

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Writ Appeal No. 759 of 2018
and
C.M.P. No. 7194 and 7195 of 2018

Christ King Middle School
Rep. by its Correspondent
Railway Colony
Tambaram East
Chennai-600 045

... Appellant

Versus

1. The Union of India
Ministry of Railways
Rep. by its General Manager
Southern Railway, Chennai-600 003.
2. The Principal Chief Engineer
Southern Railway
Chennai-600 003
3. The Divisional Railway Manager
Chennai Division
Southern Railway
Chennai-600 003.
4. The Additional Divisional Railway Manager
-cum-Estate Officer,
Chennai Division,
Southern Railway,
Chennai-600 003.
5. The Senior Divisional Engineer/Coordination,
Chennai Division,
Southern Railway, Chennai-600 003.

6. Christ King Middle School Protection Association
No.11, Door No.30, Perialwar Street,
Sundaram Colony
East Tambaram
Chennai -600 059.

7. The Secretary to Government
Department of School Education
Government of Tamil Nadu
Fort St.George, Secretariat
Chennai-600 009

8. The Director
Directorate of Elementary Education (DEE)
College Road
Nungambakkam, Chennai. Respondents

Appeal filed under Clause 15 of Letters Patent praying to set aside the order dated 15.12.2017 passed by this Court in W.P. No. 1413 of 2011 and to allow the Writ Petition.

For Appellant : Mr. P. Wilson, Senior Advocate
for M/s. Wilson Associates

For Respondents : Mr.P.T.Ramkumar for RR-1 to 5
Mr. L. Munusamy
Special Government Pleader (Education)
for RR-7 and 8

JUDGMENT

(Judgment of the Court was delivered by R. Subbiah, J)

This appeal is filed against the order dated 15.12.2017 passed by the learned single Judge in W.P. No. 1413 of 2011, whereby the learned single Judge dismissed the writ petition filed by the appellant herein.

2. The appellant has filed the said Writ Petition No 1413 of 2011 for issuing a Writ of Certiorari to call for the records of the second respondent in the order under proceeding No.M/W.234/Evic/CKMS/10 dated 30.09.2010, which culminated in the order of eviction under Section 5 (1) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 dated 17.12.2010 and to quash the said orders.

3. The facts of the case which led to the filing of the present Writ Appeal are as follows:-

4. The Appellant-School is an aided School recognised by the Government of Tamil Nadu and it is a non-fee levying institution established to impart education and facilities to children of the Railway employees, apart from other children in the neighbourhood. In the year 1935, the land in which the School is being run, was allotted by the then Railway authorities on an annual rent of Re.1 for the purpose of establishing the Middle School to benefit the children of the employees working in the Railways. On 25.04.1938, the land measuring 43,680 Square feet was allotted to the School. A lease agreement was entered into by Rev.Mother Xavier A.C. Superior of Christ King Convent, Tambaram, for and on behalf of the Governing Body of the Apostolic Carmel Schools, which is an Association registered under Act XXVI of 1860. An agreement was also entered on 25.04.1938 by the South Indian Railway Company Limited with the Christ King Convent, in which Clause 1 (a) clearly states that the leased land shall be utilised for operation of the School mainly for the benefit of the Railway employees and subject to the laws of the Municipal Authorities. Thereafter, the appellant School had put up construction after the plans were approved by the then Southern Indian Railway Company Limited, as could be seen from the letter dated 10.09.1938. Subsequently, by letter dated 30.05.1961, the respondents-Railways sought for payment of occupation fee in advance, security deposit and they also asked for written consent in the format enclosed along with the said letter. By letter dated 16.03.1956, the respondents-Railways permitted the School to utilise a rent free playground attached to the Railway Institute, Tambaram. The Appellant also built five blocks with the total constructed area of 17,464 Sq.Ft. and all the blocks were evenly spread over in the said leased out land. According to the appellant, they have spent several Lakhs of Rupees to construct the blocks and the blocks have been constructed at various stages after obtaining permission from the respondents-Railways. There are about 1500 students studying in the Appellant-School, which is recognised by the State Government and the School imparts education from Class I to Class 8. To impart education to the students, there are about 37 teachers working in the School, apart from seven non-teaching staff.

