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(sr. no.905/suppln.board)
Tuesday,3/2/2015

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 145 OF 2015
IN
SECOND APPEAL NO. 327 OF 2004

Krishna Shikshan Prasarak Mandal
: V/S :

.....Applicant

1. Wagdevi Shikshal Prasarak Mandal
and Ors.

.....Respondents

* * * * *

Mr. P.B. Shah, Advocate for the applicant.

Ms. Mhaispurkar h/f. Ms. Vaidehi Mhaispurkar, Advocate for
respondent no.1.

* * * * *

Coram :- Smt. R.P. SondurBaldota, J.

3rd February, 2015.

P.C. :-

1). This Civil Application is taken out by original respondent no.1 for an interim order of “permission to the applicant to carry out necessary repairs immediately or carry out repairs to their premises as and when, the occasion arises, if need be under police protection”. The second permission sought by prayer clause (b) is, “to rectify the deficiencies as mentioned in the letter dated 30th March, 2013 as per the RTE Act (Right to Education Act). Respondent no.1 is the original

appellant. Respondents no.2 to 5 are the other respondents to the appeal.

2). Parties will hereinafter referred to by their original nomenclature.

3). The appeal herein was admitted on 21st January, 2009 for the following substantial question of law :

“Whether passing of an order in relation to transfer of management of Educational Institution has an effect of divesting the earlier trust/society of its title to the property, which stands transferred under the provisions of the Maharashtra Educational Institution of Management Act, 1971”.

The order of admission also records the concession made available by the Counsel appearing for the respective parties to the effect that the entries in the PTR register and other records in regard to the suit property will be subject to the final outcome in the Second Appeal. The present application has been filed by respondent no.1 in view of the letter dated 30th March, 2013 received by it from Educational Officer (Primary) and Educational Officer, (Secondary) of Zilla Parishad, Satara. The subject of the letter is, the application made by respondent no.1 in the year 2009 for recognition of the School being run by it. The letter refers to twelve requirements to be fulfilled for the purpose of recognising the school and it specifically mentions that, unless the requirements are satisfied, the running of the School cannot be permitted. One of the

requirements under the letter is, construction of compound wall around the school property.

4). Mr. Shah, learned Advocate appearing for respondent no.1 submits that, respondent no.1 desires to construct the compound wall as per the requisition of the Education Department of Zilla Parishad. He submits that, construction of a compound wall can never be to the prejudice of the appellant who are claiming right to the property as infact it would serve the purpose of protecting the property of the appellant.

5). The appellant opposes the application on the ground that, respondent no.1 has, in view of order dated 31st August, 1994, instead of only managing the school run by the appellant, has taken over the charge of the entire property of the school. Mr. Mhaispurkar, the learned Advocate appearing for the appellant submits that, if respondent no.1 is permitted to construct a compound wall around the property, it would be disturbing the status of the property at site and that the appellant, for whom the land has been made available for running the school, is not desirous of any sort of construction. Further, according to him in any case, respondent no.1 cannot be permitted to do so.

6). Considering the nature of the dispute, as also the substantial question of law framed, in my opinion, the relief as sought by respondent no.1 cannot be granted. The argument that, construction of compound

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wall around the school property can never be detrimental to the appellant and is infact to it's advantage, appears attractive. However, the very dispute between the parties being about taking over of the school property and depriving the appellant enjoyment thereof, the respondents cannot be permitted to change the status-quo at the site. Hence, the Civil Application is dismissed.

(SMT. R.P. SONDURBALDOTA, J)