



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD) Nos.3403 of 2017 & 11731 of 2018

and

WMP (MD) Nos.2773 of 2017 & 10660 of 2018

WP (MD) No.3403 of 2017 : -

K.Rajaram
Educational Agency,
Pangajam Middle School,
Bodinayakkanur,
Theni District.

...Petitioner

Vs.

1.The District Elementary Educational
Officer,
Theni District, Theni.

2.The Assistant Elementary Educational
Officer,
Bodinayakkanur, Theni District.

3.S.Radhika

4.N.Vasu

... Respondents

(R3 is impleaded vide court order
dated 31.10.2017 in WMP(MD)No.5880 of 2017)
(R4 is impleaded vide court order
dated 22.02.2019 in WMP(MD)No.18447 of 2017)

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorari, to call for the records relating to the order of the first respondent in Na.Ka.No.976/Aa2/2018 dated 15.07.2018 and quash the same as arbitrary and illegal.

WP (MD) No.11731 of 2018 :

K.Rajaram,
Educational Agency,
Pangajam Middle School,
Bodinayakkanur,
Theni District.

...Petitioner

<https://hcservices.ecourts.gov.in/hcservices/>

Vs.



1.The District Elementary Educational Officer,
Theni District, Theni.

2.The Assistant Elementary Educational Officer,
Bodinayakkanur, Theni District.

3.N.Vasu

... Respondents

For Petitioner

in both writ petitions : Mr.Ajmalkhan, Senior Counsel
for B.Brijesh Kishore

For R1 and R2

in both cases : Mrs.S.Srimathy,
Special Government Pleader

For R3 and R4

in WP(MD)No.3403 of 2017 &

for R3 in WP(MD)No.11731 of 2018: Mr.Isaac Mohanlal,

Senior Counsel

for Mr.K.Ragatheeshkumar

and Mr.Thayumanasamy

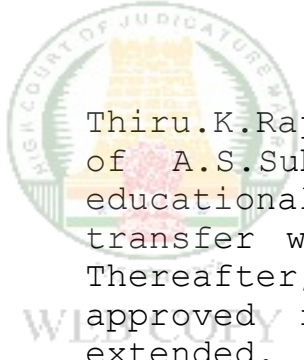
COMMON ORDER

One A.S.Subban Chettiar started Pangajam Middle School in Bodinayakkanur, Theni District in the year 1935. It is an aided institution covered by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 and the rules framed thereunder. The educational agency was transferred in favour of the writ petitioner Thiru.K.Rajaram on 25.04.2009 and it was duly approved by the District Elementary Educational Officer, Theni District vide order dated 15.10.2009. The family members of A.S.Subban Chettiar submitted complaints to the District Elementary Educational Officer, Theni District alleging alienation of the school properties by the writ petitioner. The matter was enquired into and the first respondent by order dated 17.02.2017 brought the school under Direct Payment System. The same is questioned in WP(MD)No.3403 of 2017. By order dated 17.05.2018, the District Elementary Educational Officer, Theni District re-transferred the educational agency in favour of Thiru.N.Vasu who hails from the family of A.S.Subban Chettiar. The order transferring the educational agency from the writ petitioner to Thiru.N.Vasu is challenged in WP(MD)No.11731 of 2018.

2.Heard the learned Senior Counsel on either side as well as the learned Special Government Pleader appearing for the official respondents.

