

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.34259 of 2018 and
WMP.Nos.39808 and 39810/2018

- 1.Minor Sahasra Naresh
Class CAIE 1-C
rep. by his father and Guardian
Mr.Naresh Govindaswamy
2. Minor Arya S. Lankupalli,
Class CAIE 7
rep. by Father and Guardian
Dr.H.Srinivasan
3. Minor Aanya Bhandari,
Class CAIE 4A
rep. by Father and Guardian
Aditya Bhandari
4. Minor Yuvansh Sarada
Class CAIE 4A
rep. by Father and Guardian
Amit Sarda
5. Minor Harish V,
Class CAIE 1B
rep. by Father and Guardian
K.Virender Mal
6. Minor Srihari Karthick,
Class CAIE 3B
rep. by Father and Guardian
Karthick Iyemperumal
7. Minor Bhavana R,
Class IG Yr.1
rep. by Father and Guardian
Ramesh Babu R

8. Minor Abdiel Raphael Fenn,
Class ELP 1
rep. by Father and Guardian
Andrew Chellakumar Fenn
9. Minor Vishnavi Aishvarya Ravichandran,
Class A S Level
rep. by Father and Guardian
Ravichandran Rajagopal
10. Minor Aditi E,
Class CAIE 2 A
rep. by Father and Guardian
Elayaraja Tachinamoorthy

all studying at
C.P.S. Global School,
III Avenue, Anna Nagar,
Chennai-600 102.

.... Petitioners

Vs

1. The Corporation of Chennai
rep. by its Commissioner,
Rippon Building,
Chennai-3.
2. C.P.S. Global School
rep. by its Correspondent,
III Avenue, Arignar Anna Nagar,
Chennai-102.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to consider the representation of the parents of the petitioners dated 16.12.2018 and consequently, direct the 1st respondent to reopen the 2nd respondent school forthwith and keep the same opened till the end of the Academic Year 2018-19 so as to enable the students of the 2nd respondent school to complete their education for the present academic year 2018-19.

For Petitioners

: Mr.N.G.R.Prasad

for M/s.Dakshyani Reddy

For 1st Respondent

: Mrs.Narmadha Sampath,
Additional Advocate General
assisted by
Mr.V.C.Selvasekaran,
Standing Counsel

O R D E R

This Writ Petition has been filed seeking to issue a Writ of Mandamus, directing the 1st respondent to consider the representation, dated 16.12.2018 of the parents of the petitioners and for a consequential direction, directing the 1st respondent to reopen the 2nd respondent school forthwith and keep the same opened till the end of the Academic Year 2018-19 so as to enable the students of the 2nd respondent school to complete their education for the present academic year 2018-19.

2. Mr.N.G.R.Prasad, learned Counsel appearing for the petitioners, would submit, at the first instance that all the petitioners are innocent children undergoing their education in the 2nd respondent school, namely, C.P.S. Global School, III Avenue, Arignar Anna Nagar, Chennai-102 and most of them are also pursuing their 10th Standard, which is crucial for them having regard to the Board Examination. When the students are undergoing their education in different classes, in the middle of the academic year, on the ground that the land upon which the class buildings are said to have been put up by the 2nd respondent belongs to the Corporation of Chennai, the school is directed to hand over the land to the 1st respondent, namely, the Corporation of Chennai. So pointing out, learned Counsel for the petitioners would submit that the matter was taken up to the Apex Court and an order was passed, dismissing the Petition for Special Leave to Appeal (C) Nos.22155-22156/2018, by orders dated 27.08.2018, granting one year time to vacate the premises subject to filing of usual undertaking within four weeks. Unfortunately, the 2nd respondent failed to file such an undertaking. Since the petitioners in the present Writ Petition were not parties to the proceedings before the Supreme Court, they are all put to great prejudice and also irreparable loss. Therefore, the parents of the minor petitioners have given a representation on 16.12.2018 to the 1st respondent requesting to reopen the school-in-question till the completion of the academic year 2018-2019 so as to enable the students to complete their education for the present academic year 2018-19 and they are also prepared to file an affidavit that they will not cause any hindrance to the 1st respondent in taking over possession, after completion of the academic year 2018-19.

Again by referring to an order, dated 25.09.2018, passed by a Division Bench of this Court in W.A.2210/2018 filed against dismissal of W.M.P.No.28773/2018 in W.P.No.24749/2018, the learned Counsel for the petitioners submitted that by taking note of the failure of the 2nd respondent in filing the affidavit of Undertaking as directed by the Supreme Court in Petitions for Special Leave to Appeal (C) Nos.22155-22156 which were filed against the judgment rendered by this Court in OSA.No.24/2017 dated 3.8.2018, the Division Bench declined to grant any interim

order, however, it was submitted by the learned Additional Advocate General in the said case that the official respondents would postpone their action for one week. Since the said Writ Petition No.24749/2018 is pending even today, no prejudice would be caused to anyone, if some more time is granted till the completion of the academic year 2018-2019.

While concluding his arguments, the learned Counsel for the petitioners submitted that if some breathing time is given to the parents of the minor petitioners, they will be able to make alternative arrangements to prosecute the education of their children and they are not going to create any disturbance against the 1st respondent in reclaiming the physical possession of the land-in-question. Therefore, the Writ Petition may have to be allowed, he pleaded.

3. A detailed counter affidavit has been filed by the 1st respondent.

4. Mrs.Narmadha Sampath, learned Additional Advocate General appearing for the 1st respondent urging this Court to dismiss the Writ Petition, submitted that when the title and ownership of the land-in-question were in dispute, finally, the matter was taken up to the Supreme Court vide Petitions for Special Leave to Appeal (C) Nos.22155-22156/2018. She would point out that since the 2nd respondent is having their own land measuring over 30000 sq.ft. and highly sophisticated new smart buildings with floor area of more than 55000 sq.ft. around the land belonging to the Greater Chennai Corporation which was encroached by the 2nd respondent, the Kindergarten students can be easily accommodated in their own buildings for the remaining period of the academic year, without any hindrance. However, these facts have been completely suppressed by the petitioners' joining hands with the 2nd respondent. At any rate, the said prayer was refused by the Supreme Court while dismissing the Petitions for Special Leave to Appeal (C) Nos.22155-22156/2018, by order dated 27.08.2018, giving liberty to the 2nd respondent to enjoy one year time from the date of dismissal of the said SLP subject to the filing of an usual undertaking. But, for the reasons best known to the 2nd respondent, although liberty was given for one year to vacate the premises subject to filing of usual undertaking, they wantonly failed to file even the usual undertaking. Secondly, when the very same prayer was again renewed before this Court in the pending W.P.No.24749/2018, a similar refusal order was passed, declining to grant any interim order as against which W.A.No.2210/2018 was filed.

Learned Additional Advocate General for the 1st respondent would further submit that, when the matter was taken up before the Hon'ble Division Bench on 25.09.2018, the 1st respondent/Corporation brought to the notice of the Court about the dismissal of the Petitions for Special Leave to Appeal (C)

Nos.22155-22156/2018, filed by the School, vide orders dated 27.08.2018 and also the fact that, liberty which was given to the 2nd respondent was completely unutilised by them, as a result, the 2nd respondent cannot continue to occupy the land-in-question any more on and from 27.08.2018. Taking note of the fact that the concession was given by the Supreme Court by giving liberty to the 2nd respondent to file an affidavit of undertaking was not availed of by the school, the Division Bench also refused similar prayer. Therefore, as a matter of fact, the principles of res judicata will aptly apply to the present prayer made by the petitioners in the present case. Adding further, the learned Additional Advocate General submitted that the parents of the minor petitioners are not aware of the alternative arrangements made by the 2nd respondent. Placing on record a Map/Sketch, the learned Additional Advocate General submitted that the 2nd respondent has also raised a new construction outside the land belonging to the Corporation of Chennai covered in Survey No.5/15, anticipating that they would be under legal obligation to accommodate the students during the middle of the academic year till they complete the academic year 2018-2019. Thus, suitable arrangements have been sufficiently made by the 2nd respondent school to accommodate the children studying in their school and also, the 1st respondent has taken physical possession of the land-in-question on 14.12.2018. The said message also has been communicated to all the parents through electronic media such as e-mail and SMS etc. and due to this information given by the 2nd respondent, none of the student has turned up to the school. Since the entire land, which was encroached by the 2nd respondent earlier, is now taken possession by the 1st respondent, it is too late for the petitioners to come before this Court with this prayer, more over, when the said prayer having been refused successively by both the Apex Court by dismissing the Petitions for Special Leave to Appeal (C) Nos.22155-22156/2018 vide orders dated 27.08.2018 and subsequently by the Division Bench of this Court in W.A.No.2210/2018 vide judgment dated 25.09.2018. Therefore, the present Writ Petition is liable to be dismissed, she pleaded.

