



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P. (MD) No.22863 of 2018

and

W.M.P. (MD) No.20753 of 2018

1.R.Krishnammal
2.K.G.Kothainayagi

... Petitioners

Vs.

1.The Principal Secretary,
Elementary School Educational Department,
St.George Fort,
Chennai.

2.The Director of Elementary Education,
Directorate Office,
Elementary School Educational Department,
Chennai.

3.The Joint Director (School Elementary Education),
Tamil Nadu School Elementary Education Department,
Chennai.

4.The District Elementary Educational Officer,
Opp.to Rathna Theater,
Tirunelveli 627 002.

5.Ganeshamurthy

6.The Head Master,
Ganesamoorthy Middle School,
Kurichi, Palayamkottai,
Tirunelveli.

... Respondents

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 to invoke the powers under Section 53-A of the Tamil Nadu Recognized Private School Regulation Act, 1973 and to appoint a Special Officer to administer the Ganesamoorthy Middle School at Kurichi, Palayamkottai, Tirunelveli District by considering their representation dated 20.10.2018 and pass appropriate order within a time stipulated by this Court.



For Petitioner : Mr.V.Meenakshi Sundaram
For Respondents: Mr.Karuppasamy, G.A.for R1 to 4
Mr.G.Prabhu Rajadurai, for R5
No appearance for R6

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ORDER

The prayer in the Writ petition is for a Writ of Mandamus, directing the respondents 1 and 2 to invoke the powers under Section 53-A of the Tamil Nadu Recognized Private School Regulation Act, 1973 and to appoint a Special Officer to administer the Ganesamoorthy Middle School at Kurichi, Palayamkottai, Tiunelveli District by considering their representation dated 20.10.2018 and pass appropriate order within a time stipulated by this Court.

2.Heard Mr.V.Meenakshi Sundaram, learned counsel for the petitioner, Mr.Karuppasamy, learned Government Advocate appearing for the respondents 1 to 4 and Mr.G.Prabhu Rajadurai, learned counsel appearing for the fifth respondent.

3.There has been a dispute between the petitioners and the private respondents with regard to the right of inheritance of the estate or properties of one Kandasampillai, who among other things has established a school called Ganesamoorthy Middle School at Kurichi, Palayamkottai, Tirunelveli District, which has been functioning with a recognition of the Education Department and also with the aid of the state Government.

4.Insofar as the dispute with regard to the properties are concerned, parties approached the competent civil Court by filing O.S.No.177 of 1998 before the II Additional Sub Court, Tirunelveli, where there has been a decree in favour of the petitioners. As against which, the private respondent filed appeal suit in A.S.No.77 of 2004 on the file of the I Additional District Court, Tirunelveli, which went against the petitioners. As against which, second appeal was filed and the same was also dismissed against the petitioners and a review, thereafter, was filed and simultaneously, SLP also was filed before the Hon'ble Supreme Court and thereafter, the matter has been remitted back for rehearing at the First Appellate Court stage and accordingly, the First Appellate Court in A.S.No.77 of 2004 i.,e before I Additional District Judge, Tirunelveli, passed a preliminary decree on 18.01.2018.

5.In the said preliminary decree, among other things, there has been finding and declaration insofar as relates to, who shall constitute the Educational Agency / School Committee to manage the 5th respondent school.

6.The relevant portion of the order passed by the First Appellate Court in the said Appeal Suit by way of preliminary decree reads thus -

"(b)any other private school, means any person or body

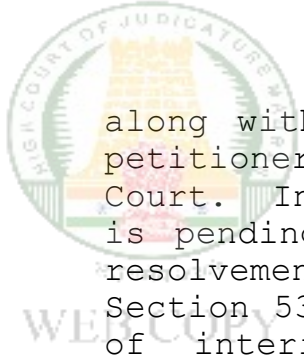


of persons permitted or deemed to be permitted under this Act to establish and maintain such other private school.

and as per the above Act the Educational Agency makes application for permission to establish a private school under Section 5 and 5-A of the Act. A change education agency requires prior permission under Section 8 of the Act for the Competent Authority and the educational agency is bound by the actions of the School Committee as per Section 18(2) of the Act and the educational agency is represented as Rule 12 of the Tamil Nadu Private School (Regulation) Rules, 1974. In case of dispute as to the constitution of educational agency or dispute as to who should be the real educational agency has to be referred under Section 53A of the Act. But here is the case already the dispute regarding educational agency lies before this Court and there is no bar to entertain such a suit and I have already decided that Will is not proved and hence the defendants 1 to 3 / appellants and the respondents 1 to 5 and 10 to 11 are to be held Educational Agency having regard to the decision above."