<https://hcservices.ecourts.gov.in/hcservices/>

3.The learned Senior Counsel appearing for the writ petitioner

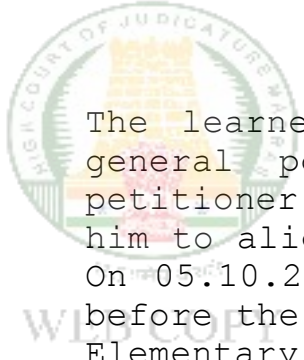


Thiru.K.Rajaram points out that on 25.04.2009, the family members of A.S.Subban Chettiar passed a resolution transferring the educational agency in favour of the writ petitioner. The said transfer was also duly approved by the authority on 15.10.2009. Thereafter, the school committee was formed and the same was approved for a period of three years and subsequently also extended. Thus, the order of transfer has become final. It was never questioned in the manner known to law. Therefore, the first respondent acted without jurisdiction by transferring the educational agency by the impugned order. The first respondent has not cited any provision of law for passing such an order. Even if the writ petitioner is guilty of having breached the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973, the writ petitioner cannot be divested of the educational agency. The department may at best resort to some interim arrangement for a period. It can even appoint a special officer. But, divesting the petitioner permanently of the educational agency is not contemplated under law.

4.The learned Senior Counsel also submitted that the petitioner was constrained to sell away a portion of the school lands only because he needed to raise funds for the maintenance and upkeep of the school building. It is not as if he had pocketed the sale proceeds for himself. In any event, such a sale without prior permission of the competent authority is null and void. In any event, the petitioner has given a solemn undertaking before this court to the effect that he would not alienate the school property in future.

5.The learned Senior Counsel for the petitioner placed reliance on the decision of the Hon'ble Division Bench of the Madras High Court reported in **1996-1-L.W-567 (M.Ayyasamy vs. District Educational Officer)** and the decision of the Hon'ble Supreme Court reported in **(2005) 10 SCC 51 (Swamy Atmananda vs. Sri Ramakrishna Tapovanam)**. His core contention is that if at all there is any dispute with regard to the educational agency, Section 53 A of the Act should be invoked and that it is not open to the departmental authorities to stultify the functioning of the educational agency. The writ petitioner also filed argument notes.

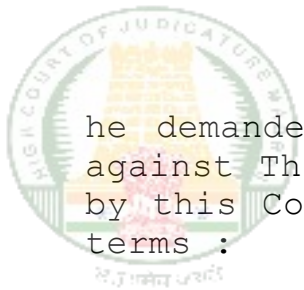
6.The learned Senior Counsel appearing for the contesting private respondents in these writ petitions took me through the typed set of papers filed on either side. He admitted that the members A.S.Subban Chettiar family had transferred the educational agency by passing a resolution in favour of the writ petitioner in the year 2009. But they had done so with the bond hope that the writ petitioner would run the school properly. When they came to know that the writ petitioner was alienating the school properties, they promptly lodged a complaint with the authorities.



The learned Senior Counsel drew my attention to the registered general power of attorney dated 03.02.2012 executed by the petitioner in favour of his relative one G.A.M.Pounraj authorising him to alienate the lands belonging to the Pangajam Middle School. On 05.10.2012, Mrs.Babysaroja and Mrs.S.Radhika filed a complaint before the District Collector, Theni. On 11.06.2013, the District Elementary Educational Officer, Theni initiated action against the writ petitioner. The proceedings dated 19.11.2012 whereby approval was given for the constitution of the school committee was put on hold. That led to the cancellation of the general power of attorney by a deed dated 14.06.2013.

7.Since the petitioner had cancelled the offending document, vide proceedings dated 27.06.2013, the earlier proceedings dated 11.06.2013 were withdrawn. The learned Senior Counsel for the petitioner pointed out that immediately the petitioner proceeded to execute a sale deed dated 01.08.2013 in favour of M.Kannan, Muthukrishnan, Sekar and M.Babu vide document Nos.5216/2013, 5217/2013, 5218/2013 and 5219/2013. This was followed by proceedings dated 24.10.2013 on the file of the District Elementary Educational Officer, Theni District keeping in abeyance the earlier proceedings dated 15.10.2019 whereby educational agency was transferred in favour of Thiru.K.Rajaram. The subsequent proceedings dated 19.11.2012 granting approval to the formation of the school committee was also put on hold. The school was brought under the Direct Payment System. By a communication dated 22.11.2013, the District Elementary Educational Officer, Theni requested the District Collector, Theni to take action for cancelling the illegal alienations made by Thiru.K.Rajaram. These proceedings were questioned by Thiru.K.Rajaram in WP(MD)No.19376 of 2013 Since these proceedings were taken without affording an opportunity to the petitioner, they were set aside and the writ petition was allowed on 23.01.2014. However, liberty was given to the authorities to initiate action against the petitioner.

