

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937Q

W.P.(C).No.15841 of 2013 (E)

PETITIONER(S):

TOM THOMAS.P., AGED 65 YEARS, SON OF LATE THOMAS,
MANAGER, ST. THOMAS UPPER PRIMARY SCHOOL,
PARANNUR, KUNNAMKULAM, THRISSUR DISTRICT.

BY ADVS.SRI.V.A.MUHAMMED

RESPONDENT(S):-

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1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695001.
 2. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
JAGATHY, THIRUVANANTHAPURAM-695014.
 3. THE ASSISTANT EDUCATIONAL OFFICER,
KUNNAMKULAM, THRISSUR DISTRICT-680503.
 4. DR. ANTO T. JOSEPH,
THEKKEKARA HOUSE NO. 30/484, EAST BAZAR, OLLUR,
THRISSUR-680306.
 5. SRI. RAPHAEL T. JOSEPH
THEKKEKARA HOUSE, RANI AUTOMOBILES WORKSHOP, KECHERY,
THRISSUR-680501.

R1 TO R3 BY GOVERNMENT PLEADER SRI.T.R.RAJESH.
R4 & 5 BY ADV. SRI.P.RAMAKRISHNAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
30-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS:-

- EXHIBIT P1- TRUE COPY OF THE HEARING NOTICE NO. F2/53565/10/DPI
DATED 18-8-2010.
- EXHIBIT P2- TRUE COPY OF THE REQUEST OF THE MANAGER OF THE
SCHOOL DAETD 28-8-2010.
- EXHIBIT P3- TRUE COPY OF THE HEARING NOTICE NO. F2/53565/10/DPI
DAETD 30-8-2010.
- EXHIBIT P4- TRUE COPY OF THE REQUEST OF THE MANAGER
DATED 4-9-2010.
- EXHIBIT P5- TRUE COPY OF THE NOTICE NO. F2/53565/10/DPI
DATED 11-10-2010.
- EXHIBIT P6- TRUE COPY OF THE REPLY OF THE MANGER DATED 21-10-2010.
- EXHIBIT P7- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
WPC.NO. 16926 OF 2010-M DATED 2-6-2010.
- EXHIBIT P8- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE COURT IN
WPC NO. 5511/2010-L DATED 9-3-2010.
- EXHIBIT P9- TRUE COPY OF THE ORDER NO. 23458/79/K.DIS
DATED 29-8-1979 OF THE 2ND RESPONDENT.
- EXHIBIT P9(a)- TRUE COPY OF THE APPLICATION FOR TRANSFER OF
MANAGEMENT DATED 26-4-1978.
- EXHIBIT P10- TRUE COPY OF THE LETTER NO. B-661/2010 OF THE
ASSISTANT EDUCATIONAL OFFICER DATED 16-3-2010.
- EXHIBIT P10(a)- TRUE COPY OF THE COMPLAINT OF THE
4TH RESPONDENT AND OTHERS DAETD 20-2-2010.
- EXHIBIT P10(b)- TRUE COPY OF THE REMARKS OF THE PETITIONER
DATED 30-4-2010.
- EXHIBIT P11- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE
COURT IN WPC NO. 33412/2010-B DATED 25-11-2010.
- EXHIBIT P12- TRUE COPY OF THE ORDER NO. F2/53565/10/DPI/K.DIS
DATED 15-11-2010.

