

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF
ANDHARA PRADESH

W.P.No.5877 OF 2003

Between:

A.Devasahayam and three others

.....Petitioners

and

The Commissioner, Municipal Corporation, Kurnool and others

.....Respondents

Date of Judgment pronounced on : 02-06-2016

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

1. Whether Reporters of Local newspapers :
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy :
Of the Judgment?

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO

W.P.No.5877 OF 2003

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Versus

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.....Respondents

< **GIST:**

> **HEAD NOTE:**

!Counsel for the petitioners : Sri M.Srikanth

^ Counsel for the respondent Nos.1 to 1 to 4 : G.P. for School
Education

^ Counsel for the respondent Nos. 17, 46, 60, 61 and 64: Sri P.
Ravinder

^ Counsel for the respondent Nos. 21, 25, 27, 29, 33, 34, 36 and 57:
M/s.N.Niyatha

^ Counsel for the respondent Nos. 35, 73 and 74: Sri K.Janaki Rami
Reddy

^ Counsel for the respondent Nos. No.44: Sri T.Raja Damoji Rao

^ Counsel for the respondent Nos. No. 31: Smt.T.Suneetha

^ Counsel for the respondent No.72: Mrs.Rachana Vaddepalli;

^ Counsel for the respondent No.70: Mrs.S.Nanda

^ Counsel for the respondent No.76: Mrs.Shantha Sree Elipe

^ Counsel for the respondent No.58: Sri J.Janaki Rama Reddy

? Cases referred

[1] AIR 1981 S.C. 344

² AIR 1976 S.C. 386

³ AIR 1976 S.C. 578(1)

⁴ (1992) 2 S.C.C. 524

⁵ AIR 1997 S.C. 993

⁶ (2002) 2 SCC 333

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.5877 of 2003

ORDER:

The Writ Petitioners, who are employed in the Emilie Coles Memorial High School for Girls (for short, 'the School') established by the American Baptist Foreign Missions Society at Kurnool, filed this Writ Petition challenging the action of the Municipal Corporation, Kurnool in granting approval for a layout in Sy. Nos.123 (P), 125 (P), 126 (P) and 127 (P) forming part of the property of the above school on 27-02-2003 and the consequential action of the respondent Nos.5 to 7 and 22 to 96 in making constructions therein.

2. It is not in dispute that the said school was established in the year 1907 by the American Baptist Foreign Missions Society in Kurnool. According to the petitioners, the school is situated in a vast campus of Ac.10.31 cts, of which, Ac.4.00 cts was allotted to High school and Ac.3.00 cts was allotted to primary school towards play ground, and both schools were admitted to Grant-in-Aid during 1977-78 academic year.

THE CONTENTIONS OF PETITIONERS

3. Petitioners contend that as per Grant-in-Aid rules, the property of the schools was hypothecated to the

Government for receiving Grant-in-Aid. They contend that in 1973, the American Baptist Church Private Limited transferred the management of the properties of the schools to the M/s. Property Association of Baptist Churches Private Limited, that a Society by name Kurnool Polumala Baptist Sangamula Samajam (9th respondent) raised a dispute over the control of the properties of the school and the said society sold various extents of the property belonging to the school from 1996 onwards, including Ac.3.65 cts forming part of the school play ground in the above survey numbers to respondent Nos.5 to 7. Petitioners contend that the purchasers applied to 1st respondent for sanction of layout for the above property; that there is a specific prohibition of Section 53 of the A.P. Education Act, 1982 (for short 'the Act') against alienation of any land belonging to an educational institution receiving the Grant-in-Aid from the State funds without permission of the State Government; the 2nd respondent had objected to the grant of layout by a letter dt.29-10-1996 addressed to 1st respondent; the 1st respondent has initially rejected an application for layout on 06-11-1998; but subsequently the 1st respondent conducted a general body meeting of 1st respondent and through a resolution dt.27-02-2003, he granted approval for layout in favour of respondent Nos.5

to 7.

4. Petitioners contend that basing on the approval granted by 1st respondent, respondent Nos.5 to 7 demolished part of the compound wall of the school, commenced construction therein and even though the staff of the school approached the respondent Nos.1 and 2 and asked them to stop the construction, no action was taken. They contend that the area which is sold to respondent Nos.5 to 7 is part of the play ground of the school and it could not have been sold without obtaining permission of the Government under Section 53 of the Act.

5. Petitioners also contend that in a judgment rendered on 17-01-2001 in O.S.No.348 of 1998 by the II Additional Junior Civil Judge, Kurnool, it was held that 9th respondent had no title to the property and any transactions entered into by 9th respondent with 3rd parties/respondents is null and void.

6. Petitioners also submitted a representation dt.21-02-2003 to the then Chief Minister of the State of Andhra Pradesh, to the Hon'ble Minister for School Education, to the District Collector, Kurnool, 1st respondent, 2nd respondent and others opposing the grant of layout permission to the respondent Nos.5 to 7.

7. Petitioners also referred to W.P.No.1082 of

1999 filed by the Property Association of Baptist Church Private Limited, Podili against 1st respondent and others complaining of illegal constructions being made in the property belonging to the above school and of the inaction of 1st respondent in stopping such unauthorized construction and pointed out that the said Writ Petition was disposed of directing 1st respondent to personally inspect the school ground and remove the encroachments, if any. They also referred to a counter affidavit filed in C.C.No.1809 of 1999 (filed against 1st respondent for non- implementation of the said order) wherein 1st respondent had filed counter stating that no encroachment or unauthorized constructions were found in the E.C.M. Girls High School and its play ground area.

8. The petitioners filed W.P.M.P.No.7715 of 2003 to stop construction activity in the above land which is part of the School property pending disposal of the Writ Petition.

THE INTERIM ORDER ON 4.4.2003

9. The Writ Petition was admitted on 04-04-2003 and an interim direction was granted in W.P.M.P.No.7715 of 2003 that any construction made by respondent Nos.5 to 7 in land in possession would be subject to further orders in the application.

