

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.9249 of 2016

Sri Konganeswara Vidyasala

Aided Primary School,

Plot Nos.200, 201 and 202,

Saradha Nagar, Medical College Road,
Thanjavur,

Rep. by its Secretary Tmt.N.Meena

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by its Principal
Secretary to Government,
School Education Department,
Secretariat, Fort St.George,
Chennai-600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.
3. The District Elementary Educational Officer,
Thanjavur District, Thanjavur.
4. The Assistant Elementary Educational Officer,
Thajavur Town, Thanjavur District.

.. Respondents

सत्यमेव जयते

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to grant permission for shifting the petitioner-school to the new premises at Plot Nos.200, 201 and 202, Saradha Nagar, Medical College Road, Thanjavur, covered by all statutory certificates and further to restore the students and teachers of the petitioner-school by cancelling the other orders passed by the Department, by considering the representation submitted by the petitioner-school, dated 05.02.2016, within a time frame to be fixed by this Court.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.P.Sanjay Gandhi, Addl.G.P.

ORDER

In this Writ Petition, the petitioner prays for issuance of a Writ of Mandamus to direct the respondents to grant permission for shifting the petitioner-school to the new premises at Plot Nos.200, 201 and 202, Saradha Nagar, Medical College Road, Thanjavur, covered by all statutory certificates and further to restore the students and teachers of the petitioner-school by cancelling the other orders passed by the Department, by considering the representation submitted by the petitioner-school, dated 05.02.2016, within a time frame to be fixed by this Court.

2. The affidavit filed in support of the Writ Petition is sworn to by the Secretary of the petitioner-School, stating that the School was established in the year 1921 by their forefathers and it is a Government aided school, situated in the place belonging to Arulmighu Konganeswara Swamy Temple; the School produced number of scholars; as the School is near the Temple premises, admission of students is/will be more, especially on the "Vijaya Dasami" day. While so, one N.Somu @ Somaskandan filed a Public Interest Litigation (PIL) before this Court in W.P.(MD).No.15001 of 2010 against the School; PIL was with false allegations and extraneous reasons. It is the further grievance of the petitioner that the said PIL was filed at the instance of adjoining School by name D.K.Subbiah Naidu (DKS) School, in which, the said N.Somu's brother-in-law, namely Arumugam is working as a Teacher and owing to misunderstanding, there is a trouble for the petitioner to run their School. However, the said PIL was dismissed on 27.07.2012. In the said factual matrix, it is the case of the petitioner that she has also filed a Writ Petition in W.P.(MD).No.5123 of 2012 challenging the order passed by the educational authorities for direct payment of salary, which according to her was based on the false representation by the said Somu; the said W.P.(MD).5123 of 2012 came to be allowed on the same date, i.e. on 27.07.2012 (combined order passed in the above said both the Writ Petitions). Since, during the pendency of the above said Writ Petitions, the petitioner-School undertook to shift the premises, this Court, based on the interim undertaking, while finally disposing of both the above said Writ Petition, directed the petitioner-School to file an Affidavit of Undertaking before the DEEO, Thanjavur, for shifting the School to new building/alternative place on or before 15.05.2014.

3. In the above background, it is the case of the petitioner that she purchased a land in S.No.236 Samipandian Nagar, Melaveli Panchayat, Thanjavur Town and she also made representation to the local authorities for planning permission to construct the School-building in the premises said to have been purchased by them; the said representation was rejected on the ground that the area falls within the residential locality. Hence, in W.P.(MD).No.5123 of 2012, she filed a Miscellaneous Petition for extension of time to vacate the premises, which was granted by this Court on 29.04.2014, by directing the petitioner-School to purchase more land than what has already been purchased and to demonstrate their bona-fides to the Court on or before 15.06.2014 and the said petition was posted for hearing on 16.06.2014 and as an interim measure, in that Miscellaneous Petition, this Court also passed an order directing the respondents not to cancel the recognition of the petitioner-School.

4. It is the further case of the petitioner that subsequently, the Joint Commissioner, H.R. & C.E. issued an order on 04.08.2014 to vacate the premises, wherein the School was running at Konganeswara Temple premises, at the instance of the said N.Somu, inspite of the dismissal of the Writ Petition (PIL) filed by them, as discussed supra. As against the said proceedings of the Joint Commissioner, the petitioner-School filed a Revision Petition before the Commissioner of H.R. & C.E., under Section 21 of the H.R. & C.E. Act, on entertaining which, the Commissioner granted an oral order of status-quo; hence, she was constrained to file another Writ Petition in W.P. (MD).No.27200 of 2015 against forcible eviction. The said Writ Petition was closed, with liberty to approach the appellate forum.

