

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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LPA No.657 of 2021 (O&M)
Date of Decision: August 25th, 2021

Shambhu Dayal Modern School, Sonipat and another

...Appellants

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Shailendra Jain, Senior Advocate
with Mr. Sushil Jain, Advocate
for the appellants.

(PROCEEDINGS THROUGH V.C.)

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment dated 16.03.2021 passed by the learned Single Judge dismissing the writ petition preferred by the appellants, wherein directions were sought to the Chief Secretary to Government of Haryana-respondent No.1 to initiate inquiry/action against the administrators appointed from time to time by the District Registrar for management of the appellants-school for the illegal/wrongdoings committed by them leading to the appellants-school suffering huge losses between the period 12.06.2014 to 15.09.2016 and on assessment of the said losses, direct payment of compensation to the appellants for the losses occurred/incurred due to non-fulfillment of the statutory obligations/dues and for losses, which occurred on account of wrongdoings of the administrators during the said period and for granting permission to the appellants to sell part of the land owned by it to clear the Government dues/statutory liabilities and other legal liabilities.

2. Learned senior counsel for the appellants submits that in pursuance to the prayer made by the appellants for permission to sell an area of

2850 square feet of vacant land depicted in site plan appended as Annexure P-17 to discharge all the statutory liabilities, the same was accepted and an order dated 08.03.2018 was passed by the learned Single Judge. In pursuance to the said order, the amount of auction was kept in a separate account, which was opened by the appellants-society and thereafter, applications moved from time to time for release of the amounts to discharge their liabilities, were allowed. In the said process, time was consumed leading to incurring of additional statutory liabilities apart from fines and interest being imposed. This resulted in increase of the liabilities manifold.

3. Faced with this situation, appellants filed CM No.994-CWP of 2020 seeking permission to sell 13627.50 square yards of land belonging to the appellants as well as plot measuring 209 square meters in Sector-23, Sonapat in order to clear the Government dues/statutory liabilities/salary and retrenchment compensation etc. of the employees and the other outstanding dues. It was stated in the said application that the liability outstanding as on 10.01.2020 would be Rs.5 crore, which amount can be discharged by selling the land/plot as mentioned in the application. The reason for moving such an application was that the said land and the plot were attached in pursuance to the orders passed by the various statutory authorities for recovery of the dues, which were payable by the appellants under the various statutory provisions/awards/orders of the Courts and Tribunals. The said prayer of the appellants has not been accepted by the learned Single Judge instead the Court had proceeded to decide the writ petition itself.

4. He asserts that the learned Single Judge has failed to appreciate

that in the absence of the money available in the hands of the appellants, they would not be in a position to discharge their liabilities and for some awards of a meagre amount passed in favour of the workmen, big chunk of land has been attached. The said assets of the appellants, thus, cannot be liquidated. The intention of the appellants for moving this application was to discharge their liabilities by sale of these assets.

Prayer has thus been made for setting aside the impugned judgment dated 16.03.2021 passed by the learned Single Judge and allowing the prayer of the appellants for selling 13627.50 square yards of land belonging to the appellants as well as plot measuring 209 square meters in Sector-23, Sonapat, so that the statutory liabilities can be discharged.

5. We have considered the submissions made by learned senior counsel for the appellants and with his assistance, have gone through the impugned judgment as well as the pleadings but do not find ourselves in a position to accept the prayer of the appellants.

6. The facts as have been put forth by the counsel for the appellants need not be elaborated in details as the plea which has been pressed into service in the present appeal is limited to the extent of permitting the appellants to sell 13627.50 square yards of land belonging to the appellants as well as plot measuring 209 square meters in Sector-23, Sonapat to discharge the statutory liabilities and other liabilities in the form of various dues payable at the hands of the appellants by selling the above-mentioned property which has been attached in pursuance to the various orders passed either by the statutory authorities or the Courts.

7. The position which emerges from the pleadings is that the appellant-school is being run by Shambhu Dayal Modern High School

Society, Sonapat-appellant No.2, which was registered in the year 1974 under the Societies Registration Act, 1860 and is now governed by the Haryana Registration and Regulation of Societies Act, 2012 (hereinafter referred to as the 'Societies Act') and the rules framed therein. Dispute arose between the members of the management regarding election of the governing body, which was held in the year 2011-12. The dispute could not be settled leading to the District Registrar of Societies, Sonapat-respondent No.7 exercising the powers vested in him under the Societies Act, appointed the Sub Divisional Magistrate, Sonapat as the Administrator of the school on 12.06.2014 (Annexure P-3), which arrangement continued up to 16.09.2016.

8. Fresh elections of the managing committee were held and a new managing committee was elected, which took over charge of the society as well as the school on 16.09.2016 from the Administrator. It is at this stage that it came to light, according to the appellants, that the administrators, who were appointed from time to time in pursuance to the orders passed by the District Registrar of Societies-respondent No.7, had failed to discharge their official functions in a proper manner leading to huge financial losses of the school. Even the statutory liabilities towards the Employees' Provident Fund Organization as also the Employees' State Insurance Corporation were not deposited leading to the piling up of the dues resulting in the liability to pay not only the principal amount but the interest/penal interest and the penalty thereon.