THE IMPLEADMENT OF SOME RESPONDENTS

10. Although initially the Writ Petition was filed impleading only seven respondents, subsequently respondent Nos.8 to 96 were impleaded vide order dt.10-03-2008 in W.P.M.P.No.6666 of 2007, order dt.24-12-2012 in W.P.M.P.No.30478 of 2010, order dt.22-09-2014 in W.P.M.P.No.17626 of 2014 and order dt.22-09-2014 in W.P.M.P.No.25046 of 2014.

11. These implead petitions were filed by petitioners after this Court directed them to implead all the encroachers in the property of the school after the 2nd respondent filed an Additional Counter affidavit stating that as per the letter dt.15.11.2006 of the District Collector, Kurnool addressed to the Secretary to Government, Minority Welfare Department, Hyderabad, the school had Ac.16.34 cts of land in Sy.No.1213,125/1,125/2,126,127 and 155/1A of Kurnool town of which Ac.11.98 cts was in illegal occupation.

12. Some of the respondents were served by registered post with acknowledgment due and for others, notice was served by way of paper publication in the Andhra Bhoomi Telugu Daily Newspaper on 14-09-2014 pursuant to an order passed by this Court.

THE COUNTER OF RESPONDENT NO.1

13. The 1st respondent filed a counter affidavit

stating that the petitioners have no *locus standi* to file the Writ Petition and they have not shown in what way their rights are infringed. He stated that the school is situated in a vast campus of Ac.10.31 cts and out of this extent, Ac.4.00 cts was allotted to High school and Ac.3.00 cts was allotted to Primary school and the school is surrounded by a compound wall for Ac.7.00 cts. He stated that the balance extent of Ac.3.31 cts is deleted from the school campus. He contends that the layout application filed by respondent Nos.5 to 7 was in respect of separate land which was already bifurcated by the Government and changed to residential area use from public/semi public usage in 1989 vide G.O.Ms.No.205 dt.19-04-1989 which was published in the gazette. He also stated that the title of 9th respondent in respect of properties in Sy. No.123, 125, 126 and 127 was confirmed by the Special Court constituted under the A.P. Land Grabbing (Prohibition) Act, 1952 in a judgment in L.G.C.No.33 of 1989 dt.20-10-1992, that the land which has been converted as residential zone by the Government is not a part to the school premises and this portion had been sold by 9th respondent to its pastors and teachers etc. in 1986-87. According to him the individual plot owners in turn sold their plots to M/s.R.R. Associates, Kurnool in 2002, that the said firm M/s.R.R. Associates, Kurnool had made a request for approval of layout through proper channel to the Director of Town and

Country Planning, Andhra Pradesh, Hyderabad which was forwarded by 1st respondent to the said office and the said office approved tentative layout. The 1st respondent stated that the land in respect of which layout has been sanctioned is in an extent of Ac.2.42 cts, that this did not form part of the E.C.M. High School grounds and therefore layout sanction was processed in favour of M/s.R.R. Associates.

COUNTER OF RESPONDENT NO.2

14. The 2nd respondent filed a counter on 27-07-2004 admitting that the petitioners were employed in various capacities in E.C.M. Girls High School, Kurnool and stated that the E.C.M. Primary School and High School were functioning in one and the same compound in an area of Ac.11.765 cts under the management of S.T.B.C., Nellore as reported by the Inspecting Officer. He stated that the High School was admitted to aid in 1977-78 and thereafter, the salaries of staff were being paid by the Government. He stated that as per Grant-in-Aid rules, management or any other agency authorized by the management should not transfer properties of the school without permission of the Government as per Section 53 of the AP Education Code. Any such transfer of land or building made without obtaining permission of the Government would be null and void as per Section 53(2) of the said Act. He stated that even though there is no

written agreement, properties are under hypothecation to the Government, as the school was receiving Grant-in-Aid from the Government. He stated that his office had opposed a proposal to grant of layout by 1st respondent on 28.10.1996, that the 1st respondent rejected one such proposal on 6.11.1998 but later, in spite of the opposition of the Education Department, the 1st respondent had given approval on 27-02-2003 for sanction of layout. He stated that it was the responsibility of 1st respondent to demolish the illegal structures in the school land by the encroachers.

COUNTER OF RESPONDENT NO.S 5-7

15. Respondent Nos. 5 to 7 filed a counter affidavit stating that the petitioners have no *locus standi* to file the Writ Petition. They contend that there is a school managing committee or other organization running school and the petitioners, who are merely employed as a staff in the said school, cannot file a Writ petition. They contend that a cause of action relating to an institution (whether a society or a Company) cannot be espoused by any person other than the authorized representative of the appropriate juristic person.

16. They contend that enquiry into several questions of fact relating to right, title and identity of the so called school play ground arise for consideration in the

Writ Petition, and this is outside the scope of the Writ jurisdiction.

17. The 5th respondent claimed to be the managing partner of M/s.R.R.Associates, Kurnool which was engaged in the business and development of real estate property, that 6th respondent is another partner in the said firm, but the 7th respondent is not concerned at all with the property which is subject matter of the Writ Petition. They contend that the said firm purchased an extent of Ac.2.42 cts under 21 registered sale deeds in 2002 from 9th respondent who had title to the said property.

18. They contend that since they are absolute owners of the property, which was purchased under different registered sale deeds and since they were in possession and enjoyment of the land, the relief prayed by petitioners is opposed to the principle that there cannot be any restraint on the true owner. They contend that the contention of the petitioners that there has been a violation of the provision of the AP Education Act, 1982 is baseless and misconceived.

19. They contended that there was a dispute about the title to the land in Sy. Nos.123, 125, 126 and 127 of Kurnool town between 9th respondent and M/s.Property Association of Baptists Church Private

Limited and the same was resolved in favour of 9th respondent decided by the Special Court constituted under the AP Land Grabbing (Prohibition) Act, 1952 in LGC No.33 of 1989 on 20-10-1992. They also contended that petitioners cannot contend that the M/s.Property Association of Baptist Church Limited is the owner of the subject land.

