State''s invocation of such principles to be treated

with more seriousness than Picasona would have it. The State does not insist that a situation has already arisen where, for want of any owner of the assets of the society, the State can step in. The State''s argument has been on the more credible lines that such a situation cannot be altogether ruled out in the present circumstances that the society finds itself in.

51. The State''s contention on the basis of the West Bengal Clinical Establishments Act, 1950 and the subsequent similar legislation of 2010 will give the State only a limited authority to apply to court and the distinction must not be lost sight of. At the highest, the State could have requested the court to revisit the omnibus permission that it granted to Picasona to ride roughshod over the statutory provisions by continuing to run the hospitals on the basis of licences that may have been issued in favour of the society. The reliance on the provisions of the relevant statutes would carry the State''s request thus far and no further. Except on the ground of lack of jurisdiction, the State cannot seek sustenance under the provisions of the two relevant statutes to have the arrangement approved by the orders dated October 8 and December 23, 2004 annulled; it can only ask for the modification of the orders to ensure compliance with the statutory provisions introduced for public safety and general good. Notwithstanding the State''s exaggerated reliance on the provisions of the said two Acts, the State cannot otherwise than on the ground of jurisdiction seek to dislodge Picasona altogether from the control of the assets or the administration of the society by virtue thereof.

52. The State''s reliance on the parents pateriae doctrine stands on a more exalted footing. Since the first Defendant society was set up for charitable and benevolent purposes and to cater to the less privileged sections of the society, the State''s role to lend its voice in support of such sections can be appreciated on the strength of the parents pateriae principle. It cannot be immediately appreciated as to who would be better than the State to espouse the cause of those that the society was established to serve as the handing over of the hospitals to Picasona on a veritable platter would leave the less-privileged aspiring to use the facilities at a discount as the most prejudiced. There is an ancillary matter that is of equal significance. For good or bad, the State Legislative Assembly has passed a Bill to take over the assets and the administration of the society. If the collective wisdom of the elected in the State has ordained such a course of action, ordinarily, the court should be inclined to facilitate it, particularly when the other option is to perpetuate the undeserving control of a commercial organisation over assets that stretch across the city and have been handed over for an unconscionable pittance.

53. The State is more worthy than most to maintain its application for recalling the orders dated October 8 and December 23, 2004 and has unquestionable locus in such regard. As to whether such orders merit to be recalled is an altogether different kettle of fish.

54. The law in the country has progressed and is more mature now than to be overly concerned with form in preference to substance. Undoubtedly, when a charge of fraud is levelled, the facts that constitute it must be pleaded so as to lead to the legal inference of fraud; but one would miss the wood for the trees on insisting that the facts had to be set down as a numbered grounds in a particular manner or else they would be disregarded. The essential facts that the State has brought to the notice of the court in course of the present proceedings are that a contrived claim was made in a suit; that the suit may have been inspired by an unholy alliance between the second Defendant herein and Picasona with the Plaintiffs roped in; that a rank outsider having no truck with the society has been made over the substantial assets of the society with either the society not being represented or the society''s interests being seriously compromised by the second Defendant herein; that the value of the assets were not attempted to be ascertained or measured against the consideration promised by Picasona in exchange; and, that the court was misled into believing that the exercise was for the benefit of the society or that it is not evident from the relevant orders that the court was called upon to apply its mind to the matters covered by the orders. If so much is evident from the petition filed by the State in GA No. 3637 of 2010, that the facts were not more flamboyantly presented under bullet-points can hardly detract from the substance thereof. Even more importantly, in some cases the facts have to be asserted and arranged to lead to an inference of fraud; in some other cases, a bare narration of the events may lead to the inevitable inference of fraud without much ado in the presentation. The salutary rules as to the pleading of fraud are both to ensure that the persons charged with fraud (or collusion or the like) are afforded an opportunity to discredit the case run and to allow the court to assess the matter. The general rules in such regard cannot defeat the cause of justice or permit an exceptional case as the present one to be brushed under the carpet. That is not to suggest that the case of fraud and collusion has not been made out by the State with sufficient clarity and precision. Both Picasona and the second Defendant herein have well understood the State''s charge that they have colluded with each other to cause a fraudulent transfer of the first Defendant society''s assets to the prejudice of the society and in complete derogation of the charitable and benevolent purposes that make up the charter of the society. If the Plaintiffs were here to defend their role in the matter, they would doubtless have understood the State''s further grouse that the Plaintiffs facilitated the illegal transaction by carrying a vicarious claim to court.