5. It was the further case of the appellant in the writ petition that the School is one of the best schools in Tambaram and it also received an award in the year 2005. One of the former Headmistress has also received the National Award and another former Headmistress has received State Award. The School is mainly imparting education to most downtrodden class and also

to the children of the Railway employees. The School is paying the lease amount to the respondents-Railways without any default. The licence fee originally fixed at Re.1 per annum was periodically increased to Rs.1,000/- per annum and presently, the license fee of Rs.1,000/- per annum is being paid without any default. While so, suddenly, by letter dated 21.01.2010, the respondents/Railways demanded an exorbitant amount of Rs.58,62,547/- towards licence fee for the period from 01.04.2001 to 31.03.2010. In connection with such enhancement of the licence fee, there was exchange of communications between the appellant-School and the respondents/Railways. Ultimately, the respondents-Railways sent a letter dated 17.12.2010, in the form of termination of licence wherein it was also suggested for an alternative location as shown in the sketch as per the latest policy and guidelines issued by the respondents-Railways. In the very same letter, the respondents-Railways also demanded the appellant school to pay the arrears of licence fee of Rs.58,62,547/- for which also, the appellant school had sent a reply on 25.03.2010 to re-consider the issue.

6. While the facts are so as stated above, the respondents-Railways issued the notice under Section 4(2) of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as The Act) and the appellant school was asked to appear on 18.10.2010 for personal hearing. The said notice dated 30.09.2010 was received by the appellant only on 13.10.2010. Therefore, on 18.10.2010, the appellant gave a representation in person seeking four weeks' time to put forward their case inter alia expressing their inability to suddenly shift around 1500 students studying in the school. Even though adjournment was sought for by the appellant school, the fourth respondent, without even granting any reasonable time, had hastily passed the order dated 17.12.2010 in exercise of the powers conferred under Section 5 (1) of The Act and granted 15 days' time for the appellant school to vacate and handover the vacant possession of the premises. Assailing the said order dated 17.12.2010, the appellant has filed the Writ Petition before this Court.

7. When the writ petition was taken up for hearing, this Court, by an order dated 21.01.2011, granted an order of interim stay.

8. In order to vacate the interim stay, on behalf of the respondents-Railways, a counter affidavit has been filed in the writ petition. According to the respondents-Railways, as against the order of eviction passed by the fourth respondent, in exercise of the powers conferred under Section 5 (1) of The Act, an appeal remedy is available, but without exhausting the same, the writ petition has been filed and therefore, it is not

maintainable. When there is an alternative and efficacious remedy available before the appellate authority, as contemplated under Section 9 of the said Act, the writ petition filed under Article 226 of The Constitution of India is not maintainable. It was further contended by the respondents-Railways that the land in which the school is presently being run belongs to the Railways. Further, the appellant, without obtaining any permission had put up construction and thereby breached the terms and conditions of the agreement entered into with the respondents/railways. Above all, it was contended by the respondents-Railways that the land is urgently required in connection with the proposed project for coaching terminal at Tambaram to accommodate stabling lines and pit lines proposed in Phase-I at a cost of Rs.11.62 crores and that the contract has already been awarded by the construction organisation of the Railways. The work is held up for want of land. Due to enormous increase in the passenger and Rail traffic, it is absolutely imperative in the interest of the traveling public to commence and complete the said terminal work. Taking note of the fact that two existing terminals at Chennai Egmore and Chennai Central are saturated, it is imperative to develop the third terminal at Tambaram to cater to the additional demand. The requirement of the land under occupation of the appellant is therefore for public utility development, which will outweigh the requirement of the appellant. The appellant had accepted the title of the Railways to the subject land before the Estate Officer and stated that they would vacate the premises and they had only sought for time. However, the appellant has filed the writ petition and assailed the order of eviction passed by the fourth respondent. According to the respondents-Railways the appellant has violated the terms and conditions of the agreement by putting up unauthorised construction in the Railway land. The appellant has also violated the terms of the agreement by constructing the buildings with an area of about 30,000 square feet unauthorisedly in the Railway land. According to the respondents-Railways, as per paragraph 2(a) of the agreement entered into between the appellant and the respondents-railways, before proceeding to construct any building or other erection on the leased out land, prior approval of the Railways is necessary, however, no such prior approval has been obtained by the appellant-School before putting up the offending construction. Further, as per the clauses contained in the lease agreement, if there is any dispute between the parties to the agreement, such dispute will be referred to the General Manager of the respondents-Railways and a decision will be taken by the General Manager of the Railways which will be final and binding on the appellant. In the present case, the appellant has not paid the licence fee properly due to the Railways and put up construction in the leased out land consisting of three blocks and two annexe buildings without the permission of the Railways,

