



hBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD) .No.20224 of 2021

and

W.M.P(MD) .Nos.16892 and 16894 of 2021

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Nehruji Nursery and Primary School (Reg.No.3343)

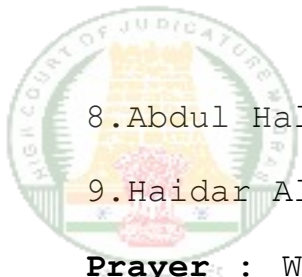
Represented by the Secretary and Correspondent,

Mr.S.M.H.Mohammed Yacoop.

... Petitioner

Vs .

- 1.The Government of Tamil Nadu,
Rep. by its Secretary,
Department of School Education,
Fort St.George,
Chennai-600009.
- 2.The Director of School Education,
College Road,
DPI Compound,
Chennai-600006.
- 3.The Chief Educational Officer,
Ramanathapuram District,
Ramanathapuram.
- 4.The District Educational Officer,
Mandapam,
Ramanathapuram.
- 5.The Block Educational Officer,
Thiruppullani Block,
Thiruppullani,
Ramanathapuram District.
- 6.The Tashildar,
Taluk Office,
Keezhakarai,
Ramanathapuram District.
- 7.The Divisional Superintendent of Waqf,
Office of the Divisional Waqf Board,
176/11, 1st Floor,
Therpasayanam Road,
Vellipattinam,
Ramanathapuram-623504.



8.Abdul Halik

9.Haidar Ali

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records of the impugned order passed by the fourth respondent in Na.Ka.No.2099/A3/2021 dated 29.10.2021 and quash the same as illegal and arbitrary.

For Petitioner : Mr.T.Lajapathi Roy
For Mr.A.Balaji
For R1 to R6 : Mr.D.Gandhiraj
Special Government Pleader
For R8 and R9 : Mr.R.Anand

ORDER

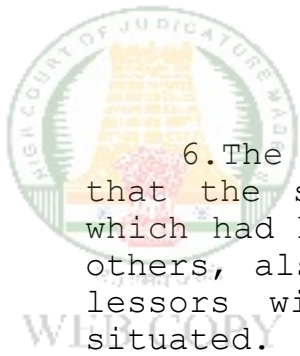
The Writ Petition has been filed in the nature of Certiorari, seeking records of order passed by the fourth respondent/District Educational Officer, Mandapam, Ramanathapuram District in Na.Ka.No.2099/A3/2021, dated 29.10.2021 and to interfere with the same.

2.Even before examining the issues on merits, I must express that this is a very unfortunate issue which has come up before the Court. It would have been for better had the petitioner and the eighth and ninth respondents, who had an opportunity of appearing in a peace committee meeting called by the jurisdictional Tashildar had, with prudence, decided to settle the issues among themselves rather than dragging each one of them to various forums.

3.Quite apart from the present Writ Petition, where the status of the petitioner and the status of the eighth and ninth respondents have been called in question, there have been allegations and counter allegations made by the petitioner and by the eighth and ninth respondents as against each other in civil Court and before the Police Officials.

4.There is a suit pending in O.S.No.4/2021, on the file of the District Munsif Court, Ramanathapuram, which suit had been instituted by the petitioner herein, against the Mayakulam Jamia Masjid Administrative Committee and primarily, against the eighth and ninth respondents herein.

5.The entire issue surrounds the management of a school which actually is a primary school for students from LKG to fifth standard, in which, as on date, about 300-400 students are studying, Nehruji Nursery and Primary School at Mayakulam, Keezhakarai, Ramanathapuram District.

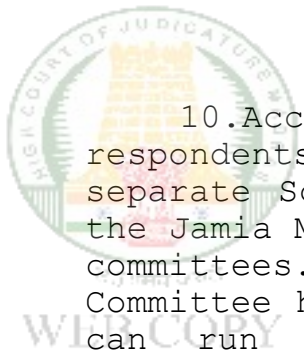


6.The contention of the learned counsel for the petitioner is that the school was originally started on the basis of a lease, which had been executed in favour of the petitioner herein by among others, also the eighth respondent/ Abdul Halik, who was one of the lessors with respect to the land covered where the school is situated.

7.It is contended that the land is controlled by the Wakf Board and a Masjid Committee is running the school. Be that as it may, these are disputed issues and I am not inclined to examine those particular facts at the particular moment. The lease was for thirty years. The claim of the petitioner is that he had expended substantial amounts in developing the infrastructure of the school and in bringing up the reputation of the school among the local people thereby ensuring that the students strength of the school had increased from around 30 to 300-400 as on date. According to the learned Counsel, the petitioner had also inducted teachers of quality to impart education for the students.

