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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.02.2017

Delivered on : 05.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

and

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

Rev. App. (MD) No.38 of 2016

and

Writ Petition (MD) Nos.8248 and 23522 of 2015

and

M.P. (MD) Nos.1, 1 and 2 of 2015

and W.M.P. (MD) No.11838 & 6480 of 2016

Rev. App. (MD) No.38 of 2016

T.Pushpanathan,

Correspondent / Educational Agency,

Alagammai Achi Memorial Aided Elementary School,

Pallathur, Karaikudi Taluk,

Sivagangai District.

... Review Applicant /

7th respondent / Petitioner

Vs.

1.The Director of Elementary Education,
Chennai - 600 006.

2.The District Elementary Educational Officer,
Sivagangai, Sivagangai District.

3.Baby Saral,
District Elementary Educational Officer,
Sivagangai, Sivagangai District.

4.The Assistant Elementary Educational Officer,
Sakkottai at Karaikudi,
Sivagangai District.

... 1 to 4th respondents /

1 to 4th respondents /

1 to 4th respondents

5.KR.Annamalai

... 5th respondent / Petitioner /

5th respondent

6.KR.Alagappan

7.KT.S.Palaniappan

... 6th & 7th respondent / 5 & 6th

respondents / 6th & 7th respondents.

Prayer: Petition filed under Order 47, Rule 1 r/w Section 114 of Civil Procedure Code, praying to review the order passed in M.P. (MD) No.2 of 2015 in W.P.(MD)No.8248 of 2015 is concerned dated

31.08.2016 and allow the above Review Application.

Prayer in WP(MD) . 8248/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the 2nd respondent in her proceedings in Na.Ka.No.550/A4/2013 dated 30.04. 2015 and quash the same and direct the respondents to confer all the consequential benefits and pass such further or other orders.

For Petitioner : Mr.V.Panneer Selvam
for M/s.C.S.Associates

For Respondents : Mr.VR.Shanmuganathan
1 ,2 &4 Special Government Pleader

For Respondents : Mr.Isaac Mohan Lal
5 ,6&7 Senior Counsel
for Mrs.S.Srimathy

W.P. (MD) No.8248 of 2015

T.Pushpanathan,
Correspondent / Educational Agency,
Alagammai Achi Memorial Aided Elementary School,
Pallathur, Karaikudi Taluk,
Sivagangai District. ... Petitioner

Vs.

- 1.The Director of Elementary Education,
Chennai - 600 006.
- 2.The District Elementary Educational Officer,
Sivagangai, Sivagangai District.
- 3.Baby Saral,
District Elementary Educational Officer,
Sivagangai, Sivagangai District.
- 4.The Assistant Elementary Educational Officer,
Sakkottai at Karaikudi,
Sivagangai District.
- 5.KR.Annamalai
- 6.KR.Alagappan
- 7.KT.S.Palaniappan
- 8.K.Solaiyan
- 9.S.Yoga Narasimman ... Respondents

(R8 and R9 are impleaded vide Court order dated 02/02/2017 in
W.P.(MD) No.1555 of 2017)

<https://hnservices.courtsgov.in/hnservices>

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus,



calling for the records pertaining to the order passed by the second respondent in her proceedings in Na.Ka.No.550/A4/2013, dated 30.04.2015 and quash the same and direct the respondents to confer all the consequential benefits.

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For Petitioner : Mr.V.Panneer Selvam
for M/s.C.S.Associates

For Respondents : Mr.VR.Shanmuganathan
1 to 4 Special Government Pleader

For Respondents : Mr.Isaac Mohan Lal
5 to 7 Senior Counsel
for Mrs.S.Srimathy

For Respondents : Mr.G.Prabhu Rajadurai
8 and 9

W.P. (MD) No.23522 of 2015

T.Pushpanathan,
Correspondent / Educational Agency,
Alagammai Achi Memorial Aided Elementary School,
Pallathur, Karaikudi Taluk,
Sivagangai District. ... Petitioner

Vs.