which amounts to breach of the terms of the agreement. Further, as on the date of filing the writ petition the occupation of appellant can be construed as an unlawful occupation. As per Clause 6 of the agreement, the respondents-Railways are entitled to determine and put an end to the agreement by giving six months' notice and in case of breach of any condition, even without any such notice, the respondents-Railways are empowered to proceed further and to cancel the lease agreement. In this case, since the appellant has breached the terms and conditions of the agreement, the respondents had terminated the agreement after following the due process of law. It was further contended in the counter affidavit that the wards of the Railway employees studying in the appellant School is of minimal strength. The annual licence fee fixed at the time of agreement was Re.1/- and it was periodically revised to Rs.100/-, Rs.300/- and Rs.1,000/- during the years 1962, 1984 and 1992 respectively. The licence fee was revised at the rate of 6% of the market value of the land as per the Railway Board's letter dated 10.04.2003 and the same was advised to the appellant School but the appellant school failed to pay the revised licence fee but on the contrary continued to deposit Rs.1,000/- per year, which was not accepted by the Railways. The amount of arrears upto March 2012 was Rs.77,38,195/-. The appellant having breached the terms of the licence, is liable to be evicted from the Railway premises as per the said Act of 1971.

9. In the counter affidavit filed by the respondents, it was further stated that there were several correspondences between the parties and that the appellant has been asked to shift the School without causing any hindrance to the work of the Railways, but unfortunately, there was no response. There is an urgency to secure the possession of the land under the occupation of the appellant, since Tambaram Yard has been identified for the development of a new coaching terminal with an outlay of approximately Rs.50 crores. After issuance of Form-A notice, as per Clause (b) (ii) of sub-section (2) of Section 4 of the said 1971 Act, personal hearing was given to the appellant school on 18.10.2010 and the appellant also attended the enquiry with two Advocates and accepted that the land belongs to the Railways. In spite of the demand made by the respondents-Railways, the appellant refused to budge and therefore, the respondents-Railways were forced to issue another notice in Form-B. The action taken by the respondents-railways to evict the appellant is in accordance with the provisions contained under The Act and therefore, the respondents-Railways prayed for vacating the interim stay.

10. When the writ petition was taken up for hearing, the learned single Judge, after appreciating the rival contentions, dismissed the writ petition filed by the appellant on 15.12.2017

with an observation that the action of the appellant in refusing to handover vacant possession of the premises in question, is not bona-fide. It was also observed by the learned single Judge that the appellant, under the guise of complying with the conditions of licence, is attempting to grab the land that belonged to the respondents-Railways and they cannot only be termed as trespasser, but can also be called as land grabber. The relevant portion of the order passed by the learned single Judge is extracted hereunder:-

"23. As held by the Division Bench of this Court in the judgment reported in 2005 (1) MLJ 453 (cited supra), the decent people vacate the premises when the lease period or the licence period expires and when a person does not behave in a decent manner, the only way left is to forcibly throw him out. It is for this purpose that the aforesaid Act of 1971 was enacted and the same object has got to be achieved only by throwing out the unauthorised occupant.

