

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE SMT. JUSTICE P.VASHA

MONDAY, THE 21ST DAY OF DECEMBER 2015/30TH AGRAHAYANA, 1937

WA.No. 2693 of 2015 IN WP(C).15841/2013

AGAINST THE JUDGMENT IN WP(C) 15841/2013 of HIGH COURT OF KERALA DATED 30.11.15

APPELLANT/PETITIONER IN THE WP:

TOM THOMAS P.AGED 67 YEARS
S/O LATE THOMAS, MANAGER
ST. THOMAS UPPER PRIMARY SCHOOL, PARANNUR, KUNNAMKULAM
THRISSUR DISTRICT

BY ADVS.SRI.C.PSUDHAKARA PRASAD (SR.)
SRI.S.RAMESH
SRI.NAVEEN.T
SMT.POOJA SURENDRAN

RESPONDENTS/RESPONDENT IN THE WPC:

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1. THE STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
GENERAL EDUCATION DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM-695 001
 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM-6595 014
 3. THE ASSISTANT EDUCATIONAL OFFICER
KUNNAMKULAM, THRISSUR DISTRICT-680 503
 4. DR. ANTO T.JOSEPH
THEKKEKARA HOUSE NO. 30/484, EAST BAZAR, OLLUR
THRISSUR-680 306
 5. SRI. RAPHAEL T.JOSEPH,
THEKKAKARA HOUSE, RANI AUTOMOBILE WORKSHOP, KECHERY
THRISSUR-680 501

R BY SR. GOVERNMENT PLEADER SRI.P.FAZIL
R BY SRI.P.RAMAKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 21-12-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE A1: TRUE COPY OF THE APPLICATION DATED 18.5.1978
SUBMITTED BY SMT.PSARADA TO THE MANAGER

ANNEXURE A2: TRUE COPY OF THE ORDER DATED 21.6.1978 ISSUED BY
THE APPELLANT AS MANAGER.

ANNEXURE A3: TRUE COPY OF THE COMMUNICATION DATED 17.6.1978
SENT BY THE AEO TO THE MANAGER.

ANNEXURE A4: TRUE COPY OF THE COMMUNICATION DATED 23.6.1978
SENT BY THE MANAGER TO THE AEO.

ANNEXURE A5: TRUE COPY OF THE COMMUNICATION DATED 18.8.1978
OF THE DEO, CHAVAKKAD CONTAINING THE ENDORSEMENT DATED
2.9.1978 OF THE AEO, KUNNAMKULAM.

ANNEXURE A6: TRUE COPY OF THE COMMUNICATION DATED 10.10.1978
SENT BY THE MANAGER TO THE AEO.

ANNEXURE A7: TRUE COPY OF THE ORDER DATED 17.12.2015 ISSUED BY
the THIRD RESPONDENT.

ANNEXURE A8: TRUE COPY OF THE OBJECTION DATED 19.12.2015 FILED
BY the APPELLANT.

ANNEXURE A9: TRUE COPY OF THE REPRESENTATION DATED
19.12.2015 FILED BY the APPELLANT BEFORE THE S.I.OF POLICE,
KUNNAMKULAM.

// TRUE COPY //

P.A.TO JUDGE

ANTONY DOMINIC & P.V.ASHA, JJ.

Writ Appeal No.2693 of 2015

Dated this the 21st day of December, 2015

JUDGMENT

Antony Dominic, J.

The petitioner in W.P.(C)15841/13 has filed this appeal challenging the judgment dated 30.11.2015 rendered by the learned Single Judge dismissing the writ petition. The appellant filed the writ petition seeking to quash Exts.P15, P19, P19(b) and P21 and to direct respondents 1, 2 and 3 to refrain from adjudicating the civil rights of the appellant and respondents 4 and 5 over St. Thomas Upper Primary School, Parannur.

2. The background in which the writ petition was filed is that the St. Thomas Upper Primary School is an aided school in the Kunnamkulam Educational Sub District. The manager of the school was one Mr. Joseph George, whose legal heirs are respondents 4 and 5. It is the case of the appellant that during the life time of Joseph George, Ext.P9(a) application dated 26.4.1978 was submitted by him for transfer of management and correspondentship of the school. According to the appellant, on 26.4.1978 itself the then manager submitted Ext.R4(a) application to the Regional

Deputy Director of Public Instruction informing him that due to old age, he proposes to transfer the ownership, management etc. of his school with effect from 26.4.1978 to the appellant and requesting for necessary permission.

