

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.28235 of 2017 (O&M)

Date of Decision:16.03.2021

Shambhu Dayal Modern School and another

.....Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Shailender Jain, Sr. Advocate
with Mr. Sushil Jain, Advocate
for the petitioner.

Mr. Sumit Gupta, Addl.AG., Haryana
for respondents no.1 and 2.

Mr. Vikas Suri, Advocate
for respondent no.3.

Mr. Rajesh Hooda, Advocate
for respondent no.4.

Mr. Ram Pal Verma, advocate
for respondent.12.

Mr. Gaurav Kumar, Advocate
for Mr. Deepak Jindal, Advocate
for applicants (in CM-2015-CWP of 2019 and CM-904-CWP of
2021).

LISA GILL, J(Oral).

This matter is being taken up for hearing through video
conferencing due to outbreak of the pandemic, COVID-19.

Petitioners, Shambhu Dayal Modern School, Gohana Road,
Sonepat and Shambhu Dayal Modern High School Society, have filed this
writ petition seeking a direction to respondent no.1 to initiate enquiry/action
against allegedly defaulting administrators who were appointed by
respondent no.7 i.e., District Registrar of Societies, Sonepat (Industries and

Commerce Department), Sonapat, between the period 12.06.2014 to 15.09.2016 as it is alleged that the petitioner school suffered huge loss due to failure on part of the administrators to perform their duties diligently. It is further prayed that permission be granted to the petitioner to sell part of the property belonging to the petitioner which stands attached in order to discharge statutory and other liabilities. Petitioner also seeks a writ in the nature of prohibition against respondents no.1 to 7 to restrain them from taking any punitive action against the petitioner-School for recovery of the outstanding amount towards its statutory liabilities till final adjudication of this writ petition. Compensation for the loss incurred by the petitioner due alleged non-fulfillment of statutory obligation/duties on the part of the administrators, is also sought.

Brief facts necessary for adjudication of the case are that the petitioner school is run by petitioner no.2-Shambhu Dayal Modern High School Society, Sonapat, which was registered in the year 1974 under Societies Registration Act, 1860 and is presently governed by the Haryana Registration and Regulation of Societies Act, 2012 (for short 'Societies Act') and the Rules framed there under. Dispute arose regarding election of the governing body held in the year 2011-12. Respondent no.7-District Registrar, while exercising power vested in him under the Societies Act, appointed the Sub-Divisional Magistrate, Sonapat as Administrator of the school on 12.06.2014, Annexure P-3. Following Administrators looked after the administration of the school for the period as mentioned hereunder:-

1. Sh. Amit Khatri 12.06.2014 to 09.02.2015.
2. Ms. Amma Tasneem 10.02.2015 to 20.10.2015.
3. Sh. Shaleen Rohilla 21.10.2015 to 07.12.2015.
4. Sh. Nishant Yadav 08.12.2015 to 15.09.2016.

It is stated in the writ petition that earlier there were about 4000

students being imparted education in the school, but the number decreased abysmally due to improper functioning of the Administrators. Prior to appointment of the administrator, the petitioners decided to retrench surplus teaching as well as non-teaching staff by abolishing certain posts. About 38 writ petitions were filed in the year 2013 challenging action of the management abolishing the said posts and consequential termination. The said writ petitions were disposed of on 20.09.2017, Annexure P-2, by relgating the petitioners therein to approach the Educational Tribunal and avail the remedy available to them. A number of writ petitions had admittedly been filed by the teaching and non-teaching staff.

Election of the managing committee was held and the elected managing committee took over charge of the society as well as school from the Administrator on 15.09.2016. It is averred in the writ petition that on account of default on the part of Administrators, contribution under the ESI Act was not deposited. Liability also arose under the EPF Act. Land measuring 19 K, 13 Marla in killa No. 8/27/1, 27/2, belonging to the petitioners, it is stated was attached by the Tehsildar, Sonapat on 13.10.2017 on account of recovery of Rs.1,52,32,287/- along with interest at the rate of 9% of the amount of gratuity to be paid to the employees of the school. A proposal to sell 2850 sq. yards of land was set up in the writ petition while submitting that the entire liability of the petitioners could be discharged, in case permission is afforded to sell the said land, which admittedly stood attached in the proceedings detailed in the writ petition.