24. Since, in the case on hand, the children are studying in the petitioner-School, this Court does not want them to be disturbed during the present academic year. It is made clear that the petitioner-School shall vacate the premises in question immediately after the end of the present academic year, preferably on or before 15.06.2018. This Court makes it clear that no further admission of students shall be done in the present premises of the petitioner-School, by stating that the children are going to be affected, and if any disturbance is caused to any of the children, the School will be solely responsible to place the students in a different School, apart from paying compensation to the parents. Though this is a fit case for imposing costs of not less than Rs.2 lakhs on the petitioner-School, taking note of the contention that poor children are imparted education in the petitioner-School, that too, at free of cost, this Court is not imposing any costs on the petitioner-School.

25. If the petitioner-School does not vacate the premises before the time stipulated above by this Court, the petitioner shall have to pay costs of Rs.2 lakhs (Rupees two lakhs only) to St.Louis Institute for Deaf & Blind, No 25, Canal Bank Road, Gandhi Nagar, Adyar, Chennai - 600020. [Near Old Cancer Hospital & Kotturpuram Railway Station] Phone Nos: 044-24910886, 24421315, Cell No. : 9003152064. Further, it is open for the petitioner to accommodate the children now studying in petitioner-Christ Kind Middle School, Railway Colony, Tambaram

East, Chennai, in any one of the two other Schools situated nearby, i.e. Christ King Girls Higher Secondary School at Velacherry Main Road and Christ King Matriculation School, MES Road, East Tambaram. The Railways are directed to inform the TANGEDCO (TNEB) of the area where the petitioner-School is situated and if the petitioner-School continues after the date specified in this order, the electricity connection shall be disconnected forthwith from 16.06.2018 to the entire School. This is in addition to the other action that may be initiated by the Railways against the petitioner or other persons who are responsible to comply with this order. Within 30 days from the date this order copy is made ready, the petitioner-school authorities shall inform all the parents to enable them to shift their wards to some other School of their choice by getting the Transfer Certificate from the petitioner-School."

11. Assailing the aforesaid order passed by the learned single Judge, the learned Senior counsel appearing for the appellant would submit that the appellant school had entered into a lease agreement on 25.04.1938 with the respondents-South Indian Railway Company Limited in respect of the land admeasuring 43,680 square feet. As per clause 1 (a) of the agreement, the said land shall be utilised for running a school for the benefit of the employees of the Railways. Accordingly, the appellant school had accommodated the wards of the employees employed in the Railway. Further, the appellant school had put up construction after obtaining permission from the respondents-Railways, which could be evident from the letter dated 10.09.1938. Further, by another letter dated 16.03.1956, the respondents-Railways permitted the appellant school to utilise a rent free play ground attached to the Railway Institute, situated at Tambaram. The appellant school had been in existence for the past 75 years imparting yeoman service to the wards of the employees of the Railways as well as the children in the neighbourhood. The school had 37 teaching staff and 7 non-teaching staff. In any event, after obtaining permission from the respondents-Railways, the appellant had put up construction only to an extent of 17464 square feet. While so, the observation made by the learned single Judge as if the appellant is a trespasser or land grabber has to be set aside.

12. The learned Senior counsel for the appellant also would contend that the dispute arose when the Southern Railway demanded an exorbitant amount towards licence fee at the rate of Rs.58,62,547/- for the period from 01.04.2001 to 31.03.2010. Such demand made by the respondents-Railways was repudiated by

the appellant school. While so, the notice dated 30.09.2010 was issued by the fourth respondent under Section 4 (2) of The Act calling upon the appellant to appear for an enquiry on 18.10.2010 and the said notice was received by the appellant only on 13.10.2010. Therefore, on 18.10.2010, the appellant appeared in person and handed over a representation to the fourth respondent to grant 15 days time to enable the appellant to put forward their case. However, the fourth respondent, without even granting time to the appellant to put forward their case, has passed the order dated 17.12.2010 to vacate and handover the vacant possession of the property in dispute. Thus, according to the learned Senior counsel for the appellant, the order dated 17.12.2010 has been passed in violation of principles of natural justice, while so, the writ petition filed by the appellant - School, without availing the alternative remedy of appeal before the appellate authority, is maintainable. This aspect has not been considered by the learned single Judge while dismissing the writ petition filed by the appellant.