3. It is also his case that after the said applications were made by the then manager seeking permission as provided under Rule 5A of Chapter III of the Kerala Education Rules, 1959 (hereinafter referred to as 'the KER' for short), the appellant started to discharge the duties of the manager and made appointments, as per Annexure A2 dated 21.6.1978. It is also his case that the then manager completed the procedural requirements for change of management and ownership and reference is made to Annexures A3, A4, A5 and A6. It is stated that while so Sri.Joseph George, the then manager expired on 31.10.1978 and subsequently, Ext.P9 order dated 29.8.1979 was passed by the Director of Public Instructions, granting permission for the transfer of management with ownership of St. Thomas U.P. School Parannur from Sri.Joseph George to the appellant.

4. Appellant contends that with the order thus passed on 29.8.1979, the change of management applied for by the deceased previous manager took effect and he continued as manager of the school with ownership over the properties. It is stated that while so, on 22.11.2002 the appellant executed Ext.R4(b) document whereby 88 cents of land appurtenant to the school was conveyed to his children. Apparently because of this, the legal heirs of Joseph George submitted Ext.P10(a) representation to the educational authorities requesting for removal of the appellant from the managership. To Ext.P10(a), the appellant submitted his reply as per Ext.P10(b) and thereafter the Director of Public Instruction passed Ext.P12 order rejecting Ext.P10(a). However, in the meantime the appellant himself had filed W.P(C) 33412/10 which was disposed of by Ext.P11 judgment dated 25th November 2010. In that judgment, without taking note of Ext.P12 order, this court directed the Director of Public Instruction to pass orders on Ext.P10(a) after hearing the appellant also.

5. As a result of Ext.P11 judgment, the matter was again considered by the Director of Public Instruction, who after completing

the procedural formalities, passed Ext.P15 order. In this order, though the Director of Public Instruction rejected Ext.P10(a), he proceeded to order that taking into consideration the future of the students and the interest of the staff, it is decided to recommend to the Government to take over the management of the school for a period of five years as provided under Section 14(2) of the Kerala Education Rules. Challenging Ext.P15, appellant filed Ext.P16 revision before the Government which was disposed of by the Government as per Ext.P19 order, by which the matter was remitted to the Director of Public Instruction for fresh consideration. Accordingly, the matter was reconsidered and the DPI passed Ext.P19(b) order, rejecting the representations, but recommending the Government to take over the management of the school or appointing the Assistant Educational Officer as its manager.

6. Ext.P19(b) order was again challenged in revision before the Government and finally the Government passed Ext.P21 order rejecting the revision. In Ext.P21, the Government ordered thus:

“16. The contentions of both sides and the reports of educational officers and relevant records were

examined in detail. There is no dispute regarding the fact that Sri.Joseph George was the proprietor and manager of the St.Thomas U.P.School, Parannur, Kunnamkulam till his death on 31.10.1978. Dr.Anto T. Joseph and his siblings are the legal heirs of late Joseph George. Sri.Tom Thomas.P claims that Sri.Joseph George in his letter dated 26.4.1978 requested the Director of Public Instructions to grant permission for transfer of management with ownership of the school to Sri.Tom Thomas.P. The Director of Public Instructions vide order No.23458/79/K.Dis. dated 29.8.1979 granted permission for the transfer of management with ownership of St.Thomas U.P.School, Parannur from Sri.Joseph George to Sri.Tom Thomas.P. But Sri.Joseph George expired on 31.10.1978, well before the date of order of the Director of Public Instructions. Therefore, it is evident that Sri.Joseph George did not act upon the order of the Director of Public Instructions granting prior permission for transfer of management and ownership of the school. He has not executed any registered deed or registered will transferring the school and its management to Sri.Tom Thomas.P. Sri.Tom Thomas.P did not produce any valid documents to prove that Sri.Joseph George had transferred the management and ownership of the school to his name. Sri.Tom Thomas.P claims that by the strength of the order of Director of Public Instructions granting prior permission he has got legal right over the management and ownership of the school.

17. The whole matter revolves around the issue whether on the strength of the order of the Director of Public Instructions granting prior permission for the transfer of management and ownership of the school, Sri.Tom Thomas.P can claim absolute right over the

management and property of the school.

18. As per Rule 4 Chapter III Kerala Education Rules, the educational officer shall be competent to approve the appointment of manager by the educational agency. As per Rule 5A Chapter III Kerala Education Rules change of management involving change of ownership shall be effected with the prior permission of the Director of Public Instructions. The Director of Public Instructions has issued orders granting permission for the transfer of management with ownership of St.Thomas U.P.School, Parannur from Sri.Joseph George to Sri.Tom Thomas.P. But the consequent procedure, ie. Transfer of ownership of the school and its property has not been effected as Sri.Joseph George passed away before the issue of the above said order by the Director of Public Instructions. The educational officer concerned has not issued any orders approving the appointment of Sri.Tom Thomas.P as the manager of the school. Therefore, the claim of Sri.Tom Thomas.P that his right over the management and property of the school has become absolute with the order of the Director of Public Instructions granting prior sanction under Rule 5A Chapter III Kerala Education Rules is not sustainable. Sri.Tom Thomas P has no right over the property and management of the school.