- 1.The District Elementary Educational Officer,
Sivagangai,
Sivagangai District.
- 2.The Assistant Elementary Educational Officer,
Sivagangai,
Sivagangai District.
- 3.KR.Annamalai
- 4.KR.Alagappan
- 5.AL.Meenakshi ... Respondents

(R3, R4 and R5 are impleaded vide Court order dated 02/02/2017 in W.M.P. (MD) No.6480 of 2016)

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the order passed by the first respondent in his proceedings in Na.Ka.No.600/A4/2013, dated 06.03.2013 and quash the same as illegal.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates



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For Respondents
1 and 2

: Mr.VR.Shanmuganathan
Special Government Pleader

For Respondents
3 to 5

: Mr.Isaac Mohan Lal
Senior Counsel
for Mrs.S.Srimathy

ORDER

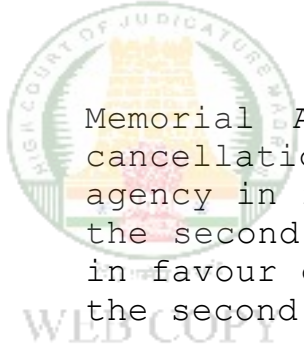
S. S. SUNDAR, J.

The Writ Petition in W.P.(MD)8248 of 2015 has been filed by the petitioner who is the Headmaster of the school and who claimed to be the Correspondent and Educational Agency of Sri Alagammai Achi Memorial Aided Elementary School, Pallathur.

2.The brief facts set out in the affidavit filed in support of this Writ Petition are as follows:

2.1.The school namely Alagammai Achi Memorial Aided Elementary School was started as a primary school by one Subramania Iyer in the year 1985. The said Subramania Iyer later transferred the management of the school in favour of one Jayankondar and it was called as Jayankondar Kalvi Nilayam. Since Jayankondar relinquished the correspondentship and requested the villagers to change the correspondent, the management of the school, namely, the Educational Agency was changed in the name of Thirunavukkarasu Chettiar @ Karuthan Chettiar in the year 1957. From then, the name of the school was changed as Alagammai Achi Elementary School.

2.2.After the demise of the said Thirunavukkarasu Chettiar @ Karuthan Chettiar, the villagers requested his son to take over the educational agency and run the school. Accordingly, the school was taken over by KR.Alagappan from 1978. After some time, KR.Alagappan, transferred the educational agency in favour of his wife Smt.AL.Meenakshi in the year 1981. Smt.AL.Meenakshi requested the villagers to take over the school from her and accordingly, at the request of the villagers, the educational agency was transferred to the petitioner in the year 2009. The transfer of educational agency in favour of the petitioner was approved by the second respondent by an order dated 02.11.2010. The husband of AL.Meenakshi, namely, KR.Alagappan also gave a letter of consent for the petitioner to act as educational agency. After the petitioner assumed as educational agency, the school grew and there were lot of developments. Since the strength of neighbouring middle school run by one Solaiyappa Chettiar came down, the said Solaiyappa Chettiar wanted to see somehow or the other the petitioner school to be closed. It was at his behest, there was an attempt to transfer the management of Alagammai Achi Memorial Aided School in favour of the said Solaiyappa Chettiar. Thereafter, the fifth respondent claiming himself as Correspondent and educational agency of the school submitted a proposal to approve him as the Correspondent of Alagammai Achi



Memorial Aided School. The fifth respondent also prayed for cancellation of the order approving the transfer of educational agency in favour of the petitioner. By an order dated 06.03.2013, the second respondent cancelled the transfer of educational agency in favour of the petitioner and on the same day namely 06.03.2013, the second respondent passed another order of direct payment.

2.3.The petitioner filed a Writ Petition earlier in W.P. (MD) No.4821 of 2013 to quash the order dated 06.03.2013 by which the second respondent cancelled the approval granted earlier for the transfer of educational agency in favour of the petitioner. Since the order dated 06.03.2013 was without hearing the petitioner, this Court by order dated 05.03.2015 set aside the order of second respondent dated 06.03.2013 and the matter was remitted back to the second respondent for passing a fresh order, after hearing the petitioner as well as fourth respondent. The fifth respondent also filed another writ petition for issuing a Writ of Mandamus directing the educational authorities to approve the proposals submitted by the fifth respondent to act as Correspondent of Alagammai Achi Memorial Aided School. This Writ Petition in W.P.(MD)No.3000 of 2013 was also disposed of along with W.P. (MD)No.4821 of 2013.