13. Regarding the plea of the respondents-Railways that the appellant had put up the construction in violation of the terms of the agreement by constructing the buildings with an area of about 30,000 square feet unauthorisedly in the Railway land, the learned Senior counsel would repudiate the same and submitted that the construction put up by the appellant is only to an extent of 17464 square feet and not 30000 square feet, as alleged by the respondents-Railways. In fact, the superstructure of the building was very weak and therefore, the appellant School had written a letter to the Railway Administration for demolition and re-construction of the building, however, no such permission was given by the respondents-Railways. Since the building of the school was in a dilapidated condition, during the summer Vacation, the building was sought to be demolished and a new building was put up. The learned Senior counsel for the appellant also invited the attention of this Court to the letter dated 23.09.1998 written by the appellant School to the Chief Engineer of Southern Railways, Park Town, Chennai - 600 003 seeking permission to demolish the existing superstructure and to put up a new construction thereof. Therefore, it is incorrect to state that without intimating the respondents- Railways or without their knowledge, the appellant had put up the construction. Therefore, the learned Senior counsel for the appellant sought for setting aside the observations made by the learned single Judge to the effect that the appellant can not only be ranked as a trespasser, but can also be construed as a land grabber.

14. The learned Senior counsel for the appellant relied on the decision of the Honourable Supreme Court rendered in the case of (New India Assurance Company Limited vs. Nusli Neville Wadia and another) reported (2008) 3 Supreme Court Cases 279 wherein in para No.25, it was held as follows:-

"25. Where an application is filed for eviction of an unauthorised occupant it obligates the Estate Officer to apply his mind so as to enable him to form an opinion that the respondent is a person who has been in unauthorised occupation of the public premises and that he should be evicted. When a notice is issued in terms of Section 4 of the Act, the noticee may show cause. Section 5 of the Act postulates that an order of eviction must be passed only upon consideration of the show cause and any evidence produced by him in support of its case also upon giving him a personal hearing, if any, as provided under clause (ii) of sub-section 2 of Section 4 of the Act."

15. In the present case, according to the learned Senior counsel for the appellant, the fourth respondent, without application of mind and without giving an opportunity of hearing to the appellant school, had straight away passed the impugned order as though the occupation of the appellant school is unauthorised. The learned single Judge did not consider this aspect of the matter and therefore, the learned Senior counsel for the appellant prayed for setting aside the order passed by the learned single Judge.

16. Notwithstanding the above submissions on merits of the case, the learned Senior counsel appearing for the appellant produced an affidavit duly signed by the Correspondent and Head Mistress of the appellant School dated 28.04.2018 wherein it was stated as follows:-

"2. I submit that the appellant is aggrieved by the order of the learned single Judge dated 15.12.2017 in dismissing the writ petition challenging the action of the Respondent in evicting the appellant without even following the process of law as contemplated under the Public Premises (Eviction of Unauthorised Occupants) Act 1971 and in utter violation of the terms of lease allotting land to the Society by the respondent way back in 1938 for the sole purpose of starting a school to benefit the children of railway employees.

3. I submit that the petitioner School is a school recognised by the Government of Tamil Nadu and is fully aided school. Therefore, the school is a

non-fee levying institution established to provide the best education and facilities to children of the railway employees apart from other children in the neighbourhood.

4. I submit that the Appellant School is an Elementary School educating around 1500 students. This school is an unique Tamil Medium School. I submit that the students from the lower strata and Orphans studying in the Appellant School. It is difficult to find out an alternate place to shift the school in the time stipulated by the Honourable single Judge. Even though we have merit in Writ Petition, considering the request of railways for a project and without prejudice to our contention, we have to explore to buy a new plot admeasuring minimum of about 10 grounds, in order to construct and to accommodate the school. This decision is now taken as requested by the Railway during the meeting held on 25.04.2018.