- EXHIBIT P13- TRUE COPY OF THE COVERING LETTER
DAETD 10-1-2011.
- EXHIBIT P14- TRUE COPY OF THE HEARING NOTE OF THE MANAGER
DATED 23-2-2011.
- EXHIBIT P15- TRUE COPY OF THE ORDER NO. F2-89310/10/DPI/K.DIS
DATED 21-3-2011 OF THE 2ND RESPONDENT.
- EXHIBIT P16- TRUE COPY OF THE REVISION PETITION FILED BEFORE
THE GOVERNMENT ALONG WITH THE STAY PETITION BY
THE MANAGER DATED 29-3-2011.
- EXHIBIT P17- TRUE COPY OF THE INTERIM ORDER IN WPC NO.
10883/2011-I DATED 5-4-2011.
- EXHIBIT P18- TRUE COPY OF THE JUDGMENT OF THIS HON'BLE
COURT WPC NO. 10883/2011-I DATED 23-8-2011.
- EXHIBIT P19- TRUE COPY OF THE G.O.(RT)NO. 925/12/G.EDN
DATED 25-2-2012 OF THE GOVERNMENT.
- EXHIBIT P19(a)- TRUE COPY OF THE HEARING NOTE OF THE MANAGER
DATED 21-11-2011.
- EXHIBIT P19(b)- TRUE COPY OF THE ORDER NO.L F2/89310(A)/
10/DPI/K.DIS DATED 6-7-2012 OF THE DIRECTOR.
- EXHIBIT P20- TRUE COPY OF THE JUDGMENT DATED 20-11-2012 IN
WPC NO. 6038/2012 OF THIS HON'BLE COURT.
- EXHIBIT P21- TRUE COPY OF THE G.O.(RT)NO. 2352/12/G.EDN
DATED 05-06-2013.
- EXHIBIT P22- TRUE COPY OF THE DECISION REPORTED IN
1984 K.L.T. 773 DATED 20-7-1984.
- EXHIBIT P23- TRUE COPY OF THE DECISION REPORTED IN
1986 K.L.T. SN 57C NO.L 93 DATED 15-10-1986.
- EXHIBIT P24- TRUE COPY OF THE DECISION REPORTED IN
2011(1) KHC 48 DATED 11-8-2010.
- EXHIBIT P25- TRUE COPY OF THE JUDGMENT IN W.A.NO. 746 OF 1986
DATED 10-11-1986.
- EXHIBIT P26- TRUE COPY OF THE PLAINT FILED BEFORE THE
HON'BLE SUB COURT, THRISSUR.

- EXHIBIT P27- TRUE COPY OF THE WRITTEN STATEMENT FILED BY
PETITIONER IN O.S.NO. 2052/2012.
- EXHIBIT P28- TRUE COPY OF THE DEED EXECUTED BETWEEN
KOCHUTHANDU AND THE PETITIONER DATED 4-1-1993.

RESPONDENT(S)' EXHIBITS:-

- EXT.R4(a) TRUE COPY OF LETTER WRITTEN BY LATE JOSEPH GEORGE
TO THE 2ND RESPONDENT.
- EXT.R4(b) TRUE COPY OF DOCUMENT NO.3056/2002 DATED 22.11.2002.
- EXT.R4(c) TRUE COPY OF PROCEEDINGS DATED 26.5.2015 OF THE
1ST RESPONDENT.

Vku/-

[true copy]

K. Vinod Chandran, J

W.P.(C).No.15841 of 2013-E

Dated this the 30th day of November, 2015

JUDGMENT

The petitioner's uncle, one Joseph George, was the Manager of St.Thomas Upper Primary School, Parannur, Kunnankulam, Thrissur District, an aided school. Joseph George died on 31.10.1978 and the controversy revolves around whether Exhibit P9 order passed, changing the ownership and management of the school in the name of the petitioner can be sustained or not.

2. Exhibit P9(a) is said to be an application for change of management and correspondent-ship of the school in favour of the petitioner herein. On Exhibit P9(a), the Educational authority is said to have acted under Rule 5A of Chapter III of the Kerala Education Rules, 1959 [for brevity "KER"], granting permission for transfer of management and ownership of the school from Joseph George.T. to Tom Thomas P., the petitioner herein. No conveyance was executed to transfer the immovable properties prior to or after Exhibit P9(a). But, after Exhibit P9,

the petitioner transferred one-third of 88 cents belonging to the school in the name of his two sons by Exhibit R4(b) document, produced by respondents 4 and 5 in their counter affidavit, who are the children of the deceased Manager.

3. The respondents 4 and 5 then filed a suit, numbered as O.S.No.2052 of 2012 before the Sub Court, Thrissur, seeking setting aside of the transfer made by the petitioner; by virtue of Exhibit R4(b) and recovery of possession. Even prior to that, 4th respondent had filed a representation, Exhibit P10(a), before the 2nd respondent, Director of Public Instructions [for brevity "DPI"], for change of Managership, which was considered by Exhibit P12 and rejected. In Exhibit P12 dated 15.11.2010 the DPI had found that the questions raised by the petitioner, the son of the deceased Manager, are pending before the Civil Court and since the said suit is pending, there could be no change of management effected in the meanwhile. Exhibit P12, as is admitted by both parties, was never challenged by respondents 4 and 5. However, the further proceedings initiated resulted in Exhibit P19(b) and Exhibit P21 orders, the latter of which accepted the claim of respondents 4

and 5, which is impugned herein by the petitioner.