8.It is the further contention of the learned Counsel, that, after examining the growth of the school over a period of years, the eighth and ninth respondents appear to have taken a decision to wrest back the school from the petitioner herein. Naturally, the petitioner was aggrieved and therefore the transition of management from the petitioner to the hands of the eighth and ninth respondents can never be a smooth transition. The petitioner insisted that he had expended substantial amount of money, time and effort over the development of the school and was naturally aggrieved by the acts of the eighth and ninth respondents in attempting to take back the management of an established institution.

9.Thus, the events relating to physical taking over of the premises had led to a complaint being lodged before the police officials and thereafter, a suit which was the first judicial proceeding, was filed before the District Munsif Court at Ramanathapuram District in O.S.No.4 of 2021. The pendency of the suit is now taken advantage by the learned Counsel for the petitioner and I shall examine that line of argument advanced a little later. The relief sought in the said suit was that the lease period is in existence and during the existence of the lease, the petitioner has a right to manage the school and such right should not be interfered with by the defendants therein. The entire right of the petitioner surrounds the lease deed which had been executed. The learned Counsel for the eighth and ninth respondents, on the other hand, disputed the contention of the petitioner that he had an existing right to control and manage and administer the school.



10. According to the learned Counsel for the eighth and ninth respondents, the property is a Wakf property and the school has a separate School Committee. The said School Committee is subject to the Jamia Masjid Committee. There are separate elections for the two committees. The Jamia Masjid also has its office bearers. The School Committee has its office bearers and these are the committees which can run the school and learned Counsel insisted that the administration cannot be vested with one single individual namely, the petitioner herein.

11. It has therefore been pointed out by the learned Counsel for the eighth and ninth respondents that necessary resolutions have been passed by the committee in the first place, calling in question the nature of administration done by the petitioner herein and questioning his bonafide and later, also forming a separate Committee to run the school. It has therefore been contended that wresting of the management was a lawful act pursuant to the decision taken by the Committee which has the controlling interest over the school and such controlling interest is not vested, according to the learned Counsel for the eighth and ninth respondents, with a single individual namely, the petitioner herein. The learned Counsel also pointed out that in this regard there was a Peace Committee Meeting held before the Tashildar and in that particular meeting, the petitioner and the eighth and ninth respondents along with the various other men whose opinions are looked upon with much respect, participated, and it was mutually decided that the eighth respondent, should be put in charge of the running of the school or in management of the school and this, was also an unanimous decision taken, in which, the petitioner specifically participated and appended his signature to such a decision. This decision was to be in place till the disposal of the suit, referred above.

12. The pendency of the suit was taken advantage in a round about manner by the petitioner herein. The learned Counsel for the petitioner placed reliance of Section 53A of the Tamil Nadu Recognized Private School Regulation Act, 1973. Section 53A of the said act is as follows:

"[53-A. Settlement of dispute as to Educational Agency, etc.- (1) Notwithstanding anything contained in Section 53, whenever any dispute as 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 the Secretary of the School Committee arises, such dispute may be referred by the persons interested or by the competent authority to the Civil Court having jurisdiction, for its decision.

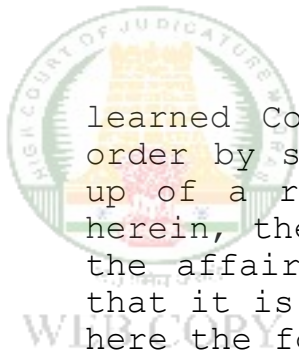


(2) Pending the decision of the Civil Court on a dispute referred to it under sub-section(1), or the making of an interim arrangement by the Civil Court for the running of the private school, the Government may nominate an officer to discharge the functions of the Educational Agency, the School Committee or the Secretary, as the case may be, in relation to the private school concerned.]”

13.This provision is a fall out of Section 53 of the said enactments, Section 53 provides a bar to Civil Court to entertain any question raised before it with respect to issues under the said Act but, as is always in every legislation, a small window or exemption is given and in this particular case, Section 53A provides such an exemption, namely that if there is a dispute with respect to the constitution of an educational agency, or with respect to whether any person or a body of a person is actually an educational agency the disputes relating to any private school or with respect to the constitution of a School Committee or with respect to an appointment of Secretary of the School Committee, may be referred to a Civil Court having jurisdiction.

