

(2015) 07 KL CK 0134

In the High Court Of Kerala

Case No : Writ Petition (C). No. 15210 of 2014 (S)

Anitha S.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Kerala Education Act, 1958 — Section 5A, 5B

Kerala Restriction on Cutting and Destruction of Valuable Trees Act, 1974 — Section 2(e)

Citation : (2015) 4 KHC 806

Hon'ble Judges : Ashok Bhushan, C.J;A.M. Shaffique, J

Bench : Division Bench

Advocate : P.B. Sahasranaman, T.S. Harikumar, K. Jagadeesh and Raajesh S. Subrahmanian, for the Appellant; Joe Kalliath, Sr. Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ashok Bhushan, C.J.

1. The petitioner claims to be an environmental educator. The Writ Petition has been filed by the petitioner challenging an order of the State Government by which the State Government has granted permission for leasing out 2 acres of land to the Thiruvananthapuram Development Authority (hereinafter referred to as "TRIDA") for construction of a bus-bay and shopping complex out of 5.5. acre land of the Government Central High School, Attakkulangara, Thiruvananthapuram. Brief facts of the case and pleadings are:

"A school named "Native High School" was established in 1889 at East Fort in Thiruvananthapuram, which has been established in a compound of 5.5 acres of area in Manakkad Village. The school has been renamed as the Government Central High School, Attakulangara, Thiruvananthapuram. It is pleaded that in the school there are about 32 species of trees numbering about 100. There are herbal plants and rich bio-diversity. It is stated that the land in the heart of city

is the green lung of the Thiruvananthapuram city. Photographs of the High School containing pictures of large number of trees in the compound have been produced along with the Writ Petition. The State of Kerala took a decision on 3.5.2013 on a request made by the District Collector, Thiruvananthapuram for transferring 2 acres of land to TRIDA for construction of bus-bay and commercial complex. The Government decided to convey 2 acres of land of the school for 30 years. Certain terms were mentioned in the order, including that the trees standing in the land shall not be cut and removed without obtaining prior consent from the Revenue Department. The petitioner, aggrieved by the said decision, has come up in the Writ Petition praying for the following reliefs:

"I. To issue writ, direction or order in the nature of certiorari calling for the records leading to Exhibit P3 order and quash the same.

II. To issue a writ, direction or order in the nature of mandamus commanding the respondents not to proceed with any project concerning the government Central High School, Attakkulangara, Thiruvananthapuram unless and until an environment impact assessment is conducted by an accredited agency;

III. To issue a writ, direction or order in the nature of mandamus commanding the 1st respondent to consider Exhibit P2 report of Tree Walk on the Government Central High School, Attakkulangara, Thiruvananthapuram before taking any development activities in the said school;

IV. Such other reliefs which this Hon"ble Court deems fit and necessary in the circumstances of the case and the costs of this case so as to protect the natural serenity of the Government Central High School, Attakkulangara, Thiruvanthapuram."

2. Learned counsel for the petitioner Sri. P.B. Sahasranaman, challenging the decision of the State Government, submitted that the decision of the State Government transferring the 2 acres of land to TRIDA is illegal. It is submitted that Section 5B of the Kerala Education Act, 1958 (hereinafter referred to as "the Act") contains the restriction on alienation of property of Government schools. In view of the statutory prohibition contained in Section 5B of the Act, the State Government could not have transferred 2 acres of land of the Government school. It is further submitted that construction of bus-bay and commercial complex shall necessitate cutting of large number of trees from the school compound, which shall affect the environment. It is submitted that in the compound of the school, no commercial building can be directed to be constructed by the State Government.

3. A counter affidavit has been filed by the State of Kerala stating that the Government accorded sanction for transfer of 2 acres of land out of 5.5 acres of land in possession of the school for construction of bus-bay, mobility hub and commercial complex. It has been stated that the TRIDA has stated that they need to cut less than 10 trees only for the new construction and that the institution can be directed to plant three times the number of trees that is to be

cut. The total strength of the students in the school during the year 2014-15 was only 55. The TRIDA shall build Ten class rooms for the school considering the development proposed. The land is given on lease for the development purpose of Government for thwarting traffic congestion now felt in the nearby area due to old and unplanned bus stops/autorickshaw parking and shops situated in an unscientific manner. The shopping mall proposed by TRIDA is intended to rehabilitate such shops.