20. They admitted that the above firm, after purchase under the registered sale deeds, applied to 1st respondent for sanction of layout and consequent on the ground of tentative layout, it is carrying on development works on the land for plotting the same and providing necessary roads and other common facilities. They denied that any construction activity (residential or non-residential) was going on in the land. They contended that after completion of the layout, the firm intended to sell the same to the interested parties with reference to sanctioned plan in the layout and stated that valid sanction for tentative layout was accorded on 27-02-2003 and there was no legal infirmity in such sanction.

21. It was also contended that petitioners did not give description and other necessary details about the play ground of the school and about the restraint on the alienation of the play ground with reference to the AP Education Act, 1982.

REPLY AFFIDAVIT OF PETITIONERS TO COUNTER OF RESPONDENT NO.S 1, 5-7

22. A reply affidavit was filed to the counter affidavit filed by respondent No.1 and respondent Nos.5 to 7 by the petitioners stating that they are not only working in the E.C.M. High School for Girls, but they are also members of the Congregation of Baptist Society and they are interested in the properties of the Mission which are intended for running the school. They stated that the contention of the respondent Nos.1 to 5 and 7 that the petitioners have no locus to maintain the Writ Petition is untenable.

23. They stated that the properties of the school should not be encroached by outsiders and any illegal construction thereon would badly affect the interest of the school as well as the congregation. They denied that they had suppressed any material facts and pointed out that even if any sale deeds have been executed in favour of respondent Nos.5 to 7, it would be clearly violation of the law.

24. They stated that builders are encroaching lands belonging to the school which are intended for the purpose of the school with the connivance of the municipal authorities and they have filed a Writ Petition in the interest of the school.

25. They stated that 1st respondent appeared to be hand-in-glove with respondent Nos. 5 to 7, because of

which, the school children are deprived of the play ground and a vast compound from 1997. It is also stated that total extent of land purchased by the American Baptist Foreign Mission Society was in fact Ac.16.13 cts, out of which, the school was located in Ac.11.765 cts. They stated that the Correspondent of the school would be a trustee and must safeguard the interest of the educational institution and that even the Deputy Inspector of Schools had clarified that the compound wall of the school is broken by private persons and structures were being erected.

26. They contended that since the land which was purchased admittedly belonged to the Baptist Mission and forms part of Ac.11.765 cts intended for the school, such land would be deemed to be mortgaged to the Government under the provisions of the AP Education Act, 1982 and the respondent Nos.5 to 7 cannot claim title to the property. They denied that an extent of Ac.3.31 cts was already deleted from the school campus and pointed out that since the school is an aided institution, its properties were was deemed to be mortgaged to the Government under the provisions of the Act.

ORDER DT.24.2.2014 PASSED BY THIS COURT

27. In view of the above respective contentions of the parties, on 24-02-2014, this Court passed an order that it is necessary to get the particulars with regard to the

land owned and possessed by the ECM High school when it was established in 1907 and later in 1970 when it was upgraded as a High school and directed the 2nd respondent to file counter affidavit giving specific particulars in this regard.

28. Time was sought from time to time by 2nd respondent to file the additional counter on these aspects and ultimately counter affidavit dt.09-04-2014 was filed by 2nd respondent.

ADDITIONAL COUNTER OF RESPONDENT NO.2

29. In this Counter, the 2nd respondent stated that ECM Primary School was established in 1907 and permission was accorded by the Government for establishing the said primary school but there was no record available with 2nd respondent about the extent of land owned and possessed by the said primary school at the time of according recognition in 1907. He stated that the school was upgraded as High school in 1971 on temporary basis renewing the extension of temporary recognition every five years and that vide G.O.Rt.No.1479 Education dt.29-07-1970, the Government had ratified the action of the Director, Public Instruction in having permitted the up gradation of the school by opening class VIII in 1970-71 without financial commitments to the

Government. He stated that records relating to the properties owned and possessed by the E.C.M. High School were not available either with the 2nd respondent or 3rd respondent.

30. He also stated that as per the letter dt.15-11-2006 of the District Collector, Kurnool addressed to the Secretary to the Government, Minority Welfare Department, the E.C.M. School is having Ac.16.34 cts of land, out of which Ac.11.98 cts is under illegal occupation.

31. He also stated that basing on a report of AP Legislative Assembly House Committee on illegal occupation of lands of Christian Missionaries and Education Institutions, the Government had issued G.O.Ms.No.86, Education dt.25-10-2007 authorizing the Commissioner and Director of School Education, Andhra Pradesh, Hyderabad to declare all the irregular transactions as null and void under sub Section (3) of Section 53 of the Education Act, 1982 and Collectors were instructed to take immediate possession of the land after declaration of transactions as null and void by the Commissioner and Director of School Education, Hyderabad.

32. Copies of the proceedings dt.15-11-2006 as well as G.O.Ms.No.86, Education dt.25-10-2007 were

enclosed to this additional counter affidavit. Copy of the letter dt.19-03-2014 addressed by the Headmistress of the E.C.M. High School for Girls, Kurnool to the District Educational Officer, Kurnool stating that an extent of Ac.11.765 cts in Sy. Nos.154, 127, 125/2, 155, 12b and 123 of Kurnool was covered by E.C.M. High School compound wall school building, bungalow, residential quarters hostel buildings, wells etc. was also filed by 2nd respondent.

