

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th May, 2015

+ **W.P.(C) No.2210/2014 & CM No.20578/2014 (for condonation of 13 days delay in filing addl. affidavit)**

AMIR ABIDI AND ORS Petitioners

Through: Mr. Sarim Naved, Adv.

Versus

GOVERNMENT OF NCT OF DELHI & ANR Respondents

Through: Mr. Raman Duggal, Adv. for GNCTD
Mr. Raghavendra M. Bajaj & Ms.
Garima Bajaj, Advs. for R-2.
Mr. Ajay Arora, Adv. for NDMC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), seeks, (i) a direction to the Directorate of Education (DoE) of the respondent No.1 Government of NCT of Delhi (GNCTD) to provide an alternative building provisionally for imparting education to the students of the Shafiq Memorial Higher Secondary School for a period of 18 months, till a new building is constructed; and, (ii) a direction to the respondent No.2 Management of Shafiq Memorial Higher

Secondary School to forthwith take efficacious steps to prevent any uncalled for mishap, inclusive of abandoning those areas of the school which are imminently and likely to fall.

2. It was the case of the three petitioners:

- (i) that Shafiq Memorial School, an aided school situated at Bara Hindu Rao, Delhi, having about 1200 children from Class I to Standard XII coming from poor underprivileged sections of the society, functions under the aegis of Delhi Education Society (Regd.);
- (ii) that the building which houses the said School is about 100 years old and a wakf property and in a dilapidated condition, endangering the security of life and physical safety of the children studying therein;
- (iii) that the Governing Body of the Delhi Education Society (Regd.) in its meeting held on 4th January, 2014 decided to have the existing building of the school demolished and to construct a new building in its place;
- (iv) that though the respondent No.2 Management of the said School had represented to various civic authorities including the DoE of the respondent No.1 GNCTD requesting them to make an

alternative arrangement for running of the School but no replies were received.

3. The petition came up before this Court first on 4th April, 2014 when the DoE of the respondent No.1 GNCTD was directed to come up with a viable solution. Vide subsequent order dated 17th April, 2014, an Advocate Court Commissioner was appointed to take photographs of the building of the School. The subsequent order dated 23rd April, 2014 records the concurrence of the DoE that the School building “requires extensive repairs”. It also records the contention of the respondent No.2 Management of the School that the existing building is to be pulled down and a new structure raised in its place. The respondent No.2 GNCTD was accordingly asked to submit a report.

4. One Sh. Fazlur Rahman applied for impleadment in this petition claiming to be father of three children studying in the said School and contending that only repair / renovation work is required in the building and it was not necessary to pull down the entire building and raise a new construction. It was further pleaded that the Delhi Education Society (Regd.) and the Management of the School were in conspiracy with land grabbers, to oust the students from the school premises so that the land

underneath the school building can be used for commercial gain, either by converting it into an expensive private school or for some other purposes. It was further pleaded that taking advantage of the filing of the petition, students of Class XI and XII studying in the said School had been shifted to a new block and the students of Classes I to X had been shifted to Sarvodaya Bal Vidyalaya, Qutub Road in the afternoon shift for two years and which was causing huge inconvenience to the said students and their parents.

5. The aforesaid made us suspicious of the motive behind filing the present petition. The Delhi School Education Act, 1973 and the Rules framed thereunder provide an elaborate procedure for closing down of a School (see Rule 46). It was felt that this so called PIL should not be allowed to be used to, without the appropriate prescribed procedure being followed, have the School shut down, as had already been achieved and thereafter not come back into existence at all, thereby making the valuable land underneath the School building available for exploitation for commercial purpose.

6. Accordingly, vide order dated 23rd April, 2014, we directed that a detailed study be made of the school building to report, whether the same

was in the need only of repairs or was required to be pulled down.

7. An additional affidavit has been filed by the newly impleaded respondent stating that the respondent No.2 Management of the School in the guise of the present petition has declared the School to be abandoned and had the building thereof vacated by 31st March, 2014, without consulting any experts on the matter to report on the stability and suitability of the building and whether it required only repairs or needed to be demolished and contending the said acts to be not *bona fide* and the present petition instead of being in public interest being in collusion with the Society under whose aegis the said School was functioning and with the Managing Committee of the School.