Evidently, primary prayer raised in the writ petition even at the initial stage, was for permission to sell the attached property of the petitioners, purportedly to discharge its statutory liabilities. Similar is the prayer at the time of final arguments. It is relevant to note that at the initial

stage, petitioner had set-forth a proposal for sale of 2850 sq. yards land as depicted in the site plan, Annexure P-17.

Notice of motion was issued in this case on 19.01.2018 by a Coordinate bench while noting contentions of the petitioner, which read as under:-

“This petition is preferred by the Shambhu Dayal Modern School, Gohana Road, Sonapat, in which it has been inter alia prayed that in order to discharge its statutory liability, the petitioner may be permitted to sell its property much-less the vacant land shown in the site plan attached as Annexure P-17.

Learned Senior counsel has submitted that the financial health of the school was good before appointment of the Administrator repeatedly from 12.06.2014 to 15.09.2016 but during their tenure(s), not only the strength of the co-educational school has been drastically reduced but also the society, which is running the school, has been saddled with the statutory liabilities, may be of Employee State Insurance Fund, Provident Fund, Income Tax and the award of the Labour Court etc. only because of the reason that the Administrators did not take much interest in the functioning of the school as the governing body had been taking. To a pertinent question as to why the petitioner requires permission of this Court to sell the property mentioned in Annexure P-17, counsel for the petitioner has submitted that the said property has been got attached even by a person who has to recover a meager amount of Rs.15,000/- in terms of the award of the Labour Court etc. It is further submitted that if the said property is permitted to be sold by the order of this Court, perhaps the entire statutory liability may be discharged by the petitioners or the society of the petitioner.

Notice of motion.

At this stage, Mr. Saurabh Mohunta, DAG, Haryana, accepts notice on behalf of respondents no.1, 2, 5, 6 & 7 and Mr. Vikas Suri, Advocate, accepts notice on behalf of

respondent no.3 and pray for time to seek instructions and file reply, if any.

Respondent no.3 be served for 12.02.2018 through dasti summons.”

Petitioner was in-fact permitted to sell the said area of 2850 sq. yards of vacant land vide order dated 08.03.2018 passed by a coordinate Bench, while directing that said land be set free from attachment. Elected office bearers of the governing body of the society were given liberty to fix reserve price of the aforesaid land for the purpose of its open auction to be supervised by the Deputy Commissioner, Sonapat. It is relevant to note that CM-1794-CWP of 2018, was moved by seven members of the governing body alleging that permission had been sought to sell part of the land belonging to the institution without taking the entire governing body into confidence.

Relevant part of order dated 08.03.2018 passed in this writ petition, permitting sale of 2850 sq. yards of vacant land, reads as under:-

“In view of the aforesaid facts and circumstances, it is ordered that the area of 2850 sq. yards i.e. 2383.83 sq. mtrs shown in the site plan attached as Annexure P17, stated to be vacant land, stands attached, vide order of the Tehsildar dated 13.10.2017, shall be set free from attachment by this order and the elected office bearers of the governing body of the Society shall fix the reserve price of the aforesaid land for the purpose of its open auction.

After the reserve price is fixed, the Deputy Commissioner, Sonapat shall be intimated, who would supervise the arrangements of the auction proceedings. It is made clear that in case the bid is not received more than the reserve price then the office bearers of the governing body would have a right to cancel the same. Otherwise after the said land is sold in the open auction, the amount of consideration received shall be deposited in a separate account opened for that purpose by the

petitioners. The Society shall thereafter file appropriate application before this Court for the purpose of releasing payment of the statutory dues.”

Accordingly, land measuring 2850 sq. yards was auctioned and part of the statutory liability outstanding towards respondents no.3 and 4 was deposited. Various applications were thereafter filed either by the petitioner or by the respondents for deposit of the various amounts. Applications were moved by the teaching as well as non-teaching staff to be impleaded as parties. Apprehension was raised by the teaching as well as non-teaching staff that the funds received by sale of the property may be misused by the petitioners.

It is relevant to note that the petitioner opposed CM-17732-CWP of 2018 moved on behalf of respondent no.4, seeking release of Rs.3,45,08,053/- as dues payable under EPF Act claiming that calculation of damages and liability which has been calculated by the said respondent is incorrect and in contravention to para no.32 of the EPF Scheme. Petitioners further claimed that no opportunity of hearing was granted before fixing this liability.