ANOTHER ADDITIONAL COUNTER AFFIDAVIT OF RESPONDENT NO.2

33. In August 2014, another Additional counter affidavit was filed by 2nd respondent referring to the above letter dt.19-03-2014 of the Head Mistress of the School referred to above to the effect that an extent of Ac.11.765 cts is the land possessed by the School in Sy.No.154,127,125/2,155,126 and 123 and that the Head Mistress stated that due to floods on 2.10.2009, records of the School recognition dt.28.6.2007 are not traced and that the records relating to the High School Upgradation vide G.O.r.No.1479 Edn dt.29.7.1970 were available. It is stated therein that 1st respondent had given a report on 20-05-2014 to 2nd respondent stating that it had no records available about the actual extent of the land consisting with the E.C.M. School compound; that in the said letter, 1st respondent had informed that 9th

respondent is the absolute owner of the properties as per the decision in L.G.C.No.33 of 1989; and that it had sold away most of the land of the said school to pastors, teachers, technical staff and others from 1986 to till date and he also enclosed a sale deed dt.30-04-2012 to the said letter. He also referred to the letter dt.15-11-2006 of the Collector and District Magistrate, Kurnool stating that the property of the school was Ac.16.34 cts out of which Ac.11.98 cts was occupied by unauthorized persons and Ac.4.36 cts was in possession of the school. He referred to Section 28 of the AP Education Act, 1982 and stated that any transactions made in contravention of the said section would be null and void and that all transactions in respect of the land belonging to the school have to be treated as null and void. Along with this counter affidavit, several photographs of the construction which have taken place in the subject land and alienations made from 1970 till date as reflected in the Encumbrance Certificate are filed by 2nd respondent.

COUNTER AFFIDAVITS OF OTHER PRIVATE RESPONDENTS

34. Counter affidavits were filed by respondent Nos.17, 46, 60, 61 and 64 through Sri P. Ravinder, Advocate; by respondent Nos.21, 25, 27, 29, 33, 34, 36 and 57 through M/s.N.Niyatha; by respondent Nos.35, 73 and 74 through Sri K.Janaki Rami Reddy, Advocate; by respondent No.44 through Sri T.Raja Damoji Rao; by

respondent No.31 through Smt.T.Suneetha; by respondent No.72 through Mrs.Rachana Vaddepalli; by respondent No.70 through Mrs.S.Nanda, by respondent No.76 through Shantha Sree Elipe and by respondent No.58 through J.Janaki Rama Reddy.

35. None of the other respondents have filed their counters in spite of service of notice of notice of the Writ.

STAND IN THE COUNTER AFFIDAVITS OF THE PRIVATE RESPONDENTS

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36. In their respective counter affidavits, the above respondents contended that the petitioners have no *locus standi* to file the Writ Petition; that the petitioners had also purchased a part of the property of the E.C.M. School; certain disputed questions of fact relating to the right, title and identity of the subject property are raised by the petitioners which cannot be decided in the writ jurisdiction; that they had purchased plots from the 9th respondent under registered sale deeds; and that 9th respondent had title to the property as per the judgment of the Special Court constituted under the AP Land Grabbing (Prohibition) Act, 1952 dt.20-10-1992 in L.G.C.No.33 of 1989. They contended that the layout has been rightly approved by the Director of Town and Country Planning on 27-02-2003 and released to the petitioners.

37. They claimed to be *bona fide* purchasers of

the respective portions of the land purchased by them. They alleged that Section 53 of the A.P. Education Act, 1982 has no application since the subject properties were not hypothecated to the Government or not procured with the aid from the Government. They alleged that the petitioners, with an ulterior motive and reap personal benefit, filed the Writ Petition with unclean hands.

38. The 58th respondent in his counter alleged that the petitioners have also unauthorizedly occupied Ac.0.05 cts to Ac.0.10 cts and constructed residential houses. He pointed that his vendor, Samavesam of Telugu Baptist Churches Property Committee (STBC), which executed the sale deed in his favour was not impleaded as a party and therefore the Writ Petition should be dismissed for non-joinder of that party.

REPLY AFFIDAVIT FILED BY PETITIONERS TO COUNTER OF RESPONDENT NO.58

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39. Reply affidavit was filed to the counter of 58th respondent by the Writ Petitioners. They pointed out that the STBC Property Committee was not in existence and it had been dissolved and therefore there was no question of impleading the said entity as a party in the Writ Petition. They contended that they had not encroached any property or purchased any house sites belonging to the E.C.M. High School and stated that since they were

employees of the said school, they are residing in the staff quarters of the school which had been built 50 years back wherein most of the teachers were residing. They contended that since the petitioners are teachers and also non-teaching staff of the school, they are interested in the welfare of the school and therefore they have *locus standi* to file Writ Petition. They stated that under Section 28 of the AP Education Act, 1982, no sale of any property of the school can be made without the approval of the competent authority under the said Act, that any such transaction is null and void and that once the school receives Grant-in-Aid, the lands belonging to the school are deemed to be hypothecated to the Government and there is no document required to show hypothecation. Apart from this, they also relied on Sections 80 and 81 (a) of the AP Charitable and Hindu Religious Institutions and Endowments Act, 1987 and contended that alienation of immovable property belonging to a charitable institution would be null and void if there is no prior sanction of the Commissioner of Endowments. They stated that since the sale transactions under which the respondents purchased the properties from 9th respondent are null and void by operation of law, the question of the respondents being *bona fide* purchasers does not arise.

40. Counsel for the respective parties reiterated the stand taken by their respective clients.

41. Learned counsel for the petitioners relied

upon a decision in **Fertilizer Corporation Kamagar Union (Regd.) Sindri and others Vs. Union of India**^[1].

42. Learned counsel appearing for the respondents relied upon the decisions in **D.L.F.Housing Construction (P) Ltd. Vs. Delhi Municipal Corporation and others**^[2], **Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and others**^[3], **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay**^[4] and **State of M.P. and others Vs. M/s.M.V.Vyavsaya and Co.**^[5]

43. I have noted the submissions of all the parties.

POINTS FOR CONSIDERATION

44. The following points arise for consideration:

- a) *Whether the petitioners have locus standi to maintain the Writ Petition challenging the alienation of the properties belonging to the E.C.M.High School?*
- b) *Whether the Writ Petition should be rejected on the ground of non-joinder of necessary party/parties?*
- c) *Whether the petitioners approached the Court with unclean hands disentitling them to relief?*
- d) *Whether the alienations in favour of the*

respondent Nos.4 to 6 by 9th respondent and subsequent alienations by them in favour of respondent Nos.17 to 96 are valid?

e) If not, whether the grant of approval for layout by the 1st respondent for the land alienated by 9th respondent in Sy. Nos.123 (P), 125 (P), 126 (P) and 127 (P) forming part of the E.C.M. High School for Girls, Kurnool is valid?