4. An additional counter affidavit has also been filed by the State Government bringing on record the Basic Tax Receipt issued by the Village Officer, Manakkad dated 13.3.2015 showing that the total extent of land available in possession of the school is 5.5 acres. Copy of the Government order dated 21.5.2014 has also be brought on record.

5. The main submission, which has been pressed by learned counsel for the petitioner is that by virtue of Section 5B of the Act, there is a prohibition to transfer the land belonging to a Government school and the State Government's order transferring the land to TRIDA is being violative of Section 5B and it deserves to be set aside on that ground. Section 5B of the Act provides for restriction or alienation of property of Government schools. Section 5B of the Kerala Education Act, 1958 reads as follows:

"5B. Restriction on alienation of property of Government schools:-- Notwithstanding anything contained in any law for the time being in force or in any decree, judgment or order of any court, no sale, mortgage, lease, pledge, charge or transfer of possession of any land appurtenant to a government school vested with a local authority under Section 5A shall be made and such land shall not be used for any purpose other than educational purposes:

Provided that nothing contained in this section shall prohibit surrender of any such land with the permission of the Government for the purpose of widening of any road."

6. A perusal of section 5B indicates that restriction on the transfer is of any land appurtenant to a government school vested with local authority under Section 5A of the Act. The Government school in question is a school, which was established in 1889. As is pleaded, the school has not vested in any local authority and is not covered by a Government school as referred to in Section 5A of the Act. Section 5B, thus, is not applicable in the facts of the present case.

7. From the facts brought on record, it is clear that the number of students in the school has decreased and in the year 2014-15, the number of students in the school was only 55. The State has come up with the case that land more than 3 acres is still left with the school, which is necessary and sufficient for running the school. The decision of the Government for transferring 2 acres of land on lease to the TRIDA, thus, is not hit by Section 5B of the Act.

8. Learned counsel for the petitioner has placed reliance on a judgment of this

court reported in *Gopalakrishnan v. The Secretary, Corporation of Kollam* (2002(2) KLT 502) in support of his submission that by virtue of Section 5B of the Act, the State Government could not have parted with 2 acres of land belonging to Government school. In the above case the issue raised was regarding putting up of a hoarding and advertisement board at the school premises. The advertisement agency was permitted to establish three hoardings at the premises of the school on payment of an amount of Rs. 8,000/-. The amount was returned to the agency directing remittance before the competent local authority. Corporation of Kollam granted permission, but subject to the condition that there shall not be any obstruction by such hoarding. The licence was not renewed. In the above context, the learned Single Judge has referred to Section 5B and has issued certain conditions. It is useful to quote paragraphs 3 and 7 of the judgment, which read as follows:

"3. On the introduction of Act 16/2000, the management of Government Schools was handed over to the local authorities. Thus Government Model Girls High School, Kollam is now managed by the Corporation of Kollam. The new provision under S. 5B of the Kerala Education Act, 1958 reads as follows:--

"5B. Restriction on alienation of property of Government Schools:-- Notwithstanding anything contained in any law for the time being in force or in any decree, judgment or order of any court no sale, mortgage, lease, pledge, charge or transfer of possession of any land appurtenant to a Government School vested with a local authority under S. 5A shall be made and such land shall not be used for any purpose other than educational purposes."

It is fruitful to refer to a few provisions in the Kerala Education Rules so as to have a general idea as to how the law making authority has dealt with this issue. Chapter IV R. 4 deals with the distance of a school from a burial place or a cremation ground. Sub-r. (2) of the said Rule deals with distance from liquor shops. R. 8(2) of the said Chapter provides that:

"School buildings and grounds shall be maintained in good repair and kept clean and tidy. Scribbling on the walls, doors and windows, and furniture or otherwise defacing them shall be prevented."

(emphasis supplied)

The very fact that Legislature has taken note of certain safeguards regarding the location of school and use of the school premises indicates the seriousness of the issue. As noted above S. 5B provides that there shall not be any use of the land of the school other than for educational purposes. Therefore, there shall not be any hoarding or any advertisement at the premises of a school, to be specific, either within the compound or on the compound wall of a school, which will not serve an educational purpose. The same principle would apply in the case of all other educational institutions. The educational institutions shall not sell the students to commercial advertisers. Unless a healthy atmosphere conducive for the upbringing and formation of children are provided at the premises of the

educational institutions, they cannot be blamed for going astray. The institutions should provide an atmosphere helping and compelling the children to have purity of thought and clarity in vision. No doubt the children are exposed to all these consumeristic influences outside the campus. But that is not an excuse and defence; the message the campus should give is definitely different. The environment has certainly an impact on the children. The presumption for a clean and tidy premises indicates the need for a clean environment surrounding any educational institution. As a matter of fact, such a clean and tidy environment of an educational institution has certainly a serious impact on the total discipline of the children and the institution. A temple of learning is as sacred as a temple of worship. Just as we keep the places and premises of worship neat, pure and holy, the places and premises of temples of learning should also be kept neat, pure and holy, protecting them from commercial invasions. It is unfortunate that no serious attention is made on these areas by the managements.

