

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6907 OF 2013

- 1) Jai Hanuman Shikshan Prasarak Mandal
Pandurna, Tq. Bhokar, District Nanded,
Through its Vice President
Madhavrao Raghuji Bainwad,
Age : 65 years, Occu. : Agriculture,
R/o. : Mudkhed, Tq. : Mudkhed,
District : Nanded
- 2) Madhyamik Ashram School at Manur,
Tq. Umri, District : Nanded
Through its Head Master,
Suryakant Khanderao Sangamkar
Age : 45 years, Occ. : Service,
R/o. : Manur, Tq. : Umri,
District : Nanded .. Petitioners

Versus

- 1) The State of Maharashtra,
Through the Secretary,
Social Welfare and Special Aid
Department, Mantralaya,
Mumbai 32
- 2) The Divisional Social Welfare Officer
Division, Latur,
District : Latur

- 3) The Special District Social Welfare
Officer, Nanded,
District : Nanded
- 4) Ramji s/o Laxman Dasarwad,
Age : 90 years, Occ. : Agriculture,
R/o. Pandurna, Tq. Bhokar,
District : Nanded .. Respondents

Shri V. D. Hon, Senior Counsel for the Petitioners
Shri K. G. Patil, A. G. P. for the Respondent Nos. 1 to 3
Shri P. D. Suryawanshi, Advocate for the Respondent No. 4

**CORAM : S. V. GANGAPURWALA AND
V. L. ACHLIYA, JJ.**

**CLOSED FOR JUDGMENT ON : 27TH FEBRUARY, 2015
JUDGMENT PRONOUNCED ON : 08TH MAY, 2015**

JUDGMENT (*Per S. V. Gangapurwala, J.*) :

- 1) The respondent No. 1 vide its order dated 26.02.2013 cancelled the Government Resolution dated 29.08.2001 permitting the petitioner to shift the Ashram School from village Brahmanwada, Taluka and District – Nanded to village Mannur, Taluka – Umri, District – Nanded.

2) Mr. Hon the learned Senior Counsel for the petitioners submit that, the petitioner was initially granted permission to run the petitioner No. 2 Ashram School at Brahmanwada. It was inconvenient to the students at large to attend the said Ashram School at Brahmanwada. The village Brahmanwada is situated on the bank of two rivers i.e. Godawari and Asna. The learned Senior Counsel submits that, upon the proposal submitted the State Government permitted the shifting of the Ashram School vide order dated 29.08.2009 and since then the petitioner is running the school at Mannur, Taluka – Umri, District – Nanded. The school is accordingly shifted and is functioning since six years. There are large number of students i.e. more than 210 students taking education in the Ashram School run by the petitioner at Mannur and more than 15 members of the staff. The learned Senior Counsel submits that, in Writ Petition No. 6805 of 2009 filed by the respondent No. 4 this Court directed Authorities to visit the school run by the petitioner at the transferred place and submit the report. In the said writ petition report is received of the authorities stating that, the school is being run at Mannur. On 19.07.2010 the respondent No. 1 without assigning any reason and without affording any opportunity, canceled the permission granted on 29.08.2009 permitting the petitioner to shift the school from

Brahmanwada to Mannur. Against the order dated 19.07.2010 petitioner had filed Writ Petition No. 6738 of 2010. This Court granted ad-interim relief thereby staying the order dated 19.07.2010 and issued notice. This Court set aside the order dated 19.07.2010 and remanded the matter back to the respondent No. 1 for fresh consideration vide Judgment and Order dated 09.08.2012. On 07.01.2013 the petitioners were called for hearing, the submissions were made by the petitioners and on 07.01.2013 after hearing the submissions matter was closed for orders. Learned Senior Counsel submits that, one month after the matter was closed for order, the respondent No. 4 on 04.02.2013 filed certain documents. The petitioners were unaware of the same. The copies of the document were not supplied to the petitioners. Based on the said documents vide order dated 26.02.2013 the respondent No. 1 passed the order cancelling the Government Resolution dated 29.08.2009. The petitioner filed request application for reconsideration of the order. The same is rejected. The learned Senior Counsel submits that, it is six years the school has been shifted and is being run at Mannur. The documents which are produced by the respondent No. 4 subsequently are false and fraudulent documents and is created piece of evidence. It is only on the basis of these documents the impugned order has been passed by