45. Before I deal with the above points, the following admitted facts may be noted.

46. The Emilie Coles Memorial (for short 'E.C.M.') School for Girls, Kurnool was established in 1907. It was admitted to Grant-in-Aid in 1977-78. It was initially a primary school only and later it was upgraded from 1971 as a High School. According to the letter of the District Collector, Kurnool addressed to the Secretary to the Government, Minority Welfare Department dt.15-11-2006, the E.C.M. School is having Ac.16.34 cts of land in Sy.No.123,125//1,125/2,126,127 and 155/1A of Kurnool Town of which Ac.11.98 cts is under illegal occupation and the school is being run in the balance area of Ac.4.36 cts.

47. At the time of filing of the Writ Petition, the 1st petitioner is working as Junior Assistant, the 3rd petitioner is working as Physical Education Teacher and the 4th petitioner is working as Watchman in the E.C.M. High

School for Girls, Kurnool of which the 3rd respondent is the Correspondent. The 2nd petitioner also claimed to be working in the said school and stated that his daughter was studying 10th class in the said school. These allegations have not been denied in the counter affidavits filed by any of the respondents.

48. The material on record reveals that G.O.Ms.No.205 Housing, Municipal Administration and Urban Development (I-2) (MA) dt.19-04-1989 was issued by the State Government, in exercise of powers conferred by clause (a) of sub Section (2) of Section 15 of the Andhra Pradesh Town Planning Act, 1920, varying the Master Plan of Kurnool Municipality by changing the land use of land in Sy. Nos.123/P, 126/P, 127/P of Block No.40 of Kurnool Town which was earmarked for public and semi-public use in the General Town Planning Scheme (Master Plan) of Kurnool to residential use.

49. There is no dispute that the District Educational Officer, Kurnool vide letter Rc.No.12300/B3/95 dt.28-10-1996 opposed grant of approval of layout in the lands belonging to the School on the ground that the said properties are under the control of the District Education Department and taking into account this objection, an application for grant of layout made on 17-08-1998 by one Rev. D.Shyam Raju in respect of an extent of Ac.3.65 cts forming part of the compound of the

E.C.M. School in Sy. Nos.123 (P), 125 (P), 126 (P) and 127 (P) was rejected by 1st respondent vide endorsement dt.06-11-1998.

50. However by a resolution dt.27-02-2003, an application for layout made by respondent Nos.5 to 7 was approved by the 1st respondent-Corporation for an extent of 1,146.50 Sq.yds. in Sy.No.s 123,126 and 127 of Kurnool Town on the ground that change of land use from public and semi-public to residential use was permitted by the Government vide G.O.Ms.No.205 MA dt.19-04-1999.

51. Later, long after filing of the Writ Petition, the 1st respondent issued proceedings Roc.No.9872/2002/G2 dt.31-12-2003 releasing layout of L.P.No.38 of 2003 in the above land on an application dt.11-12-2002 made by 5th respondent and four others after approval of the said layout by the Director of Town and Country Planning, Andhra Pradesh on 01-07-2003.

52. It is this action of the 1st respondent and the consequential action of the other respondents in proceeding with constructions in the above property which is questioned in this Writ Petition.

Point (a):-

53. As stated above the Writ Petitioners were employees of the E.C.M. School, Kurnool. The

respondents seriously dispute their *locus* to file the Writ Petition and contend that they have no vested right, that they are not the authorized representatives of the school, and in any event, there is an authorized body responsible for the functioning and management of affairs of the school and only when such authorized body approaches the Court, the Court may consider grant of relief. Since that is not the case, the respondents contend that the Writ Petition should be dismissed.

54. Learned counsel for the respondents had relied on the decision in **Jasbhai Motibhai Desai** (2 supra) in support of the above contention. That was a case where a licence for exhibiting cinematograph films was granted under the Bombay Cinema Rules, 1954 by the District Magistrate in favour of a rival in the trade to the petitioner therein who sought for its quashing by seeking a Writ of Certiorari. The Court held that the petitioner cannot be said to be a *person aggrieved* by the grant of licence to the respondent since he did not arise any objection to the public notice and the law also did not permit hearing of any objections. It further held that an applicant for a Writ under Article 226 should ordinarily be one who has a personal or individual right in the subject matter of the application and there must be some legal right or prejudice to some legal interest inhering in the petitioner. It held that the Act and the Rules only regulate the exercise the private rights of an individual to carry on a

particular business on the property, that they do not deal with norms of moral or professional conduct for the community at large or even a section thereof, and they do not confer any substantive justiciable right on a rival in a cinema trade.

55. This judgment is clearly distinguishable since the petitioners are not rivals in trade to the private respondents. They are employees of the school and therefore have a special interest in the subject matter i.e. the alienation of properties of the school allegedly contrary to the provisions of the AP Education Act, 1982 and raising of constructions therein by the private respondents on the strength of layout sanctioned by the 1st respondent Municipal Corporation. In my opinion, petitioners are not mere busy bodies or interlopers and have substantial interest in protecting the properties of the School.

56. In **Fertilizer Corporation Kamagar Union (Regd.) Sindri and others** (1 supra), where a Trade Union, representing workmen who feared large scale retrenchment on sale of certain plant and equipment in Sindri Fertilizer Corporation, questioned such sale, Justice V.R.Krishna Iyer observed:

“47. In the present case a worker, who, clearly, has an interest in the industry, brings this action regarding an alleged wrongdoing by the Board of Management. Article 43-A of the Constitution confers, in principle, partnership status to workers in industry

and we cannot, therefore, be deterred by technical considerations of corporate personality to keep out those who seek to remedy wrongs committed in the management of public sector. Locus standi and justiciability are different issues, as I have earlier pointed out. This takes us to the question of justiciability of questions like sale of public property by public bodies. Certainly, it is not part of the judicial process to examine entrepreneurial activities to ferret out flaws. The court is least equipped for such oversights. Nor, indeed, is it a function of the Judges in our constitutional scheme. We do not think that the internal management, business activity or institutional operation of public bodies can be subjected to inspection by the court. To do so, is incompetent and improper and, therefore, out of bounds. Nevertheless, the broad parameters of fairness in administration, bona fides in action, and the fundamental rules of reasonable management of public business, if breached, will become justiciable.