8. In pursuance to our further directions, an affidavit dated 24th September, 2014 along with the inspection report prepared by a Structural Engineer of North Delhi Municipal Corporation has been filed stating that the building is reparable, some parts of it are dangerous and require repairs and that the structure of the building is partly structurally safe.

9. We had vide our order dated 9th July, 2014 also directed the respondent No.2 Management of the said School to file an affidavit with regard to the steps proposed to be taken by them for demolition and re-

construction of the building to house the same students who had been displaced therefrom. Though an affidavit in response was filed but not found to be satisfactory. We vide our order dated 23rd July, 2014 asked the respondent No.2 Management of the School to file further affidavit disclosing the FAR presently exhausted and additional FAR available and the availability of the funds with the School for raising construction and to file an undertaking that the land shall not be used for any other purpose as well as an undertaking that in the event of re-construction being permitted, the same will be completed within 18 months and the new school building available to the students in a time bound manner.

10. At that stage, we were told that the Managing Committee of the School had been dissolved and the faces therein, on whose faith and credentials this Court had been proceeding and which had led to the School being shut down, without the procedure therefor being prescribed, were no longer in management and a new management had come into being; so much so, that the Advocate earlier representing the School Management was also changed.

11. Though the School Management has in compliance with our directions filed affidavits but the same discloses that all the hue and cry

about re-construction was being made, without the School Management having taken any steps for re-construction or being equipped to have the building re-constructed. So much so that they are not even possessed of and have no arrangement for the finances required therefor. Had the building of the School been demolished in the interregnum, the same would have definitely resulted in a situation of the new construction being not raised and the students studying in the erstwhile building being displaced and which in turn had a high probability of the prime land underneath the school building being misappropriated / misused.

12. The aforesaid discloses a rather sad state of affairs and the possibility of the tool of PIL being abused / misused cannot be ruled out. This Court acted on the credentials of the writ petitioners as educationists and impressed urgency on the DoE and which in turn, without satisfying itself whether the school building was only repairable or was required to be demolished, permitted shifting of students therefrom, making a prime piece of real estate available for misappropriation. The building could not have become unsafe in a day; it is inexplicable as to why the Delhi Education Society (Regd.), the Managing Committee of the School and the DoE which is granting 95% aid to the School, did not look into the matter earlier.

13. Be that as it may, the position which now emerges is that the building is not in such a state which is required to be demolished. The Delhi Education Society (Regd.) which is not even a party to the petition or the respondent No.2 Management of the School are not even in possession of the funds for demolition and re-construction of the property. It appears that if the existing building is permitted to be demolished, the coming up of a new building at least for school purpose, would be an uncertainty.

14. We therefore dispose of this petition with the following directions:

- (I) The respondent No.2 Managing Committee of the School to, within six months hereof carry out repairs to the portions of the school building in need thereof, including by re-construction of portions of the building if required but without demolishing the whole structure;
- (II) The DoE to supervise the said works on a day to day basis;
- (III) The North Delhi Municipal Corporation within whose territorial jurisdiction the School falls, to expeditiously grant approvals / permissions, if any required for the aforesaid purposes;
- (IV) After the said period of six months, the students who have been shifted out of the said School, be forthwith brought back to the

repaired / renovated school building;

(V) If the DoE finds that the Delhi Education Society (Regd.) and / or Managing Committee of the School is lagging behind in taking steps for so restoring the school building and bringing back the children, it shall be presumed that the Delhi Education Society (Regd.) and the Managing Committee of the School are not interested in running the said School and in which case the DoE shall consider the possibility of taking over the management of the said School;

(VI) The DoE to within fifteen days hereof nominate an officer who will oversee the entire aforesaid process and who will be responsible for compliance with the directions of the Court and who can be held responsible for any violation thereof.

15. The petition is disposed of.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

MAY 06, 2015

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