19. In the judgment read as 4th paper above, the Hon'ble High Court has directed Government to dispose of the Revision Petition taking note of the contents of the Ext.20 to 23 judgments produced in WP(C) No.6038/12. In the judgments relied upon by the petitioner in WP(C)No.6038/12 and also in some other judgments, the Hon'ble High Court has clarified that on the issues related to the provisions in Kerala Education

Act and Rules, educational authorities are competent in taking decision whereas in cases which involves civil right, adjudication by Civil Court is the appropriate remedy. In the case at hand, the question raised is purely on the validity of a claim to the ownership and management of a school on the strength of an order issued by the Director of Public Instructions on the basis of the powers conferred upon him under Rule 5A Chapter III Kerala Education Rules. The statutory authorities have the authority to decide on such matters. Sri.Tom Thomas.P claims that his right over the management and ownership of the school become absolute on the issue of the order of the Director of Public Instructions granting prior permission for transfer of management and ownership of the school. The order granting prior permission under Rule 5A, Chapter III Kerala Education Rules is not a final decision or order. Consequential steps like transferring the ownership of the school to the transferee by executing a registered deed or registered will by the transferor and approval of the transferee as manager of the school by the educational authority has to followed for claiming absolute right over the management and ownership of a school. In the case of St.Thomas U.P.School, Parannur such steps have not been taken as the transferor passed away before the issuance of the order by the Director of Public Instructions. The letter claimed to be sent by Sri.Joseph George, the manager and educational agency of the school to the Director of Public Instructions for permission for transferring the management and ownership of the school to Sri.Tom Thomas.P itself is being disputed by the legal heirs of Joseph George. They alleged that their father had not sent such a letter to the Director of Public Instructions. It is seen that the copy of the letter claimed to have been sent by

Shri.Joseph George to Director of Public Instructions does not have the signature of the transferor. The educational officers reported that Sri.Tom Thomas.P has never been approved as the manager of the school.

20. Therefore, it is concluded that Sri.Tom Thomas.P has no right over the management and ownership of the school. Sri.Joseph George had been the manager and proprietor of the St.Thomas U.P.School, Parannur till his death and after his death, his legal heirs become the educational agency and a Corporate Educational Agency has to be constituted under Rule 2 Chapter III Kerala Education Rules for the management of the school.

21. The dispute over the management of the school has adversely affected the functioning of the school. There is serious allegations regarding the mismanagement of the school by the present acting manager Sri.Tom Thomas.P. The school has no approved manager at present. An aided school cannot function without an approved manger.

22. In view of the above said facts, the Revision Petition preferred by the petitioner in WP(C)6038/12 read as 5th paper above and the revision petition preferred by the petitioner in WP(C)26935/12 read as 3rd paper above are disposed of holding that Sri.Tom Thomas.P has no right over the management and ownership of the St.Thomas U.P.School, Parannur, Kunnamkulam. The Assistant Educational Officer, Kunnamkulam is directed to approve the person appointed by the legal heirs of Sri.Joseph George as the manager of the school. The direction of the Hon'ble Court in the judgment read as 4th paper above is complied with accordingly."

7. It is in this background the writ petition was filed. In the judgment under appeal, the learned Single Judge held that the entire case of the appellant was built on Ext.P9 and Ext.P9 did not result in change of management involving change of ownership as required under Rule 5 A of Chapter III KER. On that basis, the learned Judge concluded that on the death of Sri.Joseph George on 31.10.1978, the school devolved upon his successors and since there was more than one legal heir, it should be modelled in the form of a Corporate Educational Agency. Accordingly, the learned Single Judge upheld Ext.P21 and directed the Assistant Educational Officer to pass orders approving the person appointed by the legal heirs of the deceased manager as the manager of the school. It is this judgment, which is under challenge before us.

8. We heard the Senior Counsel for the appellant, the learned Government Pleader and the learned counsel appearing for respondents 4 and 5.

9. Contention raised by the learned Senior Counsel for the appellant is essentially that though by the time Ext.P9 order permitting

the change of management with ownership was passed by the DPI on 29.8.1979, the applicant thereof, the then manager had expired on 31.10.1978, with the passing of Ext.P9 order the change of management with ownership requested by him during his life time has taken effect, without any further documentation or completion of formalities. Therefore, according to him, appellant is the manager atleast from 29.8.1979 and the conclusion to the contrary as contained in Ext.P21 and the judgment under appeal is against law and facts of the case. Learned Senior Counsel also brought to our notice that during the pendency of the dispute before the Government, the legal heirs of the deceased previous manager instituted O.S.2052/12 before the Sub Court, Thrissur for recovery of possession of the school building and the properties. It is stated that in such circumstances, this court should sustain his claim of being the manager of the school. These contentions were refuted by learned counsel appearing for respondents 4 and 5.