48. *If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But, if he belongs to an organisation which has special interest in the subject-matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226.”(emphasis supplied)*

57. This principle was reiterated in **Balco**

Employees Union (Regd) v. Balco ^[6].

58. In view of this legal position, they cannot be non-suited on the ground that they have no *locus standi* to file the Writ Petition. Being employees of the school and

being aggrieved by the action of the 9th respondent in disposing of assets of the school allegedly in violation of the provisions of the AP Education Act, 1982, they are entitled to approach this Court invoking Art.226 of the Constitution of India. This point is answered accordingly in favour of the petitioners and against the respondents.

Point (b):-

59. The respondent No.58 contended that he obtained a sale deed dt.05-12-2009 from the competent person of the STBC Property Committee by name P.Devaraj and the said individual or the said committee should have been impleaded by the petitioners and since they were not impleaded, the Writ Petition should be dismissed.

60. Petitioners filed rejoinder stating that the STBC Property Committee is not in existence, that it was dissolved and therefore the question of adding non-existing STBC Property Committee does not arise.

61. No material is placed on record by respondent no.58 that the STBC property committee is a registered body, that it is in subsistence and it has any right, title or interest in the properties belonging to the School.

62. According to the counter affidavits filed by private respondents (other than respondent No.58), the

9th respondent was declared to be owner by the Special Court constituted under the AP Land Grabbing (Prohibition) Act, 1982, Hyderabad in L.G.C.No.33 of 1989 decided on 20-10-1992.

63. The said L.G.C. was filed by M/s.Telugu Baptist Christian Property Protection Association, Kurnool field, Kurnool against 74 respondents and it was dismissed.

64. Even the 2nd respondent in his additional counter dt.11-08-2014 asserts that in L.G.C.No.33 of 1989, the 9th respondent was held to be the absolute owner of the subject property.

65. Copy of the judgment and decree in the L.G.C.No.33 of 1989 has been made available by the Counsel for petitioners.

66. The subject matter of the said L.G.C. was an extent of Acs.7.81 ¼ cents in Survey Nos.126, 123, 155-A, 115, 99/2B1, 98/3, 99/2A, 98/4, 98/1, 114/2, 115 and 106 of Kurnool Mandal and District.

67. In the said L.G.C. the petitioner therein contended that it is a registered association with forty members belonging to the Baptist Churches at Kurnool known as Coles Centennial Baptist Church, Kurnool, that it forms part of Kurnool Baptist Fields Association owing

allegiance to the S.T.B.C., Nellore (respondent No.74 therein); that the S.T.B.C. is the successor of American Baptist Foreign Mission Society; that properties held by the American Baptist Foreign Mission Society were transferred to the Property Association of the Baptist Churches Private Limited (respondent No.73 therein) in terms of orders of the Madras High Court in Company Petition Nos.109 and 110 of 1973 on 03.05.1974; the Property Association of Baptist Churches then became a Trustee of the S.T.B.C. Nellore in respect of the above properties in Kurnool Town; that the Property Association of Baptist Churches is the only competent authority to transfer, sell, mortgage or purchase properties for the benefit of Members of S.T.B.C. and the Kurnool Polamu Baptist Sangamula Samajam (the 9th respondent in this Writ Petition) in which respondent nos. 1 to 5 therein are members had no authority or control to manage these above properties. It was contended that respondent nos.1 and 2 therein claiming to be Power of Attorney holders from the members of the Property Committee of the Kurnool Polamu Baptist Sangamula Samajam executed certain lease deeds and sale deeds in favour of respondent nos.7 to 40 therein; likewise, respondent nos.3 and 4 also claiming to be the General Power of Attorney holders of the Property Committee of Kurnool Polamu Baptist Sangamula Samajam executed registered lease deeds in favour of respondent nos.42 and 43

therein and also registered sale deeds in favour of respondent nos.44 to 52 therein; that respondent nos.1 to 6 have no lawful title to the above properties; and so, respondent nos.1 to 72 therein were to be declared as land grabbers under Section 8 (1) of the A.P. Land Grabbing (Prohibition) Act, 1982 and liable for punishment under Sections 4 and 5 of the said Act.

68. The Special Court held that the petitioner therein was not claiming title over the property in question; that the Kurnool Polamu Baptist Sangamula Samajam was not impleaded as a party in the L.G.C. though respondent nos.1 to 5 stated in their counters that they were elected members of the Property Committee of the said Samajam; without the said Samajam being a party, *it would not be proper to decide whether the Property Association of the Baptist churches is the owner of the above property or whether the said Samajam was the owner(para 23 of the judgment)*. It however held that the petitioner in the L.G.C. or the Property Association of Baptist churches did not discharge the burden to prove that they are the owners of the property. It held that the petitioners therein did not contend that the above Samajam is a bogus society and such a contention was raised for the first time; that the evidence of the respondents that every alienation in favour of respondents was supported by a resolution of the Property Committee which was approved by the General Body of the Samajam

was not challenged by the petitioners including a sale deed Ex.B.18 executed in favour of the petitioners' church by the General Power of Attorney holders of the Property Committee of the Samajam is not challenged; and therefore, the entry into the properties occupied by respondent nos.7 to 55 therein is lawful and they cannot be said to have entered into the said possession without any lawful entitlement, and they are not therefore 'land grabbers' liable for punishment under the A.P. Land Grabbing (Prohibition) Act, 1982.