14.This provision naturally indicates that prior to the institution of a suit in a civil forum, the conditions mentioned in Section 53 A which commences with non obstante clause, should be satisfied. This also indicates that if there is a dispute of the above said nature, such a decision should be referred by the person interested. Naturally this would mean that it is not an institution of a suit by one person as against the others seeking establishment of a right or questioning the denial of a particular right but reference to a Civil Suit by persons interested or by the competent authority to the Civil Court having jurisdiction, to render a decision. This provision is not actually an exception to Section 53. Section 53 restrains any individual from approaching a Civil Court with respect to any dispute relating to any of the issues in the Tamil Nadu Recognized Private Schools Regulation Act 1973. The Court is restrained from entertaining any suit under Section 53 but, under Section 53A a dispute can be referred to the Court for adjudication. Pending such adjudication of the dispute, which had been referred to a Civil Court, the Government can nominate an Officer. This aspect is very strongly pressed by the learned Counsel for the petitioner to indicate that it should only be a Government Official, who can be nominated to discharge the functions of the educational agency.

15.Placing reliance on this particular interpretation, the
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learned Counsel for the petitioner found fault with the impugned order by stating that under the impugned order, which was a follow up of a representation given under Section 53A by the petitioner herein, the ninth respondent had been given the authority to conduct the affairs of the School. The learned Counsel also pointed out that it is only the Government who can nominate such an official and here the fourth respondent, namely, the District Educational Officer had taken upon himself to nominate the ninth respondent. The impugned order is therefore questioned on both the grounds namely, the authority who nominated the ninth respondent and the choosing of the ninth respondent as an official to run the School itself.

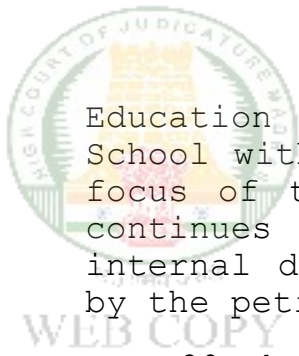
16.The learned Special Government Pleader, on the other hand, justified the impugned order by pointing the counter affidavit filed on behalf of the respondents and stating that due application of mind had been applied by the fourth respondent and thereafter, taking into account all the facts and circumstances and to avoid the dispute being further enlarged, the ninth respondent, who is not a party to the lease deed, had been nominated to run the school. The learned Special Government Pleader stated that even though, it may be, viewed from the eyes of the petitioner herein, that the eighth and ninth respondents are working hand in hand, still the ninth respondent is an entirely independent individual and therefore after taking a conscious decision, he had been nominated. With respect to the competency of the fourth respondent to so nominate the ninth respondent, in the counter affidavit which had been filed by the fourth respondent, it had been stated that under G.O.MS. No101/School Education Budget 1 Department, dated 18.05.2018, it had been provided as follows:

"The District Educational Officer, has been entrusted with powers to administer to regulate Nursery and self finance schools within his territorial jurisdiction which is known as Educational District."

17.It had also been stated that the said official has the power to renew the recognition of self financed pre-primary, primary and middle schools. It has therefore been justified by the fourth respondent that he is the competent authority to issue the order under challenge, and therefore it had been stated that the order had been passed by a competent authority and, and even if it is to be taken that the ninth respondent cannot come within the purview as an official, still he is an independent authority to administer the school.

18.I have considered the arguments advanced and perused the records.

19.It is evident that the Court should first ensure that the Petitioner School, namely, Nehruji Nursery and Primary School, now that the Government had taken a decision to open up the schools for physical attendance of the students, should be allowed to function.



Education must be imparted to the students who have joined the School with hope that education would be continuously imparted. The focus of the Court should therefore be to ensure that the school continues to impart education, without being hindered by the internal disputes in the management or control over the management by the petitioner / eighth and ninth respondents.

20.The fourth respondent had justified that he is the competent authority, who is empowered to pass such an order, whenever there is a dispute with respect to any educational agency. Under Section 53A of the said Act which has been extracted, *"till decision is taken by the Civil Court, the Government may nominate an Officer, to discharge the function of an educational agency."* In the suit which is now been filed by the petitioner herein, the Government has not been made as a party. The reference to the Government, seeking nomination of an official under Section 53A was on the basis of a representation given by the petitioner herein. The Government examined such representation and determined that there was a dispute and had taken a conscious decision to ensure that the management of the school does not suffer owing to the disputes and had nominated the ninth respondent.

21.This arrangement is only a temporary arrangement till the Civil Court takes a final decision on the issues raised before it. The institution of a Civil Suit itself, should be only with respect to the various disputes as enumerated under the first part of Section 53A of the Act.