2.4.The Writ Petitioner filed an appeal as against the order allowing the writ petition in W.P.(MD)No.4821 of 2013. The appeal was filed in W.A.No.464 of 2015 on the ground that the second respondent has no jurisdiction to decide the dispute regarding the educational agency. After the remand, the second respondent though sent a notice for enquiry on 27.04.2015, due to the petitioner's ill-health, he could not attend and therefore, he sent a letter on 25.04.2015 to the second respondent stating that he was taking treatment for his ill-health and that he had also applied for leave on 24.04.2015. In the letter, the petitioner requested the second respondent to postpone the enquiry. Though this letter dated 25.04.2015 was received by the second respondent on 27.04.2015, on 30.04.2015, the petitioner received a notice dated 28.04.2015 directing the petitioner to appear before the second respondent for enquiry on 30.04.2015. Hence, it was practically impossible for the petitioner to attend the enquiry. However, on 30.04.2015, the cancellation of the approval of transfer of educational agency in favour of the petitioner was confirmed. In the same order, the proposals for recommending the respondents 5 and 6 as educational agencies was called for. It is this order dated 30.04.2015, that is challenged, in W.P.(MD) No.8248 of 2015.

3.The grounds on which the writ petitioner challenges the impugned order dated 30.04.2015 are as follows:

<https://hcservices.ecourts.gov.in/hcservices/> The impugned order is in violation of principles of natural justice as the petitioner was not given a fair opportunity and the enquiry was conducted without sufficient opportunity to



the petitioner.

(b) This Court had granted twelve weeks time to the second respondent to pass fresh orders. However, the second respondent, who was about to retire by the end of May, 2015, decided to settle the issue even before her retirement and hence, she passed the impugned order on 30.04.2015 in a harried manner in favour of respondents 5 to 6 for extraneous reasons and with *mala fide* intention.

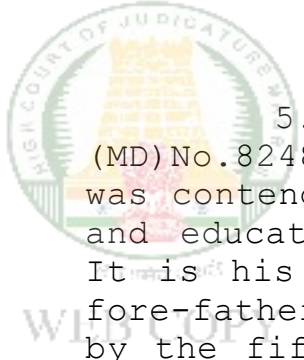
(c) The order, dated 30.04.2015, without considering merit and without assigning any reason is unlawful.

(d) The second respondent passed the impugned order as if the 6th respondent approached this Court earlier questioning the approval granted for the transfer of educational agency in favour of the petitioner. However, the order in favour of the petitioner was never challenged by the respondents 5 and 6.

(e) One K.T.S. Palaniappan was nominated as a School Committee, Secretary by the petitioner. He also filed earlier another writ petition in W.P.No.8081 of 2013 challenging the order dated 06.03.2013. However, the writ petition was later withdrawn and the said K.T.S.Palaniappan, has given statement before the second respondent contrary to the stand taken by him in W.P.No.8081 of 2013. Since there is no findings about the statement made by the said K.T.S.Palaniappan, the impugned order is liable to be set aside.

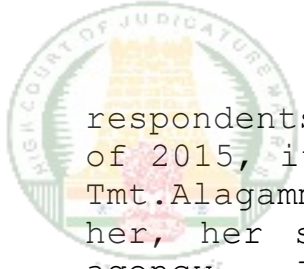
(f) If there is any dispute in the educational agency, the same can be decided only by the competent Civil Court. The second respondent is incompetent to decide the dispute regarding any rival claim as to the educational agency. The impugned order is, therefore, without jurisdiction.

4.The Writ Petition was contested by the respondents 4 and 5 by filing a detailed counter affidavit. The stand taken by the respondents 4 and 5 is also supported by the second respondent herein who is also the first respondent in W.P.(MD)No.23522 of 2015. The petitioner in W.P.No.8248 of 2015 filed W.P.(MD) No.23522 of 2015, challenging the order dated 06.03.2013 which was also passed by the first respondent namely the District Elementary Educational Officer, Sivagangai, directing direct payment in respect of Alagammai Achi Memorial Aided School, consequent to the order cancelling the approval granted for the transfer of the educational agency in favour of the petitioner earlier. The petitioner's case in W.P.(MD)No.8248 of 2015 and 23522 of 2015 is the same in both the writ petitions. Originally in W.P.(MD) No.23522 of 2015, the private respondents in W.P.(MD)No.8248 of 2015 are not parties. However, they got themselves impleaded as respondents R3 to R5 subsequently.