69. From the above judgment of the Special Court in L.G.C.No.33 of 1989, in particular para 23 thereof, it is clear that the Special court did not decide whether 9th respondent has title to the property or whether the Property Association of Baptist Churches has title to the property. So the plea of the respondents that the 9th respondent was held to have title to the property in L.G.C.No.33 of 1989, is incorrect.

70. Under the provisions of the AP Land Grabbing (Prohibition) Act, 1982, the judgment of the Special Court is a judgment *in rem* (Section 8 (6) of the Act) and is binding on all persons in having interest in the land.

71. In my opinion, in order to decide this Writ Petition, it is unnecessary to decide who has title to the

property of the school and so I also do not propose to decide this issue in this case. This will be clear from the discussion made by me under point (d) below.

72. Since the Respondent no.58 has any way been impleaded as a party to the Writ Petition, it can adequately defend the Writ petition and the presence of the STBC Property Committee, the vendor of respondent no.58 is not necessary in the Writ petition.

73. I therefore hold that there is no necessity to implead it as a party to the Writ Petition. Accordingly this point is decided in favour of the petitioners and against the respondents.

Point (c):-

74. Respondent No.58 had alleged in his counter that the petitioners had unauthorizedly occupied an extent of Ac.0.05 cts to Ac.0.10 cts each and constructed residential houses.

75. In the reply filed to this counter affidavit, petitioners denied the said allegation and contended that they being employees of E.C.M. School, they were allowed to reside in the staff quarters of the school which had been built more than 50 years back and that most teachers and staff are residing in the said quarters. This fact is not disputed by the Headmistress of the school or by its Correspondent who is impleaded as 3rd respondent

in the Writ petition.

76. Although some of the private respondents alleged that the petitioners also purchased from the 9th respondent, property belonging to the school, no material in support of the said plea is placed before this Court.

77. Also the private respondents have alleged that the petitioners approached this Court with ulterior motive and unclean hands with a desire to reap personal benefit, they have not been able to place any material on record in support of the said plea.

78. Therefore I find no substance in the plea of respondents that the petitioners have approached the Court with unclean hands.

Point (d):-

79. It is pertinent to note that none of the respondents have disputed that they have purchased portions of land belonging to the E.C.M. High School, Kurnool. But none of the private respondents, except respondent no.58, have filed copies of the sale deeds through which they have purchased the plots.

80. It is contended by the respondent no.s 1 and 5-7 that Ac.2.42 cts in Sy.No.s 1213,125,126 and 127 of Kurnool Town was purchased under 21 registered sale deeds in 2002 by M/s.R.R.Associates, Kurnool in which respondent Nos.5 and 6 are partners, that they made the application for sanction of layout and this related to land

which was bifurcated by the Government vide G.O.Ms.No.205 dt.19-04-1989.

81. As already pointed out the land which is subject matter of G.O.Ms.No.205, Housing, Municipal Administration and Urban Development (I-2) Department dt.19-04-1989 was land in Sy.No.123/P, 126/P, 127/P of Block No.40 of Kurnool Town and the Government, in exercise of powers conferred by clause (a) of sub Section 2 (2) of Section 15 of the A.P. Town Planning Act, 1920 modified the Master Plan of Kurnool Municipality in respect of this land from public and semi-public use to residential use. The land has the following boundaries.

North : Sunkesula Road 60'-0" wide.

East : S.No.127/Part, 125/Part of Kurnool town.

South : S.No.123/Part of Kurnool town.

West : House plots of Srinivasa Nagar.

82. Assuming that the above land includes either some or all of the land of Ac.11.98 cts which is in the occupation of some of the private respondents, the mere fact that a change in land use in the Master Plan was affected by the Government by exercise of powers under the A.P. Town Planning Act, 1920 does not in any way empower the 9th respondent to alienate properties of the E.C.M. High School in favour of respondent Nos.5 and 6 or other private respondents, if as per law, such

alienations are also required to be done after obtaining sanction of the State Government.

83. We shall examine this issue presently.

84. Section 28 of the AP Education Act, 1982 states:

“Section 28 - Restriction on alienation of property of private institution:-

(1) Notwithstanding anything in any law for the time being in force, no sale, mortgage, lease, pledge, charge or transfer of possession in respect of any property of a ¹private institution other than a registered school shall be made or created except with the previous permission in writing of the competent authority on an application made in this behalf.

(2) (a) No permission applied for under sub-section (1) shall be refused by the competent authority except where the grant of such permission will in its opinion, adversely affect the working of the institution.

(b) The competent authority shall pass an order, either granting or refusing permission applied for, within a period of sixty days from the date of receipt of the application.

(3) Any person aggrieved by an order refusing permission under sub-section (2) may, in such manner and within such time as may be prescribed, appeal to the prescribed authority.

(4) Any transaction made in contravention of sub-section (1) shall be null and void.”

85. Thus there is a clear embargo on sale of any property of a private institution without obtaining

previous permission in writing of the competent authority on an application made in that behalf. Sub Section (4) of Section 28 unequivocally makes any transaction made in contravention of sub Section (1) of Section 28 null and void. The *non-obstante* clause in sub Section (1) of Section 28 gives overriding effect to the provisions of that Section over any other law.

86. Clause (35) of Section 2 defines “private institution” as under:

“Clause (35) "private institution" means an institution imparting education or training, established and administered or maintained by any ³[xxx] body of persons, and recognised as educational institution by the Government, and includes a college, a special institution and a minority educational institution, but does not include an educational institution--

(a) established and administered or maintained by the Central Government or the State Government or any local authority;

(b) established and administered by any University established by law; or

(c) giving, providing or imparting only religious instruction, but not any other instruction;”

87. In the present case, there is no dispute that the E.C.M. High School is a private institution imparting education which was recognized as educational institution by the State Government and which had been admitted to Grant-in-Aid.

88. It is not the case of any of the respondents that any application was made to the State Government at any point of time by 9th respondent or any other person claiming right, title or interest in the properties of the School for alienation of the property of the E.C.M. High School to the competent authority and that such competent authority had granted permission for such alienation.