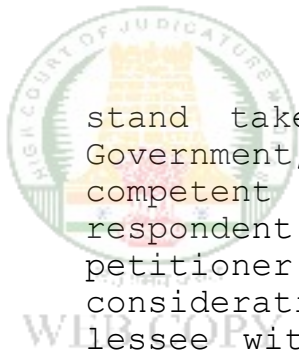
22.A persual of the plaint filed by the plaintiff reveals that the suit has been filed for permanent injunction restraining the eighth and ninth respondents primarily and everybody else or anybody else connected with them from interfering with the management of the petitioner till the period of lease exists. This naturally means that the petitioner has directly linked the lease which had been executed with the management of the school.

23.It is the contention of the petitioner that at the time when the lease was executed, the property was not a Wakf property. Now it is a Wakf property. The land where the school is situated certainly belongs, as on date to a Wakf. The Wakf should also be a necessary party to be heard before any dispute is decided with respect to the management of the school is concerned.

24.It is contended by the learned Counsel for the eighth and ninth respondents that there is a separate Jamia Masjid Committee and a separate School Committee which control the running of the School. The petitioner, however, claims exclusivity in running the school. Whether he can be granted such a right or not, is an issue which can be taken up for decision only by the Civil Court.

25.The competency of the fourth respondent, though called in question, is not given due credence by me, in view of the specific

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stand taken in the counter affidavit filed on behalf of the Government, justifying that the fourth respondent is indeed competent to pass such an order. The nomination of the ninth respondent probably has rubbed much salt into the wounds of the petitioner herein. But the petitioner must also take into consideration that the ninth respondent is neither a lessor nor a lessee with respect to the lease deed in question. The eighth respondent is one of the lessors, but not the ninth respondent. The ninth respondent is an independent party before this Court. The eighth and ninth respondents have been represented by the same Counsel, but, that would not mean that the ninth respondent cannot act independently.

26.I am conscious that, the institution of the suit itself is itself questionable and a further aspect arises whether such a suit can be termed as suit under Section 53A of the Act.

27.The second aspect is the representation given by the petitioner to the Government under Section 53 A of the Act. Once again it is stated that, pending the decision of the Civil Court, the Government can take a decision. That situation would arise only if the Government had also been made a party to the Civil Suit. If the Government had been made as a party to the Civil Court, then they could take a decision under Section 53 A to nominate an Officer.

28.The impugned order had been passed on a representation by the petitioner herein, to the Government. At any rate, an order had been passed. If it is to be examined more deeply then, the representation given by the petitioner itself would suffer as it is not a representation in accordance with Section 53 A of the Act. In the suit, the Government and the Wakf and the Committee have not been impleaded as parties. The suit is only to exercise a right, namely, having the right to continue to be in management, pending the lease deed. I would not interfere with the impugned order. Let the appointment of the ninth respondent continue as it is only an interim arrangement, pending the disposal of the suit.

29.It is fervently hoped that the petitioner and the eighth and ninth respondents would sit down and resolve the disputes among themselves in the interest of not only the management but also the smooth functioning of the school, and also in the interest of imparting quality education to the students, which should be their main focus.

30.There are also criminal cases filed by one party against other and but let me not enter into a discussion on the merits of the same as I am not called to so discuss. The order under challenge, in my opinion, does not suffer from any infirmity. Let the School continue to function in the interest of the students.



31.With the above observations, the Writ Petition is dismissed.
No costs. Consequently, the connected Miscellaneous Petitions are
closed.

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Assistant Registrar (P&A)

/ /2021

Sub Assistant Registrar(CS)

sn/lr

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Secretary,
The Government of Tamil Nadu,
Department of School Education,
Fort St.George, Chennai-600009.
 - 2.The Director of School Education,
College Road, DPI Compound, Chennai-600006.
 - 3.The Chief Educational Officer,
Ramanathapuram District, Ramanathapuram.
 - 4.The District Educational Officer,
Mandapam, Ramanathapuram.
 - 5.The Block Educational Officer,
Thiruppullani Block,
Thiruppullani,Ramanathapuram District.
 - 6.The Tashildar,
Taluk Office, Keezhakarai,
Ramanathapuram District.
- +1 CC to M/s.A. BALAJI, Advocate (SR-35293[F] dated 22/11/2021)
+1 CC to M/s.SPL GP (SR-35354[F] dated 22/11/2021)

W.P (MD) .No.20224 of 2021
19.11.2021

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