8.In terms of the aforesaid liberty given by this Court in WP (MD)No.19376 of 2013 notice dated 10.04.2014 was issued to the petitioner. In the meanwhile, Mrs.Radhika who hails from A.N.Subban Chettiar family lodged a detailed complaint dated 21.04.2014 to the District Elementary Educational Officer, Theni. She alleged that out of five acres and forty cents belonging to the school except the school building the rest of the property had been sold by Thiru.K.Rajaram. It appears that an illegal lay out in the name and style of Shri Amman Nagar was formed plotting out the school land. Mrs.Radhika filed WP(MD)No.12972 of 2014 for directing the DEEO to take action on her complaint dated 21.04.2014. However, in the said so called notice dated 10.04.2014, Thiru.K.Rajaram was allowed to function as the educational agency. This was questioned by Thiru.A.S.Natarajan S/o.A.S.Subban Chettiar by filing WP(MD)No.16393 of 2014 whereby



he demanded initiation of statutory action by conducting enquiry against Thiru.Rajaram. Both the writ petitions were disposed of by this Court by a common order dated 14.12.2016 in the following terms :

"8.Perusal of the impugned order, dated 18.06.2014, would only indicate that the said official has not applied his mind and passed a speaking order, except by saying in one line that he is accepting the explanation of the said K.Rajaram, by considering the interest of the students and the teachers. The said official has not given any finding resulting out of the allegation and the explanation. Needless to say that when this Court has remitted the matter back on earlier occasion to the said official to proceed afresh, he should have been all the more careful in deciding the matter by passing a reasoned order. Unfortunately, it has not been done in this case. Therefore, without expressing any view on the rival contention of the parties, this Court is inclined to set aside the impugned order in these writ petitions and remit the matter back to the District Elementary Educational Officer, Theni, for passing fresh orders on merits and in accordance with law after hearing both parties and also after considering their respective contentions. Such exercise shall be done by the said official, within a period of six weeks from the date of receipt of a copy of this order."

9.Pursuant to the direction given in the above terms, the orders impugned in these writ petitions were passed after hearing both the parties. The official respondents had also filed a counter affidavit and the learned Special Government Pleader reiterated the contentions set out therein.

10.After hearing the learned Senior Counsel on either side and after perusing the materials on record, this Court comes to the conclusion that the conduct of the writ petitioner Thiru.K.Rajaram is indefensible. The sequence of the events speak for themselves. Section 31 of the Tamilnadu Recognised Private Schools (Regulation) Act, 1973 forbids the alienation of property of a private school unless prior permission was given in writing by the competent authority. But, the petitioner executed a registered general power of attorney dated 03.12.2012 in favour of his close relative authorizing him to deal with the school property. The District Elementary Educational Officer, Theni District took cognizance of the same. The petitioner made the show of cancellation of the said general power of attorney. On production of the cancellation deed dated 14.06.2013, the status quo ante was restored by the District Elementary Educational Officer, Theni on 27.06.2013. But, on 01.08.2013, the writ petitioner proceeded to execute as many as 4 sale deeds. It is seen that an unapproved lay out in the name and style of Shri Amman Nagar was formed.