the respondent No. 1. The petitioner after shifting the school has taken all necessary steps for making infrastructure available. The petitioner has purchased a land at Village Mannur, building is constructed for the school admeasuring 10,000 Sq. Ft. There are nearly six rooms and the rooms are well furnished. Even the petitioner is running the Junior College. According to the learned Senior Counsel the respondent considered the case of the petitioner and after satisfying itself of the non feasibility to run the school at Brahmanwada and further viability to run the school at Mannur had granted permission. The hostel is also available at Mannur. There are more than 65 non resident students and 145 resident students taking education at the Ashram School. The respondent No. 4 who had objected is also dead. The learned Senior Counsel relies on the Judgment of this Court in Smt. Savitribai V/s State of Maharashtra, Writ Petition No. 4101 of 2007 to contend that, when the matter is fixed for orders the respondent No. 1 could not have entertained the application of respondent No. 4 for production of documents. It is submitted that, earlier the parties had submitted application to shift the school from Brahmanwada to Mugut. All the members of the petitioner society were of the view that, Ashram School at Brahmanwada can not be run and the same is to be shifted. Earlier proposal was given to shift the school at Mugut. No

orders were passed on the same, however, thereafter an application was given to shift the school to Mannur. The terms and conditions applicable to shift the school are satisfied. The permission granted to shift the school at Mannur vide order dated 29th August, 2009 is legal and valid. The said permission was in consonance with the Government Resolution dated 1st August, 2007. All the members of the petitioner had found that as it is not feasible to run the school at Brahmanwada the school is to be shifted. There is a danger of flood. As per the Government Resolution dated 1st August, 2007, more particularly Clause 5 as a special case permission can be granted and the same has been granted to the petitioner to shift the school as a special case. Mr. Hon the learned Senior Counsel further contends that, on non existing ground order has been passed, without giving opportunity to the petitioner to show that Sau. Prabhavati Manurkar could have filed the application. The Authority has come to the conclusion that Sau. Prabhavati Manurkar is not a member. According to the learned Senior Counsel the order impugned is illegal. The learned Senior Counsel submits that Right to Education would include right to receive education in a safe school. The learned Senior Counsel relies on the Judgment of the Apex Court in a case of **Avinash Mehrotra V/s Union of India and Others** reported in **2009 (6)**

SCC 398. The school at Brahmanwada was not safe as it was flood affected and the order of shifting the school is rightly passed. The learned Senior Counsel further submits that, while shifting the school convenience of children and not the desire of the institution has to be considered. There is a need of the school at Mannur. The fact that the number of students are increasing day by day is testimony to the same. The convenience and need of children for whom the school is been shifted should be the paramount consideration and not the desire and convenience of the institution. The learned A. G. P. supports the impugned order.

3) Mr. V. J. Dixit the learned Senior Counsel for respondent No. 4 submits that, the order dated 29.08.2009 permitting shifting of the school to Mannur at a distance of 50 Kms. from Brahmanwada from its original place is itself illegal and not permissible. The shifting at the relevant time could not have been at a distance of more than 10 Kms. According to the learned Senior Counsel there is no Resolution passed by the Institution to shift the school to Mannur. There was also no proposal submitted to shift the school to Mannur. In absence thereto, the permission vide Government Resolution dated 19.07.2010 could not have been granted. Realizing that the said

permission granted is erroneous it was cancelled. The Review Petition was heard on merits. Even the original proceedings were heard on merits and were rightly dismissed. The permission has been rightly cancelled. The respondent No. 4 is a founder Trustee alongwith one Rameshwar Rajmode. Petition is filed by one Madhav Raghuji Bainwad on behalf of petitioner No. 1 and Suryakant Khanderao Sangamkar on behalf of petitioner No. 2. Both of them are not entitled to file the present writ petition as they are not the members of the Trust which can be seen from the orders passed by the Charity Commissioner. The said order is confirmed. Madhav Raghuji Bainwad has also resigned from his membership by submitting resignation dated 10.04.1997. The membership granted by the alleged Committee dated 14.03.2007 came to be set aside in Change Inquiry No. 366 of 2007 as such both are not entitled to file the writ petition. The writ petition itself is not maintainable. The learned Senior Counsel submits that, the Trust had already submitted the proposal in the year, 2007 to shift the Ashram School from Village Brahmanwada to Village Mugut. The distance between these two villages is 3.5 Kms. The Trust had never submitted any proposal to shift the Ashram School from Brahmanwada to Mannur which is 50 Kms. away. It appears that, Sau. Prabhavati Manurkar who falsely alleged to be the Trustee of the