7.As against the said preliminary decree, the private respondent filed Second Appeal in S.A.No.275 of 2018 before this Court, where notice has been ordered and it is pending without interim stay of the operation of the preliminary decree dated 18.01.2018 referred to above. Therefore, the fact remains that, the Appellate Court decree dated 18.01.2018 in A.S.No.77 of 2004 is in operation insofar as the issue raised in this Writ petition is concerned, inasmuch as, the preliminary decree, under which, the appellate Court declared that the Educational Agency of the institution concerned, would consist of both the petitioners as well as the private respondent, who are the parties before the civil Court. In consonance with the said declaration of the civil Court, the management of the school must be in the hands of the Educational Agency consisting of both groups. However, the management continues at the hands of the private respondents excluding the petitioners. Therefore, in that circumstances, the petitioners filed with this Writ petition with the aforesaid prayer, requesting this Court to interfere in this matter to give a direction to the official respondents to invoke Section 53 A of the Tamil Nadu Recognized Private Schools Regulation Act, 1973, by appointing a special officer or interim administrator to manage / administer the school as an interim arrangement till a final decision is taken in this regard by the competent civil Court.

8.I have heard the learned counsel appearing for the petitioners, who would submit that, in view of the said decree passed by the First Appellate Court, dated 18.01.2018 and in view of the provision of the Section 53A of the Act referred to above, the petitioners also are entitled to participate in the management



along with the private respondents. Therefore, exclusion of the petitioners would run contra to the decree passed by the civil Court. In such circumstances, when there has been a dispute, which is pending before the civil Court and there is no likelihood of resolvment in such dispute, the Education Department can invoke Section 53A of the Act and appoint an interim administrator by way of interim arrangement till a final arrangement is made. Therefore, what has been declared by the civil Court has to be implemented in letter and spirit by the Educational Authorities. Therefore, they can very well be directed to appoint an interim administrator under the said provision of the Act. Hence, the petitioners are entitled to seek for a Mandamus, as has been prayed for, he contended.

9.Per contra, the learned counsel appearing for the private respondent would contend that, the suit filed between the parties and what has been decided by way of preliminary decree by the First Appellate Court, is nothing but private dispute between the petitioners and the contesting private respondent and in this regard, the preliminary decree, especially, the declaration made in respect of the educational agency of the school concerned, cannot be executed by the petitioners by filing this Writ petition and seeking for a Mandamus to the officials respondents to invoke Section 53A of the Act.

10.The learned counsel would further submit that, Section 53A of the Act, relevant only in the absence of making any interim arrangement when there is a request to that effect pending before the competent civil Court. Herein the case in hand, no such issue is pending before the competent Court and the preliminary decree is subject to the final decree where the First Appellate Court at paragraph No.31 of the preliminary decree judgment has specifically stated that, with regard to the administration of the school, whether it is by way of rotation or other means, can be decided only at the time of final decree and therefore, a final decree would be made, where the mode of administration of the school, can be decided by the very same First Appellate Court. Till such time, no such interim arrangement need to be made and in fact, the official respondents cannot invoke Section 53A of the Act, to make any such interim arrangement till the final decree is made. In support of his contention the learned counsel relied upon paragraph No.31 of the said preliminary decree judgment referred to above, which reads thus -

"31.So far as the direction regarding administration of school whether by means of rotation or by other means can be decided at the time of Final Decree proceeding or to be decided in any other alternative mode and so far as the receipts and withdrawals pending is relegated to final decree proceedings."