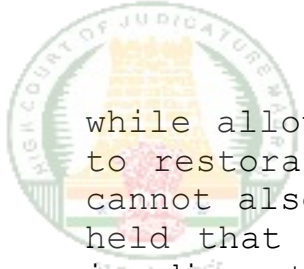
Except the school building, everything else had been plotted out. Therefore, the authority was absolutely justified in bringing the school under direct payment system. Annexure III (Vide Rule (19) (3) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974 states that under special circumstances, the District Educational Officer concerned may make direct payment to the Headmaster of a school or to the Teachers of a school.

11. In this case, the circumstances that obtained on the date of passing of the impugned order and not simply special but rather alarming. It is a case of fence eating the crop. Therefore, the order impugned in WP(MD)No.3403 of 2017 is sustained and WP(MD) No.3403 of 2017 stands dismissed.

12. This Court called upon the learned Senior Counsel appearing for the private respondents as well as the learned Special Government Pleader to refer to any statutory provision which can support the transfer of educational agency from the hands of the writ petitioner K.Rajaram to the members of A.S.Subban Chettiar family. It must be stated that a direct response to the court's query was not forthcoming. The learned Senior Counsel for the private respondents however placed reliance on the decision of the Hon'ble Supreme Court reported in (2003) 6 SCC 545 (Chandra Singh vs. State of Rajasthan). The Hon'ble Supreme Court held as follows :

"Issuance of a Writ of Certiorari is a discretionary remedy. [See Champalal Binani vs. CIT, West Bengal, AIR 1970 SC 645]. The High Court and consequently this Court while exercising their extra-ordinary jurisdiction under Articles 226 or 32 of the Constitution of India may not strike down an illegal order although it would be lawful to do so. In a given case, the High Court or this Court may refuse to extend the benefit of a discretionary relief to the applicant. Furthermore, this Court exercised its discretionary jurisdiction under Article 136 of the Constitution of India which need not be exercised in a case where the impugned judgment is found to be erroneous if by reason thereof substantial justice is being done. [See S.D.S. Shipping Pvt. Ltd. vs. Jay Container Services Co. Pvt. Ltd. & Ors. [2003 (4) Supreme 44]. Such a relief can be denied, inter alia, when it would be opposed to public policy or in a case where quashing of an illegal order would revive another illegal one."

13. Therefore, he wanted this Court to non suit the petitioner by taking note of his conduct. He pointed out that if the order impugned in WP(MD)No.11731 of 2018 is set aside, that would transfer the educational agency to the hands of Thiru.K.Rajaram. Such a situation would be monstrous and would not be in the interest of the educational institution. While it is true that



while allowing the writ petition, this Court would not be a party to restoration of an illegal order, an order without jurisdiction cannot also be allowed to stand. The Hon'ble Gujarat High Court held that since the remedy under Article 226 of the Constitution is discretionary in nature and under a given case, even if an action or order challenged in the petition, is found to be improper and invalid, the High Court can refuse to exercise its extraordinary jurisdiction. The Hon'ble Supreme Court in the decision reported in **(2014) 15 SCC 689 (Narinder S. Chadha And Ors vs Municipal Corpn Of Greater Mumbai)** remarked that they are at a loss to understand the said reasoning. The Hon'ble Supreme Court held that it must never be forgotten that one of the maxims of equity is that 'equity follows the law'. If the law is clear, no notion of equity can substitute the same.

14. Thiru.A.S.Subban Chetthiar founded the school in question. After his demise his son was running the school. When he also passed away, the family members of the founder passed a resolution for transferring the educational agency in favour of Thiru.Rajaram. The competent authority had approved the said transfer. Even the school committees formed by the educational agency were approved from time to time. In these circumstances, without a clear authority of law, the competent authority could not have re-transferred the educational agency back to a lineal descendant of the founder. Divesting the writ petitioner of control over the the school is one thing while transferring it to another person is quite a different matter.