Thereafter, petitioners filed CM-994-CWP of 2020 seeking permission to also sell 13627.50 sq. yards of land belonging to the petitioners as well as a plot measuring 209 Sq. Meters in Sector-23, Sonapat in order to clear further government dues/ statutory liabilities/ salary/ retrenchment compensation etc. It is stated that liability of about five (5) Crores was outstanding as on 10.01.2020, therefore the society had again considered the matter and passed a resolution to sell the abovesaid land for clearing the outstanding dues.

Reply to the said application by way of affidavit of Hansraj

Singh Nain son of Chand Singh Nain, Assistant Provident Fund

Commissioner/ Recovery Officer, EPFO, District Office, was filed giving the details of the amount due. The figures regarding present liability projected by the petitioners have been disputed by some of the stake holders before this Court either arrayed as respondents or applicants seeking to be impleaded as parties.

Mr. Ram Pal Verma, Advocate, earlier representing respondents no.8 to 14, submitted that as of now one of these members i.e., respondent 12 had an objection to the sale of the property in question.

Learned counsel for the parties were accordingly directed to address arguments in the main writ petition.

Learned counsel for the petitioner argued that permission should again be granted to the petitioner to sell part of the property belonging to the petitioner's school for discharge of its statutory and other liabilities towards the teachers, staff etc., in order to put an end to multifarious litigation which is pending against the petitioner. It is submitted that petitioners seek to discharge all the statutory liabilities which have been incurred. However, the land in question stands attached in various proceedings making it impossible for the petitioner to discharge the same. Learned counsel states that there is no other possible way to resolve the matter and make it viable to run the petitioner school. It is submitted that permission as was granted on 08.03.2018 in respect to sale of land measuring 2850 sq. yards be afforded again, in respect to land measuring 13627.50 sq. meters in Sector-23, Sonapat. Learned counsel urges that the land in question be auctioned under direct supervision of a senior official of the State and administration like the Deputy Commissioner of Sonapat, as the same would put to rest any apprehensions of lack of *bona fides* on the part of the petitioners. Petitioners, in this manner would thus be able to

discharge its liabilities and put an end to multifarious litigation. It is submitted that the Administrator was appointed on 12.06.2014 and the school was run by the Administrator/Administrators till 15.09.2016. School suffered huge loss as various administrators failed to perform their duties in accordance with law. It is submitted that the present writ petition has been filed as it would be the best solution to resolve the entire problem and in case, such a course is permitted, the institution can be revived. It is informed that litigation is pending with the teaching staff before the Education Tribunal. Certain Labour Courts Awards have come against the petitioner and others are still pending. EPF and ESI liability has also arisen. Learned counsel for the petitioner informs that strength of the school was 4000 in the year 2011 and as of now, the school has 87 students. It is thus prayed that necessary permission to sell the land as mentioned above be afforded.

Learned counsel for respondent no.3 submits that liability as on 31.01.2021 under ESI is Rs.1,33,58,432/-. Learned counsel for respondent no.4 submits that liability of about Rs.13,00,000/- is outstanding under the EPF.

Learned counsel for respondents no.3 and 4 submit that there is a complete mechanism which is provided in the Act regarding discharge of statutory liabilities. The petitioner has not challenged various orders which stood passed at the time of filing of the writ petition and those which have been passed during the pendency of this writ petition. Though, it is not disputed that some of the liability was discharged in the year 2019 after sale of land as permitted vide order dated 08.03.2018, it is submitted that the proper procedure as prescribed under specific provisions of law should be followed.

Learned counsel for respondent no.12 opposes the sale of

property as sought by the petitioners. Dismissal of the writ petition is prayed for.

I have heard learned counsel for the parties at length and have gone through the file with their assistance.

It is relevant to note that no serious argument has been raised regarding alleged default on the part of the Administrators appointed from 12.06.2014 to 15.09.2016. Furthermore, learned counsel for the petitioners is unable to deny that such adjudication on the alleged default and right of the petitioners for damages or compensation necessarily involves disputed questions of fact and cannot be the subject matter of adjudication in this writ petition under Article 226 of the Constitution of India. Moreover to hold the Administrators to be solely responsible for the decline of the school on the basis of averments & documents attached with the filed would not be justified for the reasons as delineated in the latter part of this decision.

Learned counsel for the petitioner has however vehemently argued that in the given facts and circumstances, land of the petitioner, which stands attached in various proceedings, should be ordered to be released and the petitioners be permitted to discharge their statutory liabilities in order to make running of the institution viable. Petitioners, it is submitted should not be subjected to multifarious litigation staring them in their face and all matters should be settled before this Court itself.

