

(2011) 08 GUJ CK 0020
In the Gujarat High Court

Case No : Letters Patent Appeal No. 2672 of 2010 In Special Civil Application
No. 7104 of 2010 With Civil Application No. 13973 of 2010

Adivasi Vikas Mandal Gulbar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 73(A), 73(A)(A)
Gujarat Secondary Education Regulations, 1974 — Regulation 10(1), 9

Citation : (2011) 08 GUJ CK 0020

Hon'ble Judges : S.J. Mukhopadhaya, C.J.;J.B. Pardiwala, J

Bench : Division Bench

Advocate : B.M. Mangukiya and Bela A. Prajapati, for the Appellant; Krina Calla, AGP for Respondent 1 and A.D. Oza, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

J.B. Pardiwala, J.

1 In this appeal, the Appellant-original Petitioner seeks to challenge judgment and order dated 31.08.2010 passed by the learned Single Judge in Special Civil Application No. 7104 of 2010 whereby, the learned Single Judge rejected the petition of the Appellant?Petitioner.

2 Facts relevant for the purpose of deciding this appeal are as under:

2.1. The Petitioner is a charitable trust registered under the Bombay Public Trust Act. In June 2009, the Petitioner-trust applied for opening a new secondary school in the name of Shree Maruti Madhyamik Vidhyalaya, situated at Sarpanch Faliyu, Gulbar, Taluka: Garbada, District: Dahod in response to the advertisement issued by Respondent No. 2 i.e. Gujarat Secondary and Higher Secondary Education Board. The Respondent-Board refused to accord permission to the Petitioner-trust to start a new secondary school substantially on the following grounds:

- i. Building proposed to be used for opening of the school is not suitable for running the school and the building is constructed for residential purpose.
- ii. The proposed school building is not health oriented with No. proper facility of air and light and No. separate provisions for sanitary have been made for girls and;
- iii. The land proposed to be used for playground is governed by the provisions of Section 73A and 73AA of the Bombay Land Revenue Code and the same is not owned, occupied and in possession of the trust.

2.2. It appears that the order passed by the Board rejecting the application was challenged in appeal before the State Government and the State Government also dismissed the appeal confirming the order 01.09.2009 passed by the Board. It is at that stage that the Appellant-trust preferred Special Civil Application No. 7104 of 2010. The learned Single Judge having noticed all the deficiencies, which were found by the Respondents, refused to grant any relief to the Appellant-Petitioner and rejected the petition.

3. We have heard learned advocate Mr. B.M. Mangukiya appearing for the Appellant and learned A.G.P. Mrs. Krina Calla appearing for the Respondents.

4. Learned advocate Mr. Mangukiya would submit that in none of the objections raised by the Respondent?authorities, there is any substance. He would submit that there are No. deficiencies as alleged by the Respondents. He further submitted that the land is not governed under the provisions of Section 73A or 73AA of the Bombay Land Revenue Code and the land is of the ownership of the chairman of the trust and he is agreed to part with the land for the purpose of the activities of the trust.

5. Per contra, learned A.G.P. Ms. Calla submitted that both the authorities have recorded concurrent findings as regards the deficiencies noticed in the infrastructure of the trust and having noticed all these deficiencies, the learned Single Judge also rightly rejected the petition. The learned A.G.P. submitted that the Appellant is not entitled to any relief. The learned A.G.P. has relied upon the affidavit filed by the Secretary of the Gujarat Secondary and Higher Secondary Education Board, Gandhinagar wherein, the following averments have been made:

8. I say and submit that the Appellant Trust is not fulfilling the requisite criteria and, therefore, the application made by the Appellant Trust came to be rejected vide order dated 1.9.2009, which is self-explanatory. I say and submit that before passing the order dated 1.9.2009, the Board has given opportunity to the Appellant to comply with the in ferities/deficiencies noticed for opening new School vide letter dated 20.6.2009. The Appellant Trust has miserably failed to comply with the said formalities and, therefore, having left with no option, the order dated 1.9.2009 came to be passed by the Board, whereby the application made by the Appellant Trust for opening School w.e.f. June 2009 is rejected. I say

and submit that the Board has assigned five reasons for not permitting the Appellant Trust to open the Secondary School. The said reasons are as under:

a. The class rooms are not admeasuring 400 Square Feet (40 Sq.mts.) as is required as per Regulation No. 9(13)(2).

b. The building, where the Appellant Trust wants to open the School is not suitable for School.

c. The building, where the Appellant intends to open the School is of residential purpose, which is evident from the documents produced on record.

d. The Appellant has not produced the documents howing the availability of health/sanitary facilities in the proposed School building as required under Regulation 9(13)(1). The School building should be having appropriate health/sanitary facilities and ventilation as are required under Regulation 9(13)(1) and the Trust should also have sufficient, satisfactory facilities for girl students, especially when the Trust intends to open School for co-education.

e. The land meant for ground is of 73/A and 73/AAof Form and there is No. likelihood of NA Permission being granted. Accordingly the land cannot be permitted for the ground meant for School.