15. This Court cannot lose sight of the fact that the petitioner K.Rajaram is in his affidavit specifically alleged that the educational agency was transferred in his favour in the year 2009 only for a consideration. Applying Section 114 of the Indian Evidence Act, this Court finds the said allegation to be quite probable. It is not as if the petitioner was already running an established trust. Cases are not unknown when persons unable to run their institutions call upon another established body to take over theirs. Thiru.K.Rajaram does not seem to have any track record of public service. Therefore, there was no valid reason for transferring the educational agency in his favour. The petitioner must have obviously bought the school. That is why after making a show of running it for a few years, he chose to convert the school property into a piece of real estate.

16. Hence, this Court is of the view that the order transferring the educational agency to Thiru.N.Vasu cannot be supported. The order impugned in WP(MD)No.11731 of 2018 is quashed only to this limited extent. The learned Senior Counsel appearing for the private respondents pointed out that except the school building everything has been sold to private hands. Section 31(1) of the Tamilnadu Recognised Private Schools (Regulation) Act, 1973 reads as follows :

<https://hcservices.ecourts.gov.in/hcscservices/1> (1) Notwithstanding anything contained in any other law for the time being in force or in any deed,



document or instrument having effect by virtue of such other law:-

(a) no property of a private school, shall except with the previous permission in writing of the competent authority, be transferred by way of sale, exchange, mortgage, charge, pledge, lease, gift or any other manner whatsoever; and

(b) if any such property is transferred without such permission, the transfer shall be null and void.

(2) The competent authority may -

(a) grant the permission under clause (a) or subsection (1) if the transfer is made in furtherance of the purposes of the private school or of similar purposes approved by the competent authority and the assets resulting from the transfer are to be wholly utilized in furtherance of the said purpose; and

(b) when granting such permission, impose such conditions as it deems fit, to ensure that such assets are wholly utilized in furtherance of such purposes; but a contravention of any such condition shall not invalidate the transfer."

17. In this case, it is beyond dispute that the competent authority has not given any permission in writing for transfer the school properties. Hence, the transactions made vide sale deed document Nos. 5216/2013, 5217/2013, 5218/2013 and 5219/2013 are null and void. The Sub Registrar, Bodinayakanur is directed to make an entry in the encumbrance register about the declaration now made in these writ proceedings with regard to the nullification of the aforementioned transactions. The District Elementary Educational Officer, Theni District is also directed to resume possession of the lands in question by clearing the encroachments/encroachers by taking police assistance. The jurisdictional police authority is directed to render assistance to the education department to resume possession of the lands belonging to the Pangajam Middle School, Bodinayakanur, Theni District.

18. This Court has already held that the school shall continue to remain under the Direct Payment System. Since Thiru.K.Rajaram by his conduct has rendered himself unfit to be the educational agency, it is open to the education department to move the government to work out an appropriate arrangement for the continued running of the school. The order passed by the competent authority bringing the school under Direct Payment System is sustained. The order divesting the petitioner of the control over the school is also upheld. However, transferring the school to the government in favour of N.Vasu who is a member of A.S.Subban Chettiar family is set aside. The alienations made by Thiru.K.Rajaram vide documents Nos. 5216/2013, 5217/2013, 5218/2013



and 5219/2013 on the file of the Sub Registrar, Theni are declared null and void. The department will take further action in the matter as per the provisions of the Tamilnadu Recognised Private Schools Regulations Act, 1973.

19. In the result, WP(MD)No.3403 of 2017 is dismissed and WP (MD)No.11731 of 2018 is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Elementary Educational
Officer,
Theni District, Theni.

2. The Assistant Elementary Educational
Officer,
Bodinayakkanur, Theni District.

+2 cc to Mr.B.Brijesh Kishore , Advocate SR.No.51832

+1 cc to Mr.K.Ragatheeshkumar , Advocate SR.No.51838

+1 cc to Mr.H.Thayumanasamy , Advocate SR.No.52116

skm

WP (MD) Nos.3403 of 2017 & 11731 of 2018

and

WMP (MD) Nos.2773 of 2017 & 10660 of 2018

04.03.2019

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