11.The learned counsel also relied upon a Division Bench

judgment of this Court reported in **1994(1) LW 506 in the matter of A.Karuppiah Pillai and 3 others Vs. District Educational Officer and others.** The learned counsel relied upon the following passage of the said judgment:

"We are now concerned with Sub-Section (2) of S.53-A. It is not disputed that there is a dispute relating to the Constitution of educational agency, pending before the Civil Court. As per Sub-Section (2) of S.53-A, the State Government is entitled to exercise the power and nominate an officer to discharge the functions of the educational agency, pending the decision of the Civil Court on a dispute referred to it under Sub-Section (1) or making an interim order by the Civil Court for the running of a private School. Sub-Section (1) enables a person interested in the educational institution to refer the dispute to a Civil Court having jurisdiction over the institution relating to the constitution of any educational agency or as to whether any person or body of persons is an educational agency in relation to any Private School or as to the constitution of a School Committee or as to the appointment of Secretary of the School Committee. In the instant case, the dispute relates to constitution of educational agency in respect of which the suit has been filed. It is no doubt that the context in which the expression 'may' in Sub-Section (2) of S.53-A of the Act, it is coupled with duty and it has to be exercised when there is a dispute relating to the matters touching the very administration of a Private School, which dispute, if allowed to continue would seriously affect the very teaching in the School and thereby the interest of the students will suffer and more so, when there is no likelihood of the Civil Court deciding the suit early or making an interim arrangement for running the Private School pending the suit, it becomes obligatory for the State Government to nominate an officer to discharge the functions of the educational agency, the School Committee and the Secretary as the case may be. It is to ensure that during the interregnum, viz., pending decision in the suit or making an arrangement by the Civil Court for running the School, the Legislature has thought it fit to empower the State Government to nominate an Officer to discharge the function of an educational agency, the School Committee or the Secretary as the case may be in relation to the Private School concerned pending decision of the Civil Court, when a dispute is referred to it or pending making an interim arrangement by the Civil Court for the running of the Private School. Of course, it may depend upon the facts and circumstances of each case whether the State Government should immediately exercise the power or to wait the decision of the Civil or the interim arrangement to be made by



the Civil Court for running the School. If there is going to be an undue delay, it would cause damage to the educational institution affecting the teaching and thereby the interests of the students will be affected, the State Government should act and exercise the power and pass an order nominating an officer to discharge the functions of the educational agency. Of course nomination of such Officer would come to an end once the suit is decided or an interim arrangement is made by the Civil Court for running the School. In the instant case, as there is already a suit filed and an application for interim arrangement is also filed by the plaintiff therein, and as any order passed by the State Government nominating an officer to discharge the functions of the educational agency would be operative only pending the decision of the Civil Court on the dispute referred to it on making of an interim arrangement by the Civil Court for running the School and as the application filed in this regard in the suit can be directed to be decided within a short period, we consider it appropriate to direct the Civil Court to take up the application on file for making an interim arrangement by the Civil Court for running the Private School in question and decide the same within a month, instead of directing the Government to immediately take up the matter and nominate an officer to discharge the functions of the educational agency, as that order has to cease to operate, if ultimately the Civil Court were to make an interim arrangement for running the School".

12. By relying upon the said judgment, the learned counsel would contend that, if at all any issue for making interim arrangement is pending before the competent civil Court and there has been any undue delay in making such arrangement in order to have a management of the institution where there is a vacuum to manage the institution, then only, the educational authorities can press Section 53A of the Act into service and appoint an interim administrator during the interregnum by way of interim arrangement. However, in the case in hand, according to the learned counsel, no such situation arises as making an interim arrangement was not an issue before the competent civil Court and the civil Court also said, the mode of administration of the school by rotation or otherwise can be decided in the final decree proceedings and till such time, already the contesting private respondent has been administering the school and absolutely there is no vacuum in the said administration and therefore, in these circumstances, the invocation of the Section 53A of the Act does not arise and hence, the prayer sought for in this Writ petition cannot be granted, he contended.

13. After hearing both sides, this Court poses the question to both the learned counsel appearing for the parties that, as per



the civil Court preliminary decree, since the educational agency consisting of both the groups having been declared by the civil Court, whether both parties could agree to have a joint administration of the school. Though the learned counsel appearing for the petitioner agreed for such arrangement, strictly in consonance with the civil Court decree, the leaned counsel appearing for the private respondent does not agree for such arrangement. According to the learned counsel for the contesting respondent, since there is no good relationship between the petitioners and private respondent it is thoroughly impossible to have a joint management consisting of both the groups and therefore, such arrangement is not possible.