5. I humbly submit that we need at least one academic year from now i.e., 30.06.2019 to vacate the school and handover the possession.

6. Therefore, it is humbly prayed that this Honourable Court may be pleased to record this affidavit, set aside the findings, stricter and observations passed by the learned single Judge and grant time until 30.06.2019 to vacate and handover the possession and pass such further orders as this Court may deem fit in the facts and circumstances of the case and thus render justice."

17. By placing reliance on the aforesaid affidavit filed by the appellant School, the learned Senior counsel prayed to set aside the order passed by the learned single Judge and to grant one year time till 30.06.2019 so as to enable the appellant to vacate and handover vacant possession of the school premises to the respondents-Railways.

18. Countering the submissions of the learned Senior counsel for the appellant, the learned standing counsel appearing for respondents-Railways would contend that the time sought for by the appellant for vacating and handing over the vacant possession of the premises is too longer. According to the learned Standing counsel for the respondents, Phase-I of Tambaram Coaching Terminal with 2 pit lines and 2 stabling lines was commissioned on 07.08.2017 and absolutely there is a necessity to expand the terminal for full-fledged operations. It is an essential project because the maintenance sheds in Gopalapuram Yard (Egmore) and Basin Bridge (Chennai Central) are saturated. On 5th January 2012, the Southern Railway started

preliminary works for shifting south bound trains to Tambaram junction. For starting new trains to southern districts, which has a huge demand, new maintenance facilities are needed at Tambaram. After taking up work on the second entrance on the Velacherry main road, the Tambaram Railway Station has achieved many milestones in terms of infrastructure, Additional Platforms, water facilities, escalators connecting the eastern and western sides of the Station, CCTV cameras on platforms and at entry and exit points, clean and litter-free platforms which are some of the additions that were made in the past two years. Everyday, on an average, around 1,50,000 commuters use the station. About 280 suburban electric trains operate from Tambaram, including those between Chennai Beach and Chengalpattu and Kancheepuram. Further, more than 25 Express Trains, including those bound for Howrah and other places in the North pass through the Tambaram. It is also third busiest station in the city, after Chennai Central and Chennai Egmore. A total of 52 trains pass through the station on an average. At present, there are three originating/terminating trains at Tambaram. The third line between Tambaram and Chengalpattu project at a cost of Rs.200 crores, Coaching terminal at a cost of Rs.24 crores (Phase II yet to be implemented due to the presence of the school), the Rs.40 Crore integrated Security Surveillance System (ISSS) project is implemented jointly by the Southern Railway and HCL Infosystems and Train Set Yard to come at a cost of Rs.248 crore. The Tambaram Railway Station has the proximity to the Central Warehousing Corporation's godown located at Chitlapakkam which makes it technically important. Therefore, any delay in completing the project, according to the learned counsel for the respondents-Railways will cause prejudice to the respondents-Railways.

19. The learned counsel for the respondents-railways would further submit that the tenders for the Phase II works at Tambaram Coaching terminal could not be called due to the presence of appellant School and the pending court case. If the phase II projects are further delayed, this would delay the full-fledged operations and the safety of the traveling public is at stake and would not get the desired benefits. Further, the coaching terminal work, as per the approved Master plan, could not be taken up in a single phase due to the presence of the appellant School located right over the alignment of the proposed pit lines and stabling lines, hence, Phase I work with the above facilities only could be completed. Thus, according to the learned counsel for the respondents-Railways, if any extension of time is given for the appellant school to vacate and handover the vacant possession, it would result in diversion of funds already sanctioned to the project to other similar projects or would result in stoppage of introduction of new trains from Tambaram.