9. Thus, on the aforesaid counts, the application filed by the Appellant Trust came to be dismissed. I say and submit that being aggrieved by the aforesaid order, the Appellant filed appeal before the Education Department and the Education Department vide order dated 16.12.2009 dismissed the said appeal concurring with the order passing by the Board. The Education Department has followed the requisite procedure and has also offered reasonable opportunity to the Appellant. The Education Department has also assigned several reasons for not accepting the appeal and has dismissed the appeal by concurring with the order dated 1.9.2009 passed by the Board. Thus, there are concurring findings of facts being recorded by the authorities while rejecting the application for opening up new School and while dismissing the appeal. I say and submit that the authorities have formed subjective satisfaction, which is not vitiated by error of facts or law. I say and submit that the application filed by the Appellant Trust for opening up new School has rightly been rejected by the impugned order. Both the authorities have considered the pros and cons of the matter and after affording sufficient opportunities to the Appellant the impugned orders are passed. The orders impugned are not vitiated by any error of law or facts and, therefore, this Hon''ble Court maybe kind enough to dismiss the appeal by up holding the order passed by the authorities.

6. Learned A.G.P. Mrs. Krina Calla submitted that permission to open a new school is governed by the Gujarat Secondary Education Regulations, 1974 as amended up to 30.06.2001. She has relied upon certain Regulations. Reliance has been placed on Regulations 9,10(1)(a) and 10(1)(b). The Regulations which are relevant for the purpose of deciding this appeal are as under:

9(13)... The following shall be the standard requirements in respect of building, laboratory, library, furniture, equipments, stationary and other articles for conducting registered schools and equipments for a Secondary school.

Provided that where the requirements cannot be complied with by any applicant for registration of a School, the applicant may specify in full details, special circumstances, reasons or local conditions on account of which such deficiency in or deviation from the standard requirements may be condoned.

i. the premises should be sufficiently healthy, welllighted and ventilated, with due provision for the safety of the pupils and with separate, satisfactory and adequate sanitary arrangements for girls in the case of a school providing co? education;

ii. the rooms in which classes are held should providerequisite accommodation for all the studentsactually admitted in each class, at the rate of notless than 8 sq.ft. per student i.e. 400 sq.ft. or40 sq.mtrs. exclusive of the space required for at able and chair for a teacher, a teaching platform, a blackboard and any other equipment required for teaching;

IV. Every registered school shall, as far as practicable, provide a playground within areasonable distance from the school at the rate of one acre of land for every 250 students.

Provided that the Executive Committee may, in special circumstances of a case, relax therequirement under this paragraph.?

Regulation No. 10(1)(A)

No. manager of a registered school shall open Std.Xin such school except with the prior permission of the Secretary.

(B) No. manager of a registered school shall openStd.XI or any additional divisions of the existing standard without prior permission of the Commissioner.

(2) (A) An application for permission to open a higher standard or higher standards should be submitted to the Commissioner at least 6 months before commencement of the academic year from which it is proposed to be opened.

(B) Similarly an application for the permission to pen a new division or additional divisions of the existing standard should be submitted to the Commissioner within a month from the commencement of the academic year.

(3) (A) No. permission to open Std.X shall be given by the Secretary unless he is satisfied that the manager is ready and willing to make adequateprovision in relation to additional class-rooms, laboratory, library, furniture, equipments, stationery and other articles required for conducting Std.X.

(B) No. permission shall be granted to open Standard X or additional divisions of existing standard unless the Commissioner is satisfied that the management is ready and willing to make adequate provisions in relation to additional class-

rooms, laboratory, library, furniture, equipments, stationary and other articles required for conducting additional classes.

7. Taking into consideration all the relevant aspects of the matter, we are of the view that the learned Single Judge has not committed any error, much less an error of law, in rejecting the writ petition warranting any interference at our hands in this appeal. We find No. merit in this appeal and the same is hereby ordered to be dismissed with No. order as to costs. Civil Application stands disposed of accordingly.