55. As to what weighed with the court and transpired in course of the orders dated October 8 and December 23, 2004 being passed has to be ascertained only from such orders. The court did not examine the authority of any person claiming to represent the society in making orders that dealt with the assets of the society. The court did not refer to the generous terms that Picasona designed for itself in its letter of September 15, 2004 though the prayers that the court allowed on October 8, 2004 appear to approve all the terms proposed by Picasona and slavishly not

dissented to by the second Defendant herein. The court did not embark on any exercise to ascertain as to whether the terms were for the benefit of the society or the purposes for which it was created. The terms suggested by Picasona were as unconscionable as they come and in the court''s attention not having been engaged once, there is now an opportunity afforded by the State to set matters right. There is no assertion by the second Defendant herein as to whether even the nominal lease rents have been received or the manner of deployment thereof for the benefit of the society. The terms imposed by Picasona and accepted by court include a direction "to the State Government/Central Government to pay the pending dues to the newly formed Company, which was otherwise payable by them" without either the State or the Union being a party to the proceedings or having so much as a notice thereof. Picasona has been allowed "complete control over the management and income" from the hospitals and even for "the objective of the hospital(s)(to) be changed ..." It has authority by virtue of the blanket approval granted by the order dated October 8, 2004 "to construct new buildings on the vacant lands" and "to offer the property as security ... for procuring ... funds ..." Picasona has the mandate to eject trespassers or others in unlawful possession of the hospital lands by virtue of its proposal being unreservedly approved in terms of prayer (b) of GA No. 3883 of 2004. and all this for Picasona having committed to "offer only 10 (ten) free beds/or seats which will be reserved in the general ward of the hospital when prepared, for any society or organisation established by Sree Mohananda Brahamachari ..." Prayer (d) of Picasona''s subsequent application by way of GA No. 4496 of 2004 contemplated that the second Defendant would be authorised to raise necessary funds by creating charge or mortgaging the moveable and immovable properties of the society.

56. Against the backdrop of such charitable terms to a commercial organisation and its cohort to deal with the assets of a once venerable society established to serve the cause of the poor and the needy, the consideration is not in how the orders have thus far been used to promote the interest of the commercial organisation; the more appropriate appreciation would be in the possibilities of sheer mischief that has the apparent blessings of the court. There is an undeniable inference of fraud that is inescapable from the chronology of events and the role, in particular, that the second Defendant herein played in the assets of a charitable society being made over for little or no consideration to a commercial organisation. The test is not in how the orders have been used or misused to sub serve the personal or monetary interests of the beneficiaries in the transaction, but to ascertain whether there is a possibility of it being so used or misused. The undeniable largesse for Picasona - whether or not it has already been cashed in - leads to the obvious inference of fraudulent conduct of Picasona and the second Defendant herein; of fraud being perpetrated on court by not expressly drawing the attention of the court to matters that warranted the court''s scrutiny; and, of collusion between the two abetted by the Plaintiffs. The transaction needs must be arrested immediately and, preferably as of yesterday or the day before.

57. The orders dated October 8 and December 23, 2004 passed in CS No. 248 of 2004 stand recalled. Since Picasona is found to be a party to the fraud, the court will not concern itself to compensate Picasona in any manner for any money that it may have paid or invested pursuant to the orders since the motive in obtaining such orders was laced with fraudulent intent. Picasona has had a run of the hospitals or some of them and any money that it may have expended would not be enough to compensate the society or those that the society was established to serve. Picasona is undeserving on account of its conduct to be entitled to reimbursement of any money that it may have spent on the hospitals or any asset that it may have brought therein. Picasona will, however, have leave to sue the second Defendant herein for having incurred any expenses for it was the second Defendant who was instrumental in causing the orders dated October, 8 and December 23, 2004 to be made.

58. Though the scope of the suit would have warranted no more to be done or said by the court upon recalling the orders dated October 8 and December 23, 2004, the court is obliged, both to the first Defendant society and the class of persons that it caters to, to correct the state of things brought about by such orders. Picasona, including its directors, employees, men and agents, and the second Defendant herein are hereby restrained by an order of injunction from dealing with or disposing or alienating or encumbering or creating any third party rights in respect of any of the seven hospitals that belong to the first Defendant society or any of the lands relating thereto or any of the assets connected therewith or any of the equipment or gadgets or facilities thereat in any manner whatsoever. Picasona, including its directors, employees, men and agents, and the second Defendant herein are restrained from having any access to the seven hospitals of the first Defendant society or any of its lands or assets, in any manner whatsoever. The Director of Health Services, State of West Bengal or the officer of equivalent rank or the secretary to the Department of Health and Family Welfare, State of West Bengal, will forthwith take charge of the seven hospitals of the first Defendant society, the lands relating thereto and all assets thereat. Since it is Picasona''s case that only the out-patients'' departments at two of the hospitals are in operation and since the rightful persons entitled to the assets and the administration of the society cannot immediately be determined, the concerned official should forthwith seal all the hospitals and ensure preservation of the lands and the assets thereat with authority to obtain police assistance for such purpose till the rightful persons entitled to control the assets and the administration are ascertained in accordance with law or in appropriate proceedings. Pica sons and the second Defendant are directed to immediately hand over all books, records and documents pertaining to the first Defendant society and its hospitals to the concerned official.

59. GA No. 3490 of 2007, GA No. 3637 of 2010, GA No. 643 of 2011 and GA No. 2766 of 2011 stand disposed of with costs assessed that 6000 GM to be paid by the second Defendant to the State.

60. Urgent certified photocopies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.