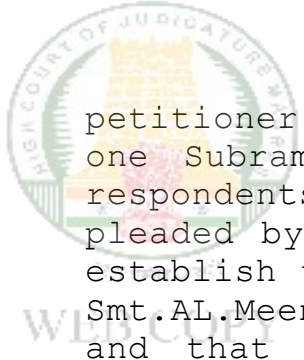
5. The private respondent namely 5th respondent in W.P. (MD) No. 8248 of 2015 filed a detailed counter affidavit wherein it was contended by the fifth respondent that he is the Correspondent and educational agency of Alagammai Achi Memorial Aided School. It is his specific case that the school was established by his fore-fathers and the administration of the school was carried on by the fifth respondent and his family members alone. According to him, the family members of the fifth respondent are the founder of the school and as such, they were in the administration of the entire school unquestionably for a long period of time. It was contended that it is only the elected member of the family of the fifth respondent who can be the President of the school. Till 2009, the brother of fifth respondent by name KR. Alagappan was in charge of the school as Correspondent. The members of the family constituted the educational agency. It was alleged that the petitioner misused his position as Headmaster of the school by manipulating and creating documents. With forged documents, the petitioner obtained approval as if there was a transfer of educational agency in favour of the petitioner. It was the specific case of the fifth respondent that Smt. AL. Meenakshi namely the wife of KR. Alagappan was not the educational agency and that she could not have transferred the educational agency in favour of the petitioner. It was further stated by the fifth respondent that his brother's wife had granted permission to the petitioner to withdraw salary and distribute the salary to the teachers giving the petitioner some limited power to carry out the administration in the school owing to her illness. Taking advantage of the situation the petitioner illegally by manipulating the records obtained approval for transfer of educational agency in favour of the petitioner. The lease deed in respect of the building in which the school is run would indicate that it is only the respondents 5 and 6 who are entitled to be in management of the school as educational agency. The fifth respondent also pleaded that the Headmaster of a school cannot act as an educational agency as per Rule 12 (4) of Private School Regulation Act and that therefore, even if opportunity is given to the petitioner, he cannot succeed in establishing his right either as educational agency or President of school. It was further contended by the fifth respondent that the lease itself was granted only in favour of the respondents 5 and 6 and that as per the lease deed, the lease will be automatically cancelled in case the management of the school is transferred to any other person.

6. The first respondent in W.P. (MD) No. 23522 of 2015 is the second respondent in W.P. (MD) No. 8248 of 2015. The first respondent in W.P. (MD) No. 23522 of 2015 has filed a detailed counter affidavit along with a petition to vacate the interim order dated 04.01.2015 granted in M.P. (MD) No. 2 of 2015 in W.P. (MD) No. 23522 of 2015. In this counter also, the stand of the respondents 5 and 6 in W.P. (MD) No. 8248 of 2015 is reiterated. Even according to the counter affidavit of the official



respondents particularly the second respondent in W.P.(MD)No.8248 of 2015, it was stated that the school was named after its founder Tmt.Alagammai Achi who was the educational agency and that after her, her son Karuthan Chettiar was recognised as an educational agency. It was the further case of the second respondent that KR.Alagappan was recognised as the Secretary of the school for the period from 01.01.2005 to 31.12.2007 and for the earlier period between 24.02.1975 and 31.12.2004 the non-approval for the school committee was also ratified by the second respondent by the proceedings dated 16.02.2005. Though it was admitted that the petitioner was promoted as Headmaster with effect from 01.06.2006 and the promotion was approved by the District Elementary Educational Officer, it was specifically contended that the Headmaster cannot claim ownership over the school nor he can claim to be the educational agency. It was further pointed out in the said counter affidavit that the proposals for transfer of educational agency was originally returned on the specific ground that the school recognition copy and the Legal Heir Certificate were not obtained. However, there was a misleading office note as if the approval for transfer of educational agency could be granted as the previous educational agency had on their own volition transferred the educational agency because of their inability to run the school and that the other family members had given no objection for such transfer of educational agency. Therefore, it was the endeavour of the respondent to point out that the approval for transfer of educational agency in favour of the petitioner earlier was on the basis of some self serving records produced by the petitioner and the District Educational Officer is competent to cancel the same if he comes to know that the earlier order of approval was on the basis of any forged document or on the erroneous assumption of facts. Quite surprisingly, the second respondent has taken more pain in contesting the writ petition by elaborating the irregularities in the records submitted by the petitioner before getting the order and the approval for the transfer of educational agency in favour of the petitioner. Since the basic facts and the issue arise for consideration are identical in both the writ petitions, this Court has taken note of the contents of the counter affidavit filed by the first respondent in W.P.(MD) No.23522 of 2015 who is the second respondent in W.P.(MD)No.8248 of 2015.

