

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Sen

WPA 12966 of 2013

**Debdip Bhattacharya & Anr.
Vs.
The State of West Bengal & Ors.**

With

**WPA 15792 of 2017
With
CAN 1 of 2019 (Old No. CAN 9994 of 2019)**

**Kalicharan Bhattacharya & Ors.
Vs.
The State of West Bengal & Ors.**

For the petitioners : Mr. Arabinda Chatterjee, Sr. Adv.
Mr. Md. Majnu Sk.

For the State : Mr. Tapan Kr. Mukherjee, AGP
Mr. Shamimul Bari
Ms. Tuli Sinha

Heard on : 13.08.2024

Judgement on : 13.08.2024

PARTHA SARATHI SEN, J.:

1. In these two writ petitions the writ petitioners are aggrieved with the issuance of the memorandum No. S/Recog/2010/N-154 dated 04.03.2010 by the Secretary, West Bengal Board of Secondary Education whereby and whereunder a provisional recognition was given to Singi Kashiram Das Girls' High School (New Set Up) (Upper Primary School) from Class V to VIII (Bengali Medium) with effect from 01.03.2010 and also with the issuance of office memo No. 671/1(4)-LS dated 27.08.2015 as issued by the Commissioner of School Education, West Bengal whereby and whereunder the said Commissioner declined to accept that the said school was running in plot Nos. 4259 and 4261 and on the contrary the said Commissioner held that the school was running in plot No. 4258.

2. By filing WPA 15792 of 2017 the writ petitioners thus prayed for issuance of appropriate writ against the respondent authorities more specifically against the respondent No. 2 to delete the word '(New Set Up)' from the memo dated 04.03.2010 with a further prayer for issuance of writ of mandamus upon the respondent No. 3, i.e.; D.I. of Schools (S.E.), Burdwan to approve the writ petitioners as the organizing teacher of the said school.

3. By filing WPA 12966 of 2013 another set of writ petitioners have also prayed for similar such relief(s).

4. At the time of hearing, Mr. Chatterjee, learned Senior Advocate for the writ petitioners at the very outset draws attention of this Court to page No. 37 of WPA 15792 of 2017. It is submitted that by a resolution dated 07.01.2006 the villagers of Village-Singi took a resolution to the effect that from the next session/year a Junior High School for the girls in the name of 'Singi Kashiram Das Junior Girls High School' would be set up and a further decision was taken in the said meeting for commencement of classes of girls for Class V and VI. Such meeting was held in 'Singi Kashiram Das Library'.

5. Mr. Chatterjee, learned Senior Advocate in course of hearing took this Court to page No. 39 of the writ petition being a photocopy of the deed of gift as executed in favour of the said school in respect of plot Nos. 4259 and 4261 whereby and whereunder a total of 28.5 decimal of land was transferred to the said school for the purpose of construction of a school building thereon. It is submitted on behalf of the writ petitioners that soon thereafter a school building was constructed on the said two plots of land and the school started functioning from the year 2006 wherein the writ petitioners have been appointed as organizing teachers.

6. Mr. Chatterjee, learned Senior Advocate for the writ petitioners draws attention of this Court to the letter of appointments and the joining reports of the writ petitioners in the said school which have been annexed to the instant two writ petitions. Drawing attention of the page

No. 77 of WPA 15792 of 2017 it is submitted that after observing all the formalities the Secretary of the said school under cover its letter dated 05.04.2006 made an application before the West Bengal Board of Secondary Education for grant of recognition of the said school.

7. It is the grievance of the writ petitioners in both the writ petitions that for the reason best known to the respondents, the respondent authorities did not adhere to such request as made by the Secretary of the said school on 05.04.2006 and on the contrary by issuing the impugned memo dated 04.03.2010 the respondents/authorities granted provisional recognition to the said school considering the said as a 'new set up'. In course of his submission Mr. Chatterjee, learned Senior Advocate also draws attention of this Court to the report dated 09.11.2017 of the District Magistrate, Purba Burdwan as filed before this Court during pendency of the writ petition. It is submitted by Mr. Chatterjee, learned Senior Advocate that such report dated 09.11.2017 of the District Magistrate, Purba Burdwan is faulty inasmuch as the District Magistrate has failed to take note of the fact that sufficient materials have been placed before the said District Magistrate as well as before this Court to establish that the said school was functioning from 2006 and not from 2010 as wrongly disclosed in the said report and the writ petitioners are the organizing teachers of the said school since 2006.

8. Mr. Chatterjee, learned Senior Advocate in course of this submission further argued before this Court that the status report as submitted by S.D.O. Katwa, District- Purba Burdwan dated 12.09.2017 is more confusing in view of the fact that in the said report the S.D.O. has not only denied the existence of school since 2006 but also contended that the location of the school is situated on a different plot of land.

9. It is further submitted by Mr. Chatterjee, learned Senior Advocate that during the pendency of the writ petition, a special officer was appointed by a co-ordinate Bench of this Court who has also submitted a report on spot verification and in the said report, the said special officer indicated that the said school is situated covering the plot nos. 4259 and 4260 and also a portion of plot no. 4261. It is thus submitted by Mr. Chatterjee that from the materials placed before this Court, it would reveal that the said school started functioning from the year 2006 and that the said school is situated in plot nos. 4259 and 4261.