14.I have considered the said submission made by the learned counsel appearing for the parities and also I have heard the learned Government Advocate appearing for the officials respondents, who would submit that, as per the power vest with the Government ie., Education Department under Section 53A of the Act, whatever decision to be made by this Court or direction to be issued, the Education Authorities would act upon accordingly. Having regard to the aforesaid factors, this Court is of the view that, since the decree passed by the First Appellate Court, which was so far has not been modified, changed, altered or tinkered by higher Court even though there has been a Second Appeal filed by the contesting respondent pending before this Court in S.A.No.275 of 2018, it is to be noted that, there is no interim order staying the operation of the preliminary decree of the First Appellate Court.

15.More over, in a partition suit, once a preliminary decree is passed, parties have to act upon as per the decree, then only, at the time of final decree, after having noted down, the parties, who acted upon as per the preliminary decree, final decree could be passed.

16.In this context, apart from the other things, insofar as the management of the school is concerned, it has to be done by the Educational Agency, which has been explained in the said Act and the said Educational Agency has to form a school committee, and the powers and functions of these agency, committee and Secretary of the private aided school has been clearly demarcated under the Act.

17.In the given circumstances, in view of the said provisions of the Act, if the Civil Court already declared what shall be the composition of the educational agency and the said decree is in operation, the school shall be managed only by such educational agency not by any other person or body of persons. However, in view of the stand taken by the private respondent in this Writ petition, there is no scope for having a joint management of both the groups join together and to form an education agency as per the civil Court decree and in such a situation, the present management of the contesting respondent, cannot be construed as a



management of the School, within the meaning of or in consonance of the civil Court decree. Therefore, in the eye of law, this Court feels that the present management cannot be considered to be a management under the Act, and therefore, for the purpose of invocation of Section 53A of the Act, there is vacuum in the administration of the school concerned and accordingly, all ingredients mentioned for the invocation of Section 53A of the Act, is very well available in the present case.

18. In this context, the principle laid down in the Division Bench judgment, very much relied upon by the learned counsel appearing for the contesting respondent, cannot be made applicable to the facts of the present case, as in that case, there was no decision by the civil Court. Here there is a decree by the competent civil Court, which is in force. Therefore, the Division Bench decision cited by the learned counsel for the contesting respondent would not be useful for advancing his case.

19. Since there is a vacuum in the eye of law, in administering the school concerned and there is no likelihood of rapprochement between the two groups to have a joint management as per the decree of the civil Court, having no other option, the exact situation contemplated for invocation of Section 53A of the Act, is very much available in the present case. Therefore, the official respondents can very well invoke Section 53A of the Act and can appoint an interim administrator of the school till a final arrangement is made.

20. In that view of the matter, this Court has no hesitation to hold that the petitioners can seek indulgence of this Court to give a direction to the official respondents ie., Education Department, to invoke Section 53A of the Act and appoint an interim administrator.

21. Resultantly, this Writ petition is disposed of with the following order:

That the official respondents especially, the respondents 2 and 3 are hereby directed to appoint a special officer as an interim administrator to discharge the functions of the educational agency of the school concerned as an interim arrangement within the meaning of Section 53A Sub section 2 of the Act, within a period of 2 weeks from the date of receipt of a copy of this order. On such appointment, the officer / interim administrator so nominated, shall take in-charge of the administration of the school and such interim administrator shall not take any major decision with regard to the appointment of teaching and non teaching staff in the school without the consent of this Court.

22. This arrangement of administration by officer / interim administrator, to be nominated by the respondents 2 and 3, shall be lasting only till the final arrangement is made pursuant to the final decree to be passed by the First Appellate Court or any



interim or final order is passed by this Court in the pending S.A.No.275 of 2018.

23.With these direction the Writ petition is ordered accordingly. No costs. Consequently, connected W.M.P.is closed.

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Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Principal Secretary,
Elementary School Educational Department,
St.George Fort,
Chennai.
- 2.The Director of Elementary Education,
Directorate Office,
Elementary School Educational Department,
Chennai.
- 3.The Joint Director (School Elementary Education),
Tamil Nadu School Elementary Education Department,
Chennai.
- 4.The District Elementary Educational Officer,
Opp.to Rathna Theater,
Tirunelveli 627 002.

+1CC TO MR.D.NALLATHAMBI, Advocate Sr. No.75555
+1CC TO MR.G.PRABHU RAJA DURAI, Advocate Sr. No.75760
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 75734

W.P. (MD) No.22863 of 2018
16.07.2019

DB(CO)

TR (28.08.2019) 9P 8C