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7. I direct the Secretary to Government, Local Self Government Department to immediately issue appropriate instruction to the local authorities, in the matter of advertisements at the premises of the educational institutions. I make it clear that the Government should strictly enforce 5. 5B of the Kerala Education Act and see that the premises of an educational institution is not made use of for any purpose other than educational purpose. I also direct the Secretary to Government, General Education Department, to issue appropriate instruction to the educational officers to see that the premises of a school in the private sector is not used for any purpose other than educational purpose. I also direct the Chief Secretary to Government to take appropriate steps in the light of this judgment, in the case of all other educational institutions in the State and see that the premises of the institutions are used only for educational purposes. Since there are about two months for the reopening of the educational institutions, I direct the Government Secretaries to take steps forthwith so that the children will be in a position to enter a clean and tidy premises by the beginning of the next academic year."

The above judgment is clearly distinguishable, since in the said case the Court was not considering any transfer or lease of land of a Government school, rather, the issue was with regard to putting up of hoarding in the school premises. As observed above, restriction under Section 5B is with regard to land pertaining to Government school, which is vested in the local authority.

9. An environmental issue has also been raised in the Writ Petition. It is contended that by transfer of 2 acres of land to the TRIDA for construction of bus-bay and shopping complex, large number of trees have to be cut. It is stated that in the school there are more than 100 trees which are of 32 species.

10. A statement has been filed on behalf of the TRIDA stating that the TRIDA shall not be reducing any facility now enjoyed by the school. The TRIDA shall

also construct 10 class rooms in lieu of the building which shall be demolished. Further, construction activities in any way will not cause hindrance to the working of the school. In paragraph 8 of the statement the following has been stated:

"8. Photographs of a number of trees are given in the Exhibit P1. All these trees are not to be cut for the implementation of the project. Out of the 42 trees in the 2 acres of land transferred for the project only less than 10 trees need to cut. The allegation that more than 100 trees are utilized for the project is not correct."

11. In the counter affidavit filed by the State of Kerala it has been stated that the institution can be directed to plant three times of the number of trees which are to be cut. In paragraph 5 of the counter affidavit the following has been stated:

"5. It is submitted that there are some trees in the premises of the school which do not fall in the category of trees enlisted in Section 2(e) of the Kerala Restriction on Cutting and Destruction of valuable Trees Rules, 1974. The petitioner is also stating flimsy arguments by quoting the number of butterflies/ dragonflies etc. TRIDA has stated that they need to cut less than 10 trees only for the new construction. That institution can be directed to plant 3 times the number of trees that is to be cut."

12. In the above view of the matter, it is clear that to meet the environmental issue raised by the petitioner, respondents 1 and 2 have come up with a case that less than ten trees shall be cut and they shall plant thrice the number of trees cut from the area. The above shall suffice to take care of the environmental issue. Sufficient reason for construction of bus bay and shopping complex has been given in the counter affidavit. We do not find any fetter on the right of the State Government in transferring 2 acres of land to the TRIDA for construction of bus-bay and shopping complex, which has been decided as per the recommendation of the District Collector and Director of Public Instructions.

In view of the above, we are of the opinion that interest of justice will be served by disposing of the Writ Petition with the following directions:

"I. The petitioner's prayer for quashing Exhibit P3 is refused.

II. Respondents 1 and 2 shall cut less than ten trees in the area which has been leased to the TRIDA.

III. Respondents 1 and 2 are directed to plant thrice the number of trees, which are cut in the area leased out to the second respondent, so as to maintain sufficient green cover in the area.

IV. The second respondent, while carrying out its project on the lease area, shall not cause any hindrance to the functioning of the school and shall construct ten class rooms as undertaken in its statement filed in the Writ Petition."

The Writ Petition is disposed of as above.