7. In W.P.(MD)No.8248 of 2015, two other persons filed impleading petition stating that they are the representatives of Pallathur village. According to them, they are interested in the proper administration of school. This Court, however, without prejudice to the rights of the respondents 5 and 6, permitted them to come on record as intervenors. They are impleaded as respondents 8 and 9 in W.P.(MD)No.8248 of 2015. The 9th respondent claimed to be the President of the Parent-Teacher Association of Alagammai Achi Memorial Aided School. It is pertinent to mention that these respondents 8 and 9 have supported the case of the

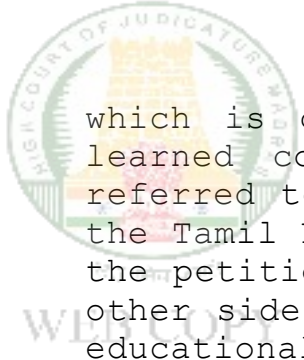


petitioner by stating that the school was originally started by one Subramanya Iyer. The contention of these newly impleaded respondents namely respondents 8 and 9 are on the same line as pleaded by the petitioner. These respondents are also trying to establish that the educational agency was transferred in favour of Smt.AL.Meenakshi in the year 1981 at the request of the villagers and that again the educational agency was transferred to the petitioner in the year 2009 only at the request of the villagers. It is their specific stand that the school belongs to Pallathur village as it was managed only by the people of Pallathur village.

8. Reading of the whole affidavit filed by these third parties will lead to further complications. However, the stand taken by the petitioner with regard to the ownership of school is contrary to the documents relied upon by the petitioner himself for the purpose of getting the approval of transfer of educational agency in favour of the petitioner. It is very important to point out that the petitioner submitted documents namely the letter from Smt.AL.Meenakshi and the application sent by her in the prescribed format. In every document filed by her would disclose that the petitioner admitted the ownership of the school vest in an individual and it was from Smt.AL.Meenakshi, the petitioner claimed that he became the educational agency. In such circumstances, the contention of the petitioner by stating that the school belonged to the villagers of Pallathur village and that the General Body of the villagers constituted the educational agency is contrary to his own case.

9. From the facts and pleadings of the respective parties narrated above, the following facts are evident.

9.1. The school by name Alagammai Achi Memorial Aided Elementary School is a Government aided non-minority school functioning for more than 100 years. At least from 1957, the management of the school is with the family of the respondents 5 and 6 and the school also was named after Alagammai Achi and known as Alagammai Achi Memorial Aided Elementary School indicating that the school belonged to the family of the respondents 5 and 6. Though it was stated by the petitioner that the educational agency was transferred in favour of several individuals at the request of the villagers, no records have been produced before this Court or before the official respondents. Even the case of the petitioner is that one Smt.AL.Meenakshi, the wife of 6th respondent was the educational agency and that she was the one who transferred the right in favour of the petitioner. There is a serious dispute with regard to the manner in which the school has been run for the past several decades. Having regard to the fact that the writ petition in W.P.(MD)No.8248 of 2015 has been filed challenging the order of the second respondent cancelling the approval, granted in favour of the petitioner regarding transfer of educational agency and the matter has to be ultimately decided by the Civil Court



which is competent to resolve the dispute giving finality, the learned counsel on both sides agreed that the matter may be referred to the Civil Court as contemplated under Section 53 A of the Tamil Nadu Recognised Private School Regulation Act. However, the petitioner on the one side and the respondents 5 and 6 on the other side wanted themselves to be in management of the school as educational agency till such time the matter is finally resolved by the Civil Court in terms of Section 53A of the Act.

10. The learned Senior Counsel appearing for the respondent 5 and 6 relied upon a judgment of a Division Bench of this Court in the case of **Ayyasamy, M. v. District Educational Officer etc & 2 others** reported in **1996-1-L.W. 567** wherein it has been held as follows:

"10. We are of the view that the following principles and norms, if applied, in invoking the powers under Section 53-A(2) of the Act, may help to avoid arbitrariness:

(1) Wherever there is a properly and validly elected Educational Agency or School Committees duly registered and certified by the Competent Authority under the provisions of the Tamil Nadu Societies Registration Act and the Rules made thereunder, the same should be allowed to function and not stultified.