20. Above all, the learned counsel for the respondents-Railways vehemently would contend that the writ petition itself is not maintainable when there is an alternative remedy of appeal available. The appellant, without exhausting such alternative remedy, has filed the writ petition under Article 226 of The Constitution of India and therefore the writ petition itself is not maintainable. In order to lend support to such contentions, the learned counsel for the respondents-Railways relied on a catena of decisions, including the one in the case of (Ashoka Marketing Limited and another vs. Punjab National Bank and others) reported in (1990) 4 Supreme Court Cases 406 wherein it was held that a writ petition filed against an order passed by the Estate Officer under the provisions of The Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is not maintainable when there is an alternative and efficacious remedy available.

21. We have heard the learned counsel for both sides at length and perused the materials placed. The learned counsel appearing for the appellant would strenuously contend that the appellant is running the school for the past 70 years and they have put up the building in question after obtaining necessary permission from the respondents-Railways. The order dated 30.09.2010, and the consequential order dated 17.12.2010 passed by the fourth respondent has been subjected to challenge in the writ petition on various legal grounds, including the plea with respect to violation of principles of natural justice. While so, the learned single Judge ought not to have rendered a finding to the effect that the occupation of the appellant in the premises in question is unlawful besides branding the appellant school as a trespasser. The learned Senior counsel therefore prayed this Court to set aside such observations made by the learned single Judge.

22. We find considerable force in such submission of the learned Senior counsel for the appellant. Admittedly, the appellant-School was put in possession of the land belonged to the respondents-Railways way back in the year 1935 and the appellant has been running the school, imparting education to the wards of the Railways and other children in the neighbourhood. Further, we find from the letter dated 23.09.1998 written by the appellant School to the Chief Engineer of Southern Railways, Park Town, Chennai - 600 003 that the appellant School had sought permission to demolish the existing superstructure and to put up a new construction thereof inasmuch as the existing building has become dilapidated. In such circumstances, it is difficult to hold that the possession of the appellant in the premises in question is unauthorised or the appellant could be branded or ranked as a trespasser.

Therefore, we are of the view that the observations made by the learned single Judge holding the appellant as unauthorised occupant or a trespasser deserves only to be set aside.

23. As regards the order passed by the fourth respondent directing the appellant to vacate and handover the vacant possession, which was impugned in the writ petition, we are not inclined to go into the correctness or otherwise of the same inasmuch as the appellant has filed an affidavit of undertaking to vacate and handover the vacant possession of the premises in question to the respondents-Railways on or before 30.06.2019. In the affidavit, appellant has categorically stated that such time is required to identify an alternative location to accommodate the 1500 students studying in their school. In fact, the learned counsel appearing for the respondents-Railways opposed to grant such a long time, as prayed for by the appellant, by contending that the land which is in occupation of the appellant is urgently required for implementing the several projects undertaken by the respondents- Railways for setting up the coaching terminal works.

24. Having regard to the above submissions of the counsel for both sides, we feel that the time sought for by the appellant has to be granted. Admittedly, there are about 1500 students studying in the appellant School and to accommodate them in an alternative place, such time sought for by the appellant will be reasonably required. Therefore, while recording the affidavit of undertaking filed by the appellant school, we grant time till 30.04.2019 to enable the appellant to vacate and handover the vacant possession of the premises in question to the respondents- Railways. In the meantime, it is open to the respondents-Railways to commence the other preliminary works to give effect to the coaching terminal works.

25. Subject to the aforesaid observation, we dispose of the Writ Appeal. No costs. It is made clear that no further extension of time will be granted to the appellant-School beyond 30.04.2019.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Union of India
Ministry of Railways
Rep. by its General Manager
Southern Railway, Chennai-600 003.
2. The Principal Chief Engineer
Southern Railway
Chennai-600 003
3. The Divisional Railway Manager
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Chennai-600 009
8. The Director
Directorate of Elementary Education (DEE)
College Road
Nungambakkam, Chennai.

+1cc to Mr.P.T.Ramkumar, Advocate Sr.32428

WA No. 759 of 2018

srg 08/06/2018