
(2026) 03 KL CK 0773

In the High Court Of Kerala

Case No : Writ Petition (C) No.27175 Of 2025

Fazeela R.A

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 27-03-2026

Acts Referred:

Kerala Education Act, 1958 — Section 5B
Kerala Education Rules, 1959 — Rule 3

Citation : (2026) 03 KL CK 0773

Hon'ble Judges : Bechu Kurian Thomas, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Bechu Kurian Thomas, J

1. Petitioners have questioned the decision of the Government, transferring possession of a playground of a Government School to the Department of Collegiate Education for constructing a building for a College of Music. They also seek a direction not to interfere with the use of playground of the Government school in question.

2. The petitioners are the parents/old students of Government UP School at Ramavarmapuram. They allege that the playground of the aforesaid school has been decided to be transferred to the Department of Collegiate Education for starting the SRV College of Music and Performing Arts by the Government, as per order dated 05.12.2024. Pursuant to a mass petition signed by numerous persons, who emphasized the need to maintain the health of the students through physical activities, petitioners claim that the impugned order will result in deprivation of the school playground, and hence, it ought to be interfered with. The petitioners also contend that the alienation of the school property is contrary to section 5B of the Kerala Education Act, 1958 (for short 'the Act') and hence, the transfer, ordered as per Ext.P1 Government Order, is void. Relying upon the National Education Policy, 2020, it was pleaded that the need to integrate sports

in education fosters holistic development by promoting physical and psychological well being of the students, apart from enhancing their cognitive abilities and therefore the attempt of the respondents to part with the possession of the school playground for construction of a Music College is contrary to the avowed purpose and therefore bad in law.

3. A counter affidavit has been filed on behalf of the fourth respondent stating that the SRV College of Music and Performing Arts is a newly opened Government Music College, which is presently functioning on a rented building. As the said institution lacked a permanent building, the Government has by Ext.P1 order decided to transfer possession of 2 Acres, 30 cents and 64 Sq. links in Re-survey No.48/2 part of Viyyur Village in Thrissur District, for constructing the building for the said College. It is asserted that the transfer is solely for an educational purpose. According to the fourth respondent, all official formalities were complied with, and the property that has been identified for transfer, adjoins the premises of the Government UP School at Ramavarmapuram and since the transfer is for educational purposes, the restriction under section 5B of the Act, will have no application. It is also stated that the premises around the school are sufficient for the students to engage in extra curricular activities.

4. A reply affidavit has been filed by the petitioners and they rely upon Ext.P11, a document obtained under the Right to Information Act, 2005 (for short 'RTI Act') which indicates that the property remaining after the playground cannot be used as a playground. The petitioners also allege that the entire decision is vitiated by arbitrariness and non-application of mind. It is also stated that the remaining property is not suitable for a playground as it lies in an 'L' shape and is full of overgrown trees, while the said property can very well be used for constructing a college.

5. I have heard Sri. G.Krishnakumar, the learned counsel for the petitioners as well as Sri. P.Santhosh Kumar, the learned Special Government Pleader.

6. On a consideration of the pleadings and the rival contentions urged, the following two issues arise for consideration:-

(i) Whether Ext.P1 order transferring possession of around 2.30 acres of land for constructing a building for a Music College violates the restriction under section 5B of the Act, and:

(ii) Whether the transfer as contemplated in Ext.P1 would deprive the Government UP School, Ramavarmapuram of its playground and hence requires to be quashed?

7. The above two issues are considered below.

Issue No. (i). Whether Ext.P1 order transferring possession of around 2.30 acres of land for constructing a building for a Music College violates the restriction under section 5B of the Act?

8. Section 5B of the Act restricts the right of alienation of Government school property except for the purposes specified therein. For an easier comprehension, section 5B of the Act, is extracted below:

"Section 5B. - Restriction on alienation of property of Government schools:- Notwithstanding anything contained in any law for the 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."

9. The above provision restricts the right of any type of transfer of the land appurtenant to a Government school, for any purpose, other than for educational purposes. The proviso to the said section has no application in the instant case. A reading of Ext.P1 order reveals that, the purpose for which the land is proposed to be transferred is for the construction of a College for Music and Performing Arts. Construction of a College for Music is no doubt an educational purpose and there cannot be any embargo under section 5B of the Act. As study of Music is, no doubt, an educational purpose, it necessarily has to be concluded that the proposed transfer of possession of the property to an extent of 2.30.64 acres from the Government UP School Ramavarmapuram for the construction of the College for Music is an educational purpose. Hence Ext.P1 order is not violative of section 5B of the Act.

Issue No. (ii). Whether the transfer as contemplated in Ext.P1 would deprive the Government UP School, Ramavarmapuram of its playground and hence requires to be quashed?

10. The importance of a school playground needs no reiteration. Apart from strengthening the muscles during the growing stage of a student, it helps in the child's development by paving the way for his social, emotional and overall well-being. The benefits of outdoor activities in school are manifold which can be summed up in a single sentence as stated by Dr. John Ratey of Harvard Medical School who observed that "physical activity in school readies the brain for learning".

11. In this context it is worthwhile to refer to the decision in *Prakash N. v. Government Welfare Lower Primary School*, [2024 (3) KHC 183] wherein, a learned single Judge of this Court had remarked that, school playgrounds are an essential part of a child's learning environment, providing a safe and fun place to play. It was further observed that playgrounds can help children to develop their physical, social, emotional and imaginative skills and further that education should not be restricted to classrooms as extra curricular activities, including sports and games, should also be a part of the educational curriculum. It was

also held that sports will increase the physical skills of children like flexibility, balance, motor skills, eye coordination and heart and lung function. It was further observed that if the children are allowed to engage in games and other activities in the school playground, social skills, cognitive skills and emotional skills will also improve, thereby reducing stress and anxiety of children in classrooms.

12. Of course, in the above decision, the question was whether a water