5. Subsequently, as a measure of order passed in the earlier Writ Petition in W.P.(MD).No.5123 of 2012, the petitioner proceeded to purchase another land in S.No.174/2, measuring an extent of 1.32 acres and S.No.174/5, measuring an extent of 61 cents, situated at Palli Agraharam, Thajavur Taluk, with a view to run the School as was run by the petitioner's predecessors from 1921. In view of the arbitrary action of the H.R. & C.E. authorities at the instance of the said Somu, there had been forcible eviction of the students and teachers from the School on 28.08.2015, leading to locking of the School premises. At this juncture, it is the grievance of the petitioner that the fourth respondent issued communication, dated 27.08.2015 for shifting the students and teachers to the nearby school as a temporary measure, pending regular establishment of the petitioner-School and in that regard, the fourth respondent, by communication, dated 03.11.2015, also stated that the teachers and students are temporarily shifted to nearby Schools and requested the petitioner to inform as to the stage of changing

of School to the new premises, in order to submit a report to the second respondent, pursuant to which, the petitioner, by letter dated 12.11.2015, sought time to submit the report, subsequent to which, the report was also submitted by her on 05.02.2016, stating that a new school building had been located with infrastructural facilities, by availing lease (registered deed) from land owner, in support of which, all documents, like Structural Stability Certificate, Public Building Licence issued in Form-D, Sanitation Certificates and NOC from the Department of Fire and Rescue Services and other Certificate from the TNEB, etc., all of which were issued after due inspection, have been submitted seeking permission to run the School in new premises.

6. In the meantime, based on the said letter/representation, dated 05.02.2016, given by the petitioner-School, the fourth respondent called her in person to explain the situation, by proceedings, dated 09.02.2016 in Na.Ka.No.136/A1/2016; further orders had to be passed by the second and third respondents for granting permission to the petitioner to run the School in the new premises.

7. It is the further case of the petitioner that without passing any orders on the proposal as called for by the Department, and in compliance of the orders passed in the Writ Petition(s), the fourth respondent proceeded to issue orders in February 2016 transferring the teachers working in the School on re-deployment basis, whereas, it is the grievance of the petitioner that the School was and had been in trouble due to the act of the H.R. & C.E. authorities at the instance of third parties, having regard to the above factual background of the case of the School.

8. In the above circumstances, it is the case of the petitioner that there cannot be any re-deployment, which is adverse to the interest of the petitioner-School, thereby, it affects the rights of the teachers and students, leading in vain all the efforts taken by her to establish a new school building as per the orders of this Court, discussed supra. It is clear that the petitioner-School is sought to be located in the new land and building with adequate facilities for housing the new School. Since no orders have been passed by the respondent-authorities to restore the position of the petitioner-School back to the normal state of affairs, i.e. in a new place to run the School as before, she has filed the present Writ Petition for the above relief.

9. Heard both sides.

10. In view of the above chequered history involved in this case, considering the above factual aspects of the matter and also taking into consideration the earlier orders passed by this

Court, though this Court is not inclined to grant positive direction as sought for by the petitioner, but at the best, without going into the merits of the claim of the petitioner at this stage, this Court directs the respondents in coordination with each other, to consider the request of the petitioner as made in her representation, dated 05.02.2016, conduct enquiry, give an opportunity of personal hearing to the petitioner-School and its office-bearers, and other necessary parties, if any, and thereafter pass appropriate orders on the said representation, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order.

11. With the above observations and directions, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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Copy to

1. The Principal Secretary to Government,
State of Tamil Nadu,
School Education Department,
Secretariat, Fort St. George,
Chennai-600 009.
2. The Director of Elementary Education,
DPI Campus, College Road,
Chennai-600 006.
3. The District Elementary Educational Officer,
Thanjavur District, Thanjavur.
4. The Assistant Elementary Educational Officer,
Thajavur Town, Thanjavur District.

+ 1 cc to Mr.Sankaran, Advocate Sr.15836

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MG(CO)
EU 18.03.16