(2) Whenever any competent court or Statutory Authority vested with such powers under the Act stays or suspends the operation of the proceedings recorded under the said Act by the grant of any order of stay or injunction, the fate of the Committee shall abide by such orders and the Authorities under the Act must give due weight and implement these orders;

(3) If there is no impediment in recognising or approving the elected Committee by any order as noticed in (2) above, the Authorities exercising jurisdiction under the Act shall be at liberty to recognise and approve the same so as to enable the Committee to function effectively, subject to the result of any judgment/decreed of any court or the orders of any of the Statutory Authorities legally entitled to interfere with the said position:

(4) If the authorities of the Educational Department themselves entertain any reasonable doubt about the legality and propriety of the claims made by anyone, it shall always be open to such authorities or members of the society to take action under Section 53-A (1) of the Act followed by separate action under Section 53-A of the Act:

(5) If the authorities of the Educational Department are not in line with the claims made which are duly certified by the Competent Authority under the provisions of the

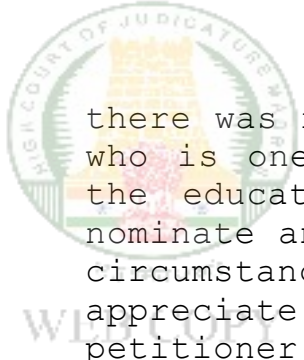


Tamil Nadu Societies Registration Act, 1975 and the Rules made thereunder, such authorities shall be at liberty to recognise or approve of the same under the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and there is no necessity to have recourse to Section 53-A(2) of the Act and such recognition or approval shall of course, be subject to the orders of any court interim or final, or competent statutory authority in exercise of its powers under the Statute."

11. This Court in the same judgment has also held further as follows:

Consequently, there can be nothing illegal or constitutes want of jurisdiction in the District Educational Officer, purporting to accord approval to the School Committee constituted by the Educational Agency as its representatives in such School Committee and the contentions to the contrary are devoid of merit. It is not as though there is any prohibition in any of the provisions of the Act or the Rules restraining the District Educational Officer from passing such an order or exercising such powers even in the absence of any specific mention thereof in the Act or the Rules made thereunder. It is a well accepted principle of construction or interpretation of statutes that wherever the statute or the statutory Rules confer upon a particular authority to perform an act or do a thing, all such essential, necessary and incidental powers, to make the exercise of powers expressly conferred more effective and fruitful must also be implied in such conferment of power and we are not in any manner persuaded to agree with the submission on behalf of the third respondent on the question of the alleged lack of power in the first respondent to accord approval to the Committee constituted.

12. Relying upon the said judgment, the learned Senior Counsel submitted that the *status quo* as on date should continue till such time the dispute is finally resolved by the Civil Court. However, the learned counsel for the petitioner would submit that the school be run by an officer nominated by the Government to discharge the functions of the educational agency and the school committee, pending decision of the Civil Court in terms of Sub Section 2 of Section 53A of the Tamil Nadu Recognised Private Schools Regulation Act. The petitioner claims to be the educational agency of the institution on the basis of a letter given by one of the members of the family whose exclusive authority as the educational agency is in dispute. The petitioner also was the Headmaster of the school. The petitioner's claim is seriously disputed by the contesting respondents on several grounds. At the time when the petitioner was recognised as the educational agency, he was only the Headmaster of the school and



there was no document or material to show that Smt.Meenakshi Ammal who is one of the members of the founder's family was acting as the educational agency and that she has got absolute power to nominate any one as her successor. Having regard to the facts and circumstances of the case, this Court is not in a position to appreciate the contention of the learned counsel appearing for the petitioner as to appoint a nominee of Government to discharge the functions of the educational agency. Further, it is not the case of the petitioner that members of the family of the founder have committed any irregularity or illegality in the course of management or administration of the educational institution. Hence, the request of the learned counsel appearing for the petitioner is turned down. The judgment relied upon by the learned Senior Counsel appearing for the respondent is about the dispute in a registered society where the decisions of the authorities under the Societies Registration Act, 1975 to recognise or approve the elected committee was directed to be respected so as to enable the committee to function. However, this judgment also is not in tune with the judgment of the Full Bench of this Court and several other judgments where this Court has consistently held that the role of Registrar under the Tamil Nadu Societies Registration Act is only ministerial. This Court further need not go into the other issues which are not raised as issues and argued. However, it is suffice to point out that this Court, on the basis of the materials with relevant pleadings, is *prima facie* of the view that the petitioner's claim that he should be allowed to function as the educational agency is not sustainable. This Court is, therefore, not inclined to disturb the *status quo* as on this date. Since the scope of the present lis has been narrowed down, this Court does not want to go into the details and merits of the case pleaded by contesting parties.