10. None appears on behalf of the respondent authorities till 12.35 p.m. though the instant matter was taken up for hearing at 11.00 a.m. today.

11. However, on consideration of the entire materials as placed before this Court, this Court finds that dispute between the writ petitioners and the respondent authorities centers around two issues namely,

- i) regarding the year of commencement and/or establishment of the school;
- ii) regarding the location of the school i.e., on which plot/plots the said school building is situated.

12. In course of his argument, Mr. Chatterjee, though strenuously contended by showing various resolutions of the local villagers, letter of appointments of the writ petitioners being the organizing teachers, joining letters of the writ petitioners with the said school and even attendance register of the said school that the said school started functioning since 2006 but no materials could be placed before this Court that the said school started functioning from 2006 by way of admission of students, by imparting education to its pupil, by taking examination of the students as well as by publication of the results of the students and the class promotion.

13. At this juncture, I propose to look to the report of the District Magistrate, dated 09.11.2017. The report of the District Magistrate, Purba Bardhaman reveals that in course of enquiry by the said District Magistrate, the writ petitioners produced the photocopies of the resolutions dated 07.01.2006 and 15.01.2006 instead of originals wherefrom the said District Magistrate found that in the year 2006 a proposal was taken for establishment of the school in the name and style of the said school.

14. The said District Magistrate further found that during enquiry when the writ petitioners were asked for production of any document regarding functioning of school since 2006 like student admission register, mark sheets, students attendance etc., the writ petitioners candidly admitted that they have got no such documents. In course of enquiry, the District Magistrate further found that admission register of the said school shows that first admission in the said school was started on and from 03.03.2010 and on the basis of such report, the District Magistrate concluded that there are sufficient materials to come to a logical finding that the said school started functioning from 2010 and not from the year 2006.

15. Admittedly, against the said report of the District Magistrate, an exception supported by affidavit was filed on behalf of the writ petitioners but in the said exception too no document could be produced before this Court on affidavit to substantiate the claim of the writ petitioners.

16. At this juncture, if I look to the report of the SDO, Katwa, Purba Bardhaman dated 12.09.2017 as forwarded by the District Magistrate, Purba Bardhaman under cover of its letter dated 13.09.2017, it would reveal that the same is the replica of the report of the District Magistrate, Purba Bardhaman as mentioned supra.

17. So far as the second issue is concerned i.e., with regard to the location of the said school, this Court proposes to look to the report in

the form of affidavit as filed on behalf of the respondent no. 4 as affirmed on 07.02.2024 and as filed by Mr. Samim Ul Bari, learned advocate.

18. In the said report in the form of affidavit, a report from the office of ADM and DL & LRO, Purba Bardhaman has been relied upon wherefrom it reveals that a physical inspection was done at plot nos. 4259 and 4261 in Mouza- Singi wherefrom it reveals that in LR plot nos. 4259 and 4261, there is no construction of the said school building, however, the said school is situated on the southern part of LR Plot No. 4257. With the said report, a sketch map though not according to scale was placed which was drawn by an 'Amin' appointed by DL & LRO, Purba Bardhaman where the exact location of the aforesaid three contiguous plot numbers have been duly shown including the location of the said school building at the Southern part of the Plot No. 4257.

19. In course of his submission, Mr. Chatterjee though disputed such report and sketch map contending that such report is contrary to the report of the special officer as appointed by this Court but in considered view of this Court, such argument is not tenable in view of the fact that a special officer as appointed by this Court cannot be an appropriate authority to give a clear picture as to the location of any particular plot or plots and on the contrary, the office of the District Magistrate-cum-Collector Authority more specifically, its Land department possesses the mouza map of the said district wherefrom the exact location, the nature

and character of the plots of land can be ascertained since those mouza maps have been prepared during L.R. survey as per the provisions of the West Bengal Land Reforms Act, 1955.

20. It is also argued on behalf of the writ petitioners that disputed two plots are waterbody but from the physical inspection report of the authorized officer of the ADM and DL & LRO, Purba Bardhaman, this Court finds no such reflection with regard to the alleged nature of land.

21. Considering the rival contention as raised in these two writ petitions, this Court has thus no reason to disbelieve the report of the District authority with regard to the nature, character of plot nos. 4259 and 4261 and this Court being a writ Court, cannot come to a contrary finding in absence of any contrary material that the said school building is not situated on the southern part of the plot no. 4257.

22. At this juncture, if I look to the aforementioned two impugned memo dated 04.03.2010 and 27.08.2015, this Court thus finds that from the said respondent authorities sufficient materials have been placed that the said school started functioning from the year 2010 over a plot of land being 4258 and not on plot nos. 4259 and 4261 as wrongly claimed on behalf of the writ petitioners. This Court also cannot overlook the report of the District Magistrate that no materials could be placed by the writ petitioners regarding the functioning of the said school in village – Singi even in a temporary basis since 2006.

23. In view of the discussion made herein above, this Court thus finds that both the writ petitions being **WPA 12966 of 2013** and **WPA 15792 of 2017** are devoid of any merit and those are thus dismissed along with all interim applications, if therebe any, but considering the facts and circumstances of the present case without any order as to costs.

24. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(PARTHA SARATHI SEN, J.)