5. I fully agree with the submissions made by the learned Additional Advocate General appearing for the 1st respondent. The reason being that the minor petitioners represented by their parents, who are all students and continuing their education in the 2nd respondent school, cannot maintain the writ petition since the prayer made in the writ petition has already been refused by the Supreme Court in Petitions for Special Leave to Appeal (C) Nos.22155-22156/2018, vide orders dated 27.8.2018. It is relevant to extract the same hereunder :

' 'Heard learned Counsels for the parties.

We do not find any merit in these petitions. The

special leave petitions are accordingly dismissed. However, considering that the petitioners are running a school, they are granted one year's time from today to vacate the premises subject to filing of their usual undertaking within four weeks from today.'

6. When the 2nd respondent has miserably failed to file an usual affidavit to enjoy one year's time to vacate the premises, it is not known how the petitioners have come up with the present prayer. Secondly, the very same prayer has been refused by the Division Bench of this Court in W.A.No.2210/2018 by judgment dated 25.09.2018. It is relevant to extract paragraphs 5 and 6 here under :

'5. However, by way of reply, learned Senior Counsel appearing for the appellants/writ petitioners submitted that so far, no physical possession of the property in question was taken by the Corporation of Chennai and only symbolic possession is recorded by them in the year 1953, and therefore, the appellants are having case under Section 24(2) of the said new Act of 2013 (Land Acquisition Act) and thus, he insisted for interim order pending disposal of the Writ Appeal/Writ Petition.

6. However, we are of the opinion that, since we find that there was already a direction given by the Supreme Court to file an affidavit of undertaking, we are not inclined to grant any interim order. At this juncture, learned Additional Advocate General submitted that the official respondents are prepared to file counter affidavit in the main Writ Petition itself within two days and they are ready to proceed with the Writ Petition within one week thereafter. Learned Additional Advocate General further submitted that till such time, the official respondents will postpone their action for a period of one week. This submission of the learned Additional Advocate General is recorded.'

Thirdly, the principles of res judicata also apply between the past litigation and the future one, inasmuch as finality has already been reached in respect of the same land-in-question at the instance of the 2nd respondent against the 1st respondent before the Supreme Court in the order passed in the petitions for Special Leave to Appeal (C) Nos.22155-22156/2018, vide orders dated 27.8.2018; thus, the rule of res judicata prevents the third parties to a judicial determination from litigating the same question over again. This is for the reason that the issue has already reached a finality, therefore, the parties are bound

by the judgment of the Apex Court and they are now estopped from questioning it once again. Reference can be had from the judgment of the Apex Court in Dr.Subramanian Swamy v. State of Tamil Nadu and others (2014) 5 SCC 75, wherein it is held that once a res is judicata, it shall not be adjudged again, for the simple reason that the principle of res judicata is to give a finality to judicial decisions.

Fourthly, the counter affidavit filed by the 1st respondent clearly shows that after the dismissal of similar prayer by the Division Bench, the Corporation of Chennai/1st respondent herein have also taken physical possession of the land in question on 14.12.2018. In view of the above, I find no merit whatsoever in the Writ Petition.

7. In the result, the Writ Petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-3.

+1cc to Mr.Dakshyani Reddy, Advocate, S.R.No.664

सत्यमेव जयते

W.P.No.34259 of 2018

PP(CO)

GSP(04/01/2018)

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