89. Therefore all the sales/leases of parcels of land in the above survey numbers belonging to the E.C.M. High School by 9th respondent or by anybody else claiming right, title or interest in the properties of the ECM High School are null and void in view of sub Section (4) of Section 28 of the Act.

90. A contention was raised on behalf of the respondents that Section 28 does not apply and that the E.C.M. High School is not a 'private institution' as defined in Section 2 (35) of the Act inasmuch as the said school is not an educational institution as defined in Section 2 (18) of the Act.

91. Section 2 (18) of the Act defines the term "educational institution". It states:

"Sec.2 (18):-

"educational institution " means a recognised school, colleges including Medical Colleges], special institution or other institution (including an orphanage

or boarding home or hostel attached to it) by whatever name called, the management of which carries on (either exclusively or among other activities) the activity of imparting education therein, and includes every premises attached thereto; but does not include a tutorial institution;”

92. Since the E.C.M. High School is a recognized school (according to the counter affidavits filed by 2nd respondent) and it is not a tutorial institution, it falls within the definition of the term “educational institution” in Section 2 (18) of the Act. Consequently it also falls within the definition of the term “private institution” defined in Section 2 (35) of the Act.

93. Learned counsel for respondents also contended that Section 53 of the AP Education Act, 1982 has no application since the land belonging to the E.C.M. High School was not acquired with the aid of any grant made from the State funds. The prohibition under Section 53 for transfer of lands and buildings by educational institutions applies only if they were acquired, constructed, improved or altered for the purpose of any educational institution *with the aid of any grant made from the state funds or where such land or buildings were transferred by the Government for use for the purposes of any educational institution*. In my opinion the said provision has no application to the present case since it is not the case of the petitioners or the 2nd respondent that the properties of the E.C.M. High School are acquired with

the aid of any grant made by the State. Sec.53 is an additional provision to safeguard the assets of educational institutions which are also receiving Grant-in-Aid from the State Government apart from Section 28.

94. In this view of the matter, in view of the express bar contained in sub Section (1) of Section 28 for alienating properties of a private institution imparting education (like E.C.M. High School) without approval of the competent authority, and in view of sub Section (4) of Section 28 which renders all such transactions of sale as null and void, the sale deeds/lease deeds executed by 9th respondent or S.T.B.C. Property Committee or any other agency in favour of respondent Nos.5 and 6 or other private respondents, are null and void. The plea that the private respondents, who purchased portions of the land belonging to the E.C.M. High School, are *bona fide* purchasers cannot be accepted since the statute i.e., the AP Education Act, 1982 does not save any such alienations. The said plea is therefore rejected.

95. Therefore this point is answered accordingly in favour of the petitioners and against the private respondents.

Point (e):-

96. Admittedly by endorsement dt.06-11-1998 the 1st respondent had refused grant of approval for

layout in respect of extent of Ac.3.65 cts in E.C.M. High School compound on the basis of an objection raised by the District Education Officer, Kurnool pointing out that the said land belongs to the High School and is under the control of the Education Department.

97. It is un-understandable how the same 1st respondent could have again granted approval for sanction of layout tentatively on 27-02-2003 and later for final layout vide Roc.No.9872/2002/G2 dt.31-12-2003 under the provisions of the Hyderabad Municipal Corporation Act, 1955 in favour of respondent No.5 and others ignoring the objection raised by the District Educational Officer (which is available on its file) and endorsement dt.06-11-1998 issued by it earlier refusing approval for layout to another party.

98. Section 388 of the Greater Hyderabad Municipal Corporation Act, 1955 mandates that applications for layout should be accompanied by copies of title deeds of the land. Under Section 389 the Commissioner of Municipal Corporation can also call for further particulars. It may be that the Commissioner of the 1st respondent Corporation, exercising power under the provisions of the said Act or under the MCH (Layout) Rules, 1965, cannot decide questions of title but he can certainly take notice of the location of the proposed layout. Where it is clear that the said layout is sought to be

located in the play grounds of a school, he ought not to have granted sanction of layout to the respondent No.5, particularly in view of the earlier objection raised by 2nd respondent. I am of the opinion that there is a clear abdication of statutory duty by the 1st respondent in this regard.

99. Therefore this point is answered in favour of the petitioners and against the respondents.

THE CONCLUSION

100. For the aforesaid reasons, it has to be held that the sanction of layout by the 1st respondent in the subject land belonging to the E.C.M. High School, Kurnool is clearly contrary to law and unsustainable and consequently no constructions should have been made by any of the private respondents on the basis of the said sanction. Therefore all the structures erected by the private respondents in the extent of Ac.11.98 cts in Sy. Nos.123 (P), 125 (P), 126 (P) and 127 (P) of Kurnool town are liable to be demolished by 1st respondent after notice to the private respondents (respondent no.s.5, 6 and 16 to 96) or other persons interested therein and the land of the ECM High School is liable to be restored to the 3rd respondent by evicting all the private respondents.

101. Consequently the 1st respondent is directed

to demolish the structures erected by the private respondents in the above property and the private respondents (respondent no.s.5, 6 and 16 to 96) are directed to restore possession of the vacant land of the ECM High School to the 3rd respondent within three months from the date of receipt of a copy of this order .

102. The Writ Petition is allowed as above and the respondent Nos.5, 6 and 16 to 96 are directed to pay costs of Rs.5,000/- (Rupees Five Thousand only) to the petitioners.

103. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-06-2016

Note:-

L.R. copy to be marked: Yes.

B/o.

Kvr/Ndr

[\[1\]](#) AIR 1981 S.C. 344

[\[2\]](#) AIR 1976 S.C. 386

[\[3\]](#) AIR 1976 S.C. 578(1)

[\[4\]](#) (1992) 2 S.C.C. 524

[\[5\]](#) AIR 1997 S.C. 993

[\[6\]](#) (2002) 2 SCC 333