For this reason, the first prayer was made by the appellants for taking action against the administrators and to pay them the compensation.

Since the learned Single Judge has, while passing the impugned judgment,

left it open to the appellants to take recourse/remedies as may be available to the appellants in accordance with law for proving any damages suffered by them due to the alleged malfunctioning of the administrator during the period 2014-2016, counsel for the appellants has not made any grievance in this regard.

9. With regard to the other plea raised by the appellants of permitting sale of the land owned by the petitioners-society by de-attaching these properties so as to discharge their liabilities are concerned, the learned Single Judge has, in the light of the various orders/awards passed by the authorities/Courts and in execution thereof, the attachment of the properties owned by the appellants, not interfered in the matter. The reason assigned for non-exercise of such discretionary power under Article 226 of the Constitution has been justified by observing that the appellants while seeking permission to sell the land is actually taking preemptive and sweeping orders from this Court, which, in the process, would lead to override all or any of the orders which may have been passed by the authorities/Courts in exercise of their statutory function/duty to discharge the various liabilities and claims fructified against the appellants, which in our opinion is fully justified.

10. This Court can exercise its discretionary writ jurisdiction under Article 226 of the Constitution for which the determinative factor would not be merely the facts and circumstances of the case but also the statutory provisions governing it. By now it is well settled that existence of an alternative remedy is not an absolute bar to the maintainability of the writ petition nor can it be said that the High Court can, under no circumstances, exercise its powers under Article 226 of the Constitution where an

alternative remedy is available, however, the High Court would refrain itself from exercising such jurisdiction, where there exists an alternative remedy much less a statutory one. Things would be altogether different when such statutory remedy/power has already been availed/exercised and/or the proceedings under the available applicable statutory provisions is/are pending before the competent Authority/Court having jurisdiction to decide the issue/lis.

Despite the above, certain exceptional circumstances where the writ petition can be entertained, can be where (i) there has been a breach of fundamental rights; (ii) violation of principles of natural justice; (iii) in excess of jurisdiction and/or (iv) a challenge to the *vires* of the statute or delegated legislation. None of the above exceptions have been established or even pleaded in the writ petition preferred by the petitioners. Under these circumstances, the decision of the learned Single Judge not to exercise its extraordinary writ jurisdiction cannot be said to be an act of non-exercise of its jurisdiction.

11. Now coming to the present case, the statutory liabilities i.e. the dues as claimed by the Employees' Provident Fund Organization as well as the Employees' State Insurance Corporation are concerned, the said amounts have been disputed by the appellants and, therefore, it cannot be said that the said liabilities are admitted or can be said to be undisputed, which could lead to discharging the liability by the sale proceeds of the land which is now being sought. The other statutory dues are also pending pertaining to the salary/retrenchment amount dues of the employees, apart from the undischarged liabilities arising from the awards, which have been passed by the Educational Tribunal and Labour Court(s) from time to time.

Various orders have been passed by different authorities in the different proceedings, which have been initiated either by the employees which include teaching as well as non-teaching and the different authorities for discharge of the statutory duties, which the appellants have failed to discharge.

12. This Court in exercise of its writ jurisdiction would not render the orders which have been passed by the competent authorities/Courts in accordance with law *non est* or ineffective when admittedly the appellants have specific alternate remedies available to them. What the appellants call upon this Court is that it should exercise its writ jurisdiction under Article 226 of the Constitution of India to direct release of the land of the appellants, which stands attached under various orders passed by the competent authorities/Courts then undertake to carry out an exercise of determination of the exact extent of liability either statutory or otherwise and then proceed to permit the release of the amount after selling the above referred to land and plot through auction from such sale proceeds. This in the considered view of this Court would not be permissible in exercise of its writ jurisdiction.

13. Jurisdiction under Article 226 of the Constitution of India cannot be used for circumventing the statutory provisions or to avoid the process of law nor can it be used as a shortcut to scuttle the mandate of the statute. Clubbing up of various proceedings which have been initiated under different statutes for different liabilities leading to the consolidation of the adjudication and then exercising its extraordinary powers and permit discharge of such liabilities, which had accrued to the appellants would amount to usurping the power and statutory duties which have been

conferred upon the Authorities/Courts under the different statutes which function independent of each other for different purposes relating to different cause of action. It may be added here that the claimants are all different persons/entities.

14. In the considered opinion of this Court, the judgment passed by learned Single Judge being in accordance with law and based upon factual matrix, do not call for any interference in the present appeal.

We, therefore, dismiss this appeal.

(AUGUSTINE GEORGE MASIH)
JUDGE

August 25th, 2021
Puneet

(ASHOK KUMAR VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes