

(1984) 07 KL CK 0037

In the High Court Of Kerala

Case No : O.P. No's. 3818 of 1978 and 362 of 1979

A. Abdul Rahim and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-07-1984

Acts Referred:

Kerala Education Rules, 1959 — Rule 92

Citation : AIR 1985 Ker 103

Hon'ble Judges : K. Bhaskaran, Acting C.J.; M.P. Menon, J

Bench : Division Bench

Advocate : George Varghese Kannathanam, P.K. Shamsuddin and A.A. Abdul Hassan, for the Appellant; A.G., K.K. Usha and N.D. Premchandran, for the Respondent

Judgement

Bhaskaran, Ag. C.J.

1. Both these writ petitions are directed against the same order, viz. G.O. Rt. No. 3200/78/G. Edn. dated 26-10-1978 passed by Government of Kerala, a true copy of which is marked as Ext. P9 in O.P. No. 361 of 1979. It would appear that there has been dispute between the petitioners on the one hand and the 4th respondent in O.P. No. 362 of 1979 on the other in regard to the ownership and the right of management of the school with respect to which Ext. P9 order has ultimately been passed. The question really is whether the validity of an alleged transfer of the property and right of management of an aided school could be decided by the Educational Authorities or not. This Court in the judgment in W.A. Nos. 152 & 191 of 1978 stated as follows :

"It was pointed out by this Court that the Kerala Education Act and the Rules left it to the statutory authorities constituted by them to decide the question of the right of management to school to the best of their resources and ability, and that this Court would not be justified, especially in writ proceedings, in directing the parties to fight out their rival claims in a Civil Court and on that ground alone to interfere with the decision arrived at by the statutory authorities. It follows

therefore that the course adopted by the learned Judge of setting aside Exts. P20 and P26 on the only ground that in the interests of justice, the parties should fight out their rival claims in a Civil Court, is not justified or proper, and cannot be sustained."

It is doubting the correctness of this decision that our learned brother Narendran J. by the order dated 12-12-80 referred the matter to a Division Bench. We understand the Division Bench ruling as one laying down that it is for the statutory authorities constituted under the Kerala Education Act and the Rules framed thereunder, to the best of their resources and ability, to decide the question of the right of management of the school. We do not, however, understand it as one laying down a proposition that such decisions taken by the Educational Authorities would conclude the civil rights of the parties to the properties involved. The decisions of the Educational Authorities are not meant to settle civil rights of the parties to such properties. These decisions are in the nature of summary determination for the sake of expediency without wading for the result of a protracted litigation in a civil court. There could be no doubt that the right to agitate on questions of civil rights in a civil court would remain unaffected in spite of the decision by the Educational Authorities for the limited purpose of carrying on the functions and fulfilling the obligations under the Act. It does not, and cannot oust the jurisdiction of the civil court in matters touching the civil rights of the parties. Looked at from this angle, we do not consider it necessary to re-examine the correctness of the decision of the Division Bench inasmuch as in Ext. P9 what the Government did was to pass an order in exercise of powers under Rule 92 of Chap. XIV A of the K.E.R. and that is for the purpose of the Act; not for determining the civil rights of the parties. We need only say that Ext. P9 does not conclude the matter so far as the civil rights of the parties are concerned; and it is open to any of the parties to the proceedings to take the matter to the Civil Court for its adjudication. Moreover, Ext. P9 being an order of 1978, we do not consider that we would be justified in interfering with it at this stage, even if there is any merit in the contention raised by the petitioners.

2. In the result, without prejudice to the right of the parties to agitate their cause, if any, in a civil court, these writ petitions are dismissed. We do not make any order as to costs. Needless to say that status quo as it obtains today shall continue in so far as it relates to the management of the school and the possession of the buildings and properties of the school, until a competent Civil court decides the matter.