In my considered opinion, such a course to be adopted is neither justified nor viable. It is a matter of record that the petitioners were permitted to sell 2850 sq. yards of land vide order dated 08.03.2018, passed in this writ petition. It had been specifically stated at that time that petitioners would be able to discharge their entire liability. It cannot be denied by learned counsel for the petitioners that demand raised by the

statutory authorities has been disputed by the petitioners. Demand was alleged to be unjustified and even a plea of no hearing being provided to the petitioners, was raised. The liability as projected in the miscellaneous application is under dispute. Thereafter, another application has been filed seeking permission to further sell 13627.50 sq. yards of land as depicted in the site plan attached as Annexure A-6.

As per the written statement filed on behalf of respondent no.3 to which there is no replication, petitioner school came within the ambit of provisions of ESI Act w.e.f., 30.01.2009. Petitioner never started compliance under the ESI Act. Petitioner school was allotted the employer code number vide letter dated 31.03.2010, but it failed to deposit the statutory dues as per provisions of ESI Act. Show cause notice was issued to the petitioner school for the period September 2009 to May 2012, Annexure R-3/5. Assessment order under Section 45-A of the ESI Act was passed on 30.04.2014. Management of the school was admittedly taken over by the Administrator on 12.06.2014 and management of the school was again taken over by the governing body in September 2016. Therefore, to say that the entire statutory liability has arisen due to the alleged default on the part of the Administrators, at this stage, is not justified and that too without any specific evidence.

Another fact to be noted is that though it was vociferously argued that strength of the school in the year 2009-10 was about 4000 and the same has drastically reduced due to malfunctioning of Administrators appointed from 2014 to 2016, the same is not borne out from the file. As per the chart in para no.26 of the writ petition, number of students in the school had reduced from 3134 in 2009 to 1481 by 2013-14, when the Administrator was first appointed. Strength of students was 799 in 2016 when management

of school was taken over by petitioner no.2 and it was informed by learned counsel for the petitioners at the time of arguments that strength of the school as of now, is of merely 87 students. Thus, argument that petitioners should be permitted to sell their land as aforementioned by way of preemptive and sweeping order of this Court, while overriding all/ and any other orders which may or may not be even before this Court, in my considered opinion, is not justified in the given factual matrix. It is not open to the petitioners to try and lay the entire blame of malfunctioning of the administration of the school at another door and try to use it as a method of bypassing the specific procedure and applicable provisions of law in the multifarious litigation being faced by the petitioners. There is nothing on record to suggest earnest efforts being undertaken to revive the institution. To the contrary, strength of the school has further declined since 2016 from 799 to 87 students.

It is further relevant to note, at this stage, that during the course of hearing, the site plan attached as Annexure P-17 and site plan attached as Annexure A-6, were perused and compared. A perusal thereof raised a doubt regarding location of the school building as depicted in Annexure P-17. Learned counsel for the petitioners on a pointed query submitted that there is a mistake in the site plan, Annexure P-17, as it is a college which is being run at the said premises and the petitioner school is about 1 ½ kms further away from the area. Location of the petitioner school is admittedly not even depicted in any of the two site plans. The college stated to be run in the building reflected in the site plan, Annexure P-17, is informed to be run by the petitioner society.

In my considered opinion, there is no justification for consideration of the various disputes/ litigation pending against the

petitioners in various forums & enter adjudication thereon, as is the evident prayer of the petitioners. There is no ground whatsoever to interfere in the exercise of jurisdiction under Article 226 of the Constitution of India, to direct release of land of the petitioners which stands attached under various orders of the competent authorities or to undertake the exercise of determination of the exact extent of statutory and other liabilities of the petitioners. It is a matter of record that specific alternate remedies are available with the petitioners. There is no justification for clubbing all the matters in the present writ petition for a consolidated adjudication thereon. Needless to say, the petitioners are at liberty to bring forth necessary facts before the respective authorities which have attached the property of the petitioners. If at all, auction of the land can easily be conducted in accordance with law and entire statutory and other liabilities of the petitioners easily discharged under the said process/es in case the petitioners so want. Needless to say petitioners are also at liberty to take recourse to remedy/remedies as may be available to them in accordance with law for proving any damage suffered by them due to alleged malfunctioning of the Administrators appointed from 2014 till 2016.

No other argument had been addressed.

Writ petition is accordingly disposed of. It is made clear that the observations in this order are confined for the purpose of this writ petition and would have no bearing on any pending litigation/s.

16.03.2021

s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.