4. The petitioner's contention is that Exhibit P12 having never been challenged, it holds the field and the further proceedings cannot be relied upon, since ignoring the existence of Exhibit P12 the DPI passed Exhibit P15 dated 21.03.2011, which is *non est* in law. It is to be noticed that Exhibit P12 was passed on a representation by the 4th respondent and others, which was rejected only for reason of the pending Civil Court matter. Admittedly the Civil Court proceedings are even now pending, but a reading of the plaint would not indicate any ownership issue being agitated in the suit. There is also no finding on merits in Exhibit P12.

5. What prompted Exhibit P15 was the fact that the petitioner had approached this Court apprehending that he would not be supplied with documents when the application of the 4th respondent is being considered. This Court passed Exhibit P11 dated 25.11.2010, directing consideration of the claim, after a proper adjudication and also giving every opportunity to the petitioner to defend his managership. Unfortunately by the time Exhibit P11 directions were issued,

Exhibit P12 order dated 15.11.2010 was passed. The DPI, in his anxiety to comply with Exhibit P11, went ahead and passed Exhibit P15 order dated 21.03.2011 after considering the issue on merits. In Exhibit P15 there is also a recommendation to the Government for taking over the management of the school for a period of five years, as provided under Section 14(2) of the Kerala Education Act, 1958.

6. It is argued by the petitioner that, after Exhibit P11 the petitioner had approached the DPI and contended that no further orders are necessary, for reason of existence of Exhibit P12. Exhibit P15, in such circumstance, cannot be sustained, is the argument. Subsequently, the petitioner as well as the 4th respondent challenged Exhibit P15 order, before the Government. Both came before this Court also and this Court directed expeditious consideration of the appeals as per Exhibit P18. On consideration, the Government as per Exhibit P19, made a remand, upon which the DPI considered the issue on merits and passed Exhibit P19(b) order dated 06.07.2012. Again both parties approached this Court and obtained direction for speedy disposal of the revision, by the Government. The

petitioner herein who had approached this Court challenging Exhibit P19(b), was also directed to prefer a revision.

7. It is to be noticed that when a challenge was made against Exhibit P15 order and subsequently, when the order on remand was challenged; respectively by Exhibits P18 and P20, the petitioner kept silent about Exhibit P12 order. Looking at Exhibit P17 and P20, the petitioner did not in any event, urge the contention of an earlier order of the DPI having not been set aside. The petitioner acquiesced insofar as the remand order made at Exhibit P19. Exhibit P12 in the nature of the remand made by Exhibit P19 is deemed to have been set aside.

8. In such circumstance, this Court is not inclined to allow the writ petition and set aside Exhibits P19(b) and P21 only on the ground that Exhibit P12 has not been set aside. Exhibit P12 was, in any event, an order declining to consider the matter on merits, since the issue of management was said to be pending before the Civil Court. The plaint filed is produced as Exhibit P26. Therein, the prayer is for declaration that the document executed by the petitioner in favour of his sons is void

and also for recovery of possession of the plaint schedule properties. Hence, the issue agitated is not with respect to the ownership of the school and the same has to be considered, independent of the suit on the basis of the documents available before the Educational authority, which has been done as per Exhibit P21.

9. The entire case of the petitioner is built on Exhibit P9. Exhibit P9 is an order passed purportedly on an application Exhibit P9(a) made for transfer of management and correspondent-ship. Chapter III of KER contemplates two situations; one change of management and the other change of management involving change of ownership, as per Rule 5 and Rule 5A respectively. The change of management, if any, has to be immediately reported to the Educational Officer and approval obtained as per Rule 5. The Note to Rule 5 provided specifically, that Rules 4 and 5 does not apply to change of management, involving change of ownership. The change of ownership has to be under Rule 5A, which has to be with the prior permission of the Director. Though Exhibit P9 refers to Rule 5A Chapter III KER, there is no prior approval obtained,

since the alleged application of 26.04.1978 is considered and approved by Exhibit P9 dated 29.08.1979. Even if Ext P9 is deemed to be the prior approval then necessarily, it should be followed by a proper conveyance, which is conspicuously absent here. The approval of ownership cannot be said to have been effected by Exhibit P9, since it suffers from the fundamental defect of there being no prior approval as contemplated in the statutory rule and if it is deemed to be the prior approval then necessarily there should be a subsequent conveyance effected.

10. Further, it is to be noticed that the petitioner also does not have any contention that there was a transfer of ownership *inter-vivos* made in accordance with the Transfer of Property Act, 1882 [for brevity "TP Act"] and evidenced by a registered document. No transfer of immovable property could be made without such conveyance being effected in accordance with law. The petitioner even in the document of the transfer made to his sons, traces his title to Exhibit P9 and not to any other registered deed/document. However, this Court would not observe anything with respect to the transfer made to the sons

of the petitioner; since the issue is pending before the Civil Court. But the ownership of the school cannot by any stretch, be found on the petitioner; nor can the petitioner derive any title on the basis of Exhibits P9 and P9(a).

11. The reliance placed by the learned counsel for the petitioner on the decisions in ***Abdul Rahim v. State of Kerala* [1984 KLT 773]**, ***Mar Theophilus v. State of Kerala* [1986 KLT SN 57 (Case No.93)]** and ***Vicar, St.Mary's Church v. State of Kerala* [2011 (1) KHC 48]** is of no avail. In ***Abdul Rahim*** (supra) a decision of the Division Bench, finding that the authorities under the KE Act and Rules should decide the question of right of management of a school to the best of their resources and ability and it would not be justified in writ proceedings to direct the parties to fight out their rival claims in a Civil Court; was doubted and referred. Answering the reference, a Division Bench found that, the dictum laid down by the earlier Division Bench was only to the effect that the authorities under the K.E.Act and Rules should consider the question of right of management of the school to the best of their resources and ability and does not lead to a conclusion

that such decision would necessarily conclude the civil rights of the parties. The Educational authority was found to have no capacity to look into the civil rights of the parties; and decisions arrived at with respect to management was held to be in the nature of summary determination for the sake of expediency; without waiting for the result of a protracted litigations in a Civil Court. The civil rights was found to be capable of settlement only in an appropriate civil forum.

12. In ***Mar Theophilus*** (*supra*), it was found that the statutory authorities cannot abdicate their jurisdiction, on a mere finding that the dispute is a fit one to be resolved by a Civil Court. Only where there are disputes involving complicated questions of fact and law, the Educational authorities could recuse themselves from considering the question, of the issue of management, to which claims are raised by rival parties. The said decision was also one in which the question of change of management under Rule 5A of Chapter III KER was up for consideration. ***Vicar, St.Mary's Church*** (*supra*) also held that only if there is a dispute which cannot be resolved under the provisions of the KER then only the remedy before the Civil

Court has to be first resorted to.

13. Herein, as was noticed above, there are no disputed questions to be agitated. The petitioner asserts his ownership only on the basis of Exhibit P9(a) and not on any proper deed of conveyance. As was found by this Court, though correspondent-ship could be transferred to another person and the management could be carried on by such person, on the approved Manager expiring, the correspondent-ship also ceases. Then the proper person or agency to be entrusted with the management would have to be decided on the principles of devolution of assets on legal heirs, regulated by the laws of succession.

14. Exhibit P19(b) elaborately considered the issue on facts. However, Exhibit P19(b) also rejected both the contentions of the petitioner and respondents and directed the take over of the management of the school by appointing Assistant Educational Officer as Manager for looking after the day-to-day affairs of the school. The Government in Exhibit P21 specifically noticed the decisions of this Court, which laid down that wherein there is a question of civil right involved, then the

adjudication by the Civil Court is the appropriate remedy. However, the Government rightly found that the question raised in the present case is purely on the basis of the transfer of management, with ownership of the school on the basis of the order issued by the DPI invoking Rule 5A of Chapter III KER [Exhibit P9]. The petitioner's claim was found to be one raised; on the basis of Exhibit P9(a) and the permission granted under Rule 5A, at Exhibit P9. It was found that there was no registered deed or Will by the deceased Manager conveying the properties of the school to the petitioner. It was also found that the application filed by the deceased Manager itself was disputed, which is further buttressed by the respondents 4 and 5 by producing the covering letter of Exhibit P9(a) as Exhibit R4(a), which does not even contain the signature of the deceased Manager.

15. It was in that circumstance that the Government found that the petitioner has no right over the management and ownership of the school. If at all the petitioner was appointed correspondent of the school, the said appointment ceases on the death of the Manager. The school has to devolve upon the

successors of the Manager and since there was more than one legal heir, it should be modelled in the form of a Corporate Agency. It was also found by the Government that the dispute over the management has adversely affected the smooth functioning of the school. In such circumstance, the AEO was directed to approve the person appointed by the legal heirs of the erstwhile/deceased Manager as the Manager of the school. This Court does not find any reason to differ from Exhibit P21. Exhibit P21 is upheld. AEO shall pass appropriate orders, at any rate within one month from the date of receipt of a certified copy of this judgment.

The writ petition would stand dismissed, upholding Exhibit P21. No costs.

Sd/-
K.Vinod Chandran
Judge.

vku/-

[true copy]