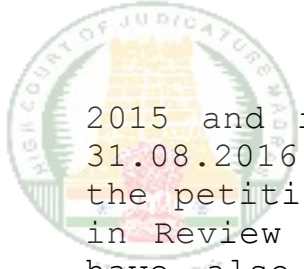
13.The learned Senior Counsel appearing for the respondent 5 and 6 relied upon a judgment of a Division Bench of this Court in the case of **Swamy Atmananda v. Sri Ramakrishna Tapovanam** reported in **(2005) 10 SCC 51** wherein it has been held as follows:

"49.A dispute as to who is the real educational agency in relation to a private school is not a matter which in terms of the provisions of the said Act would be determined by an authority under the provisions of the said Act. Section 53A of the Act carves out an exception to Section 53 thereof. In terms of the said provision any dispute as to the educational institution is to be determined by a Civil Court having jurisdiction for its decision. The submission of Mr. Sukumaran, however, is that the jurisdiction of the Civil Court is required to be exercised in such matters specified therein by way of reference by the persons interested or by the competent authority. Mr. Sukumaran would contend that such a



reference would be akin to a dispute pending under the Industrial Disputes Act. We cannot accept the said contention. A party to a dispute may not join the other in referring the same to the Civil Court. The party may agree or may not agree therefor. A person having a grievance as against other must have a remedy. The maxim 'ubi jus ibi remedium' is not an empty formality. The jurisdiction of the Civil Court exemplifies the said doctrine. The jurisdiction of the Civil Court cannot be held to have been ousted unless it is so, expressly or by necessary implication, stated in the statute. In terms of Section 53A of the Act, a dispute as to educational agency is concededly required to be decided by a Civil Court. How the jurisdiction of the Civil Court is required to be invoked is a matter to be examined by the Civil Court. Unlike a private tribunal or a statutory tribunal which would not derive a jurisdiction unless a reference in terms of the provisions of the Act is made to it, the Civil Court enjoys a plenary jurisdiction. Furthermore, if and when a dispute arises before the competent authority as regard entitlement of an educational agency in relation to educational institutions, the same must also be referred to the Civil Court. Statutory authority in terms of Section 5 of the Act cannot be said to have any jurisdiction to determine such a dispute. A statute, as is well-known, must be read in such a manner so as to give effect to the provisions thereof. It must be read reasonably. A statute must be construed in such a manner so as to make it workable. The wordings "referred by the persons interested" would, thus, mean a person who has a grievance as regard claim of other side relating to educational agency of the educational institutions. It can be done by filing a suit before the Civil Court. The term "persons" which is plural has been used having regard to the fact that educational agency need not be a person alone but would also include a society registered under the Societies Registration Act or a body corporate in terms of the Companies Act. In any event, if such a dispute within the contemplation of Section 53A has to be decided by a civil court, it will not attract the bar under Section 53 which applies only to a question which is required to be dealt with or decided by any authority or officer mentioned in the Act."

14. It is brought to the notice of this Court that the petitioner has obtained an order of stay in W.P.(MD)No.8248 of 2015. However, interim order granted in M.P.(MD)No.1 of 2015 in W.P.(MD)No.8248 of 2015 dated 20.05.2015 was vacated by the Division Bench by order dated 31.08.2016. It is true that the prayer before the Division Bench at the time of passing the order was not to vacate the interim order granted in W.P.(MD)No.8248 of



2015 and it was mistakenly included while passing the order on 31.08.2016. The learned counsel for the petitioner submitted that the petitioner in W.P.(MD)No.8248 of 2015 filed a review petition in Review Application (MD)No.38 of 2016 to review the order. We have also expressed that the order dated 31.08.2016 is to be reviewed as the order vacating the interim order in W.P.(MD) No.8248 of 2015 was unwarranted and inappropriate and due to inadvertence. However, the fact remains that there was no interim order in W.P.(MD)No.8248 of 2015 after 31.08.2016 and the school was under the management of the respondents 5 and 6. It is also relevant to point out that the writ petitioner himself has admitted the management of the school by the family members of the respondents 5 and 6. The petitioner himself has claimed transfer of educational agency only from the wife of 6th respondent. Going through the records, there are several discrepancies in the case of the petitioner by claiming that the educational agency was held by the wife of 6th respondent as against the case of respondent that the wife of 6th respondent Smt.Meenakshi Ammal was only the President and that she had no right as the sole individual to act as an Educational Agency. In other words, the petitioner's case that the wife of 6th respondent was recognised as an individual educational agency and that the petitioner got the same transferred in his name by the consent of 6th respondent's wife cannot be believed so as to recognise him as a person entitled to be in management and administration of the school as a lawful educational agency. The petitioner has taken contrary stand by stating that the school originally belonged to the villagers and it was only at the instance of the villagers, the individuals were recognised as educational agency. Apart from the factual controversies, the case of the education department and the specific stand that Smt.AL.Meenakshi was never recognised as educational agency and that she was acting only as the President of the School Committee cannot be discarded in the light of several attendant circumstances. The records produced by the petitioner before the second respondent for getting approval for the transfer of management in favour of the petitioner are seriously disputed by the respondents 5 and 6. In such circumstances, this Court is not inclined to express any opinion on the rival claim of respective parties except observing that the *prima facie* case and the balance of convenience are in favour of the respondents 5 and 6. Having regard to the interest of the students and the teachers, this Court is of the considered opinion that *status quo* as on date should be preserved till such time the Civil Court decide the dispute one way or the other.

15.Taking into account the admitted facts and the attendant circumstances, this Court is inclined to pass the following order:

<https://hcservices.ecourts.gov.in/hcservices/> W.P.(MD)No.23522 of 2015 is dismissed and W.P.(MD) No.8248 of 2015 is disposed of subject to the following observations and directions.



b) The impugned order passed by the second respondent dated 30.04.2015 shall be valid to the extent of enabling the respondents 5 and 6 to continue as educational agency for time being and to enable the second respondent to pass any consequential orders regarding the approval of school committee or for the approval of any one to act as a Secretary or Correspondent to the school till such time any competent Civil Court passes either an interim order or render a final decision with regard to the management of the school or the entitlement of any one to act as an educational agency or as Secretary or Correspondent of the school.

c) It is open either to the petitioner or to the respondents 8 and 9 herein to approach the Civil Court for appropriate relief in the manner known to law as expeditiously as possible. Until such time the competent Civil Court passes either an interim order or a final decision, the Educational Authorities shall recognise the respondents 5 and 6 or their eligible family members as members constituting the educational agency for the purpose of administration of the school and for the purpose of formation of the School Committee and also for any one to be elected and recognised as Secretary or Correspondent to the school. It is made clear that as and when the Civil Court passes any interim order, any order that may be passed by the educational authority including the impugned order dated 30.04.2015 shall give way to the order of Civil Court and the rights of parties shall be taken and recognised by educational authorities as declared by the Civil Court.

Review Application (MD) No.38 of 2016

16. This Court, after hearing the parties, passed the following order on 06.01.2017 in the Review Application:

"We are convinced that the petitioner has made out the position in the above Review Application that while passing the order on 31.08.2016, M.P.(MD) No.2 of 2015 in W.P.(MD) No.8248 of 2015, has been wrongly and inadvertently included in the order and therefore, all the parties also have agreed that the order which was passed on 31.08.2016 should be read without the portion, vacating the interim order that was granted in M.P.(MD) No.1 of 2015 in W.P.(MD) No.8248 of 2015. However, both the parties have agreed that the above Review Application can also be disposed of along with the Writ Petitions, namely W.P. (MD) No.8248 of 2015 and W.P.(MD) No.23522 of 2015."



Since both parties agreed that there is no controversy in this review application as to the factual position that the interim order granted in M.P.(MD)No.2 of 2015 in W.P.(MD)No.8248 of 2015 was wrongly vacated and hence, the order dated 31.08.2016 vacating interim order granted in M.P.(MD)No.2 of 2015 in W.P.(MD)No.8248 of 2015 should be reviewed so that the interim order granted in M.P.(MD)No.2 of 2015 in W.P.(MD)No.8248 of 2015 will be in tact and the order dated 31.08.2016 shall in no way affect the interim order granted in M.P.(MD) No.1 of 2015 in W.P.(MD)No.8248 of 2015. However, the order in this Review Application shall not have any impact in the decision of this Court in the two Writ Petitions.

17.With the above observation and conclusion, the Review Application is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1.The Director of Elementary Education,Chennai - 600 006.

2.The District Elementary Educational Officer,
Sivagangai, Sivagangai District.

3.The Assistant Elementary Educational Officer,
Sakkottai at Karaikudi,
Sivagangai District.

+1cc to M/S.AJMAL ASSOCIATES, Advocate SR.No.76909

+1cc to M/S.S.SRIMATHY, Advocate SR.No.76700

+1cc to M/S.G.PRABHU RAJADURAI, Advocate SR.No.76832

+1cc to M/S.V.PANNEER SELVAM, Advocate SR.No.77043

SRM

MAS/KK/SAR1:12.10.2017:16P-8C

Rev. App. (MD) No.38 of 2016
in

M.P. (MD)No.2 of 2015
in

Writ Petition (MD) No.8248 of 2015
and

W.P. (MD)No.23522 of 2015
05.09.2017