Trust directly addressed letter to the then Hon'ble Chief Minister requesting to shift the Ashram School and without calling for the report from the Authorities and without any inquiry Resolution came to be passed allowing shifting of the school to Mannur though the proposal was pending for shifting the school to Mugut. The respondent No. 1 in the impugned order rightly observed that, there is no proposal to shift the school to Mannur. The learned Senior Counsel further submits that, the petitioners have not added all the parties which were parties before the respondent No. 1. The learned Senior Counsel submits that, the documents which are said to be subsequently filed were also filed earlier and they were not new documents. Those documents were already subject matter of the record. It is only for convenience those documents which were already part of record were again subsequently filed. The respondent No. 1 has taken all aspects into consideration in the proper perspective. It is also submitted that, the shifting is not in consonance with the Ashram School Code which prohibits the shifting of Ashram School. It is only permissible if there is danger of natural calamity. Village Brahmanwada is not a flood affected region. There are other school operating in the said Village Brahmanwada.

4) The other learned counsel appearing for intervenors have adopted the arguments of the respective learned Senior Counsel in consonance with stand in there respective applications.

5) We have considered the submissions canvassed by the learned counsel for the respective parties. The fact that the Ashram School which was initially run at Village Brahmanwada was permitted to be shifted to Village Mannur vide Government Resolution dated 29.08.2009 and since then it appears that the school is run at Mannur is borne out from record.

6) It is also a matter of record that, initially proposal was given to shift the school run by Jai Hanuman Shikshan Prasarak Mandal from Brahmanwada to Mugut. The said proposal was given in the year, 2007 and thereafter it appears that on an application the school is shifted to Mannur. Vide the impugned order the permission granted in the year, 2009 to shift the school is cancelled. Of course earlier in, 2010 it was also cancelled. The order was set aside by this Court in a writ petition matter was remitted to the respondent No. 1 to consider the same afresh. The respondent No. 4 had raised an objection to the said transfer and the proceedings were taken up pursuant to

the objection raised by respondent No. 4. Respondent No. 4 is dead. It appears from the record that all the members of Jai Hanuman Shikshan Prasarak Mandal wanted to shift the school from Brahmanwada. As such proposal was given to shift the said Ashram School from Brahmanwada to Mugut. There is unanimity amongst all on the said aspect. It is clear that, each and every member of the Trust wanted the school to be transferred from Brahmanwada to another place. It is also the fact that proposal was given for transfer of the school to Mugut, no decision was taken on the same. An application under the signature of Sau. Prabhavati Manurkar is given. According to the respondent it is the forged signature while there is no conclusive finding on the same. It is for six years the school is being run at Mannur. The proposal for shifting of the school to Mannur does not appear in the record. Only application of the legal heir of one Mr. Manurkar allegedly signed by Sau. Prabhavati Manurkar is given for shifting the school to Mannur. The Authority i. e. respondent No. 1 was required to arrive at the specific conclusion as to the genuineness of the letter given by Sau. Prabhavati Manurkar. Specific finding to that effect is not given. The respondents have also raised dispute about the membership of those through whom the present petition has been filed. The same is required to be considered by the

respondent No. 1. The feasibility of the school to be run at Mannur also was required to be considered. None of the parties wanted the school to be run at Brahmanwada as is clear from the proposal given unanimously by all the parties to shift the school to Mugut which was 3.5 Kms. away from Brahmanwada. As such none of the parties can be heard to say that, the school is required to be run at Brahmanwada. The Government Resolution dated 01.08.2007 permits the transfer of the school as a special case also. The respondent No. 1 was required to consider the terms and conditions laid down in the said Government Resolution dated 01st August, 2007 in its entirety before passing the impugned order. All these facts were required to be considered by respondent No. 1. Two documents are filed after hearing is closed. One document is subsequent in point of time. The respondent No. 1 ought to have brought this to the notice of the petitioner also before passing the order. The respondent also ought to have considered the present day position as on the date of passing of the order. All these aspects were required to be considered by respondent No. 1 before passing the impugned order. It appears that the respondent No. 1 only on the ground that valid proposal was not forwarded and the signature of Sau. Prabhavati Manurkar appears to be forged has set aside the order. Also some reasoning ought to have been

given before coming to the conclusion that the name of Sau. Prabhavati Manurkar does not appear to be that of a Director.

7) In light of that, we are of the view that, respondent No. 1 shall reconsider the case on its own merits, however, considering all the aforesaid aspects of the matter. The Writ Petition as such is partly allowed. The impugned order is set aside and the matter is remitted back to respondent No. 1 for decision afresh. The parties shall appear before Respondent No. 1 on 10th June, 2015.

[V. L. ACHLIYA, J.]

[S. V. GANGAPURWALA, J.]

sam/April. 15