10. We have considered the submissions made. As rightly found by learned Single Judge, the whole claim of the appellant is based on Ext.P9, the order passed by the Director of Public Instruction granting

permission for change of management with change of ownership. This order was passed in exercise of the powers conferred on the DPI under Rule 5A of Chapter III KER. Rule 5A of Chapter III KER was inserted by G.O.(P)150/71 dated 27.10.1971. Prior to the insertion of this provision, Rule 3 of Chapter V KER conferred power on the Director to approve the change of management involving the change of ownership. That provision contained in Rule 3 of Chapter V was deleted with effect from 27.10.71 and it was simultaneously that Rule 5A was introduced in Chapter III of KER. Rule 5A being relevant is extracted below for reference:

“5A. Change of management involving change of ownership - (1) Notwithstanding anything contained in these rules, no change of Management of any aided school involving change of ownership shall be effected except with the previous permission of the Director. The Director may grant such permission unless the grant of such permission will, in his opinion, adversely affect the working of the institution and the interests of the staff and the person to whom the Management is transferred.

(2) Any person aggrieved by an order under sub-rule (1) may, within 30 days from the date of the receipt of the order, prefer an appeal to the Government.

(3) In the case of change of management of a school involving change of ownership the new Manager of a corporate or an individual Agency, shall be bound to absorb any member who is a claimant under rule 51A of

Chapter XIV A or is eligible for protection belonging to teaching and non-teaching staff of any school of the transferor manager against the vacancies that may arise in the school."

11. Reading of this provision shows that no change of management of any aided school involving change of ownership shall be effected except with the previous permission of the Director and that the Director may grant such permission unless the grant of such permission will, in his opinion, adversely affect the working of the institution and the interests of the staff and the person to whom the management is transferred. It is clear that no change of management of any aided school involving change of ownership shall be effected except with the previous permission of the Director.

12. Reading of Ext.P9 also shows that the Director has made reference to Rule 5A and what is accorded is permission for the transfer of management with ownership of St.Thomas U.P.School, Parannur. Appellant has no case that after the order, permitting the change of management with ownership was issued, any legal formality for such change including those that are required for transfer of immovable properties have been complied with.

13. Secondly, admittedly on 31.10.1978, the then manager on whose application the proceedings culminating in Ext.P9 were initiated, had expired. Once the manager, who applied for change of management with ownership, was no longer alive, the individual educational agency will devolve on the legal heirs of the deceased manager, by virtue of the provisions of the Law of Succession that is applicable. In other words, with the death of the manager on 31.10.1978, all further proceedings on the application made by the manager should have ended automatically. If that be so, Ext.P9 order could not have been passed by the Director on 29.8.1979 and this order is a void order.

14. Apart from all this, we also find that even according to the appellant, Exts.P9(a) and R4(a) are the applications of the deceased former manager which culminated in Ext.P9. Ext.P9(a) is signed by both the then manager and the appellant. However, in this application, all that the manager has sought is change of management and the correspondentship. In other words, there is no mention of any change of ownership at all. In so far as Ext.R4(a) is concerned, though this document is also in the name of the deceased manager and is dated 26th

April 1978, this document does not contain the signature of the then manager. In this context, it is also relevant to state that in Ext.P21 Order of the Government, it has been found that the copy of the letter claimed to have been sent by Sri.Joseph George to the Director of Public Instruction does not have the signature of the transferor. Therefore, we cannot place any reliance on Ext.R4(a). In other words, on the materials now available, we can only place our reliance on Ext.P9(a) where there was no request for change of ownership.

15. It is true that O.S.2052/12 filed by the legal heirs of the deceased former manager is pending before the Sub Court, Thrissur. However, reading of Ext.P26, the plaint in that suit, shows that the subject matter of the suit is the property and the school building. Therefore, the pendency of the suit cannot be a reason for the Government to decline to pass order on the revision filed by the appellant against Ext.P19(b) order. Even otherwise, having filed revision before the Government, the appellant can not contend that the Government should not have passed orders on his revision and thereby permitted him to continue as manager illegally.

16. For all these reasons, we do not find any infirmity in the judgment of the learned Single Judge.

Appeal fails and it is dismissed.

**ANTONY DOMINIC
JUDGE**

**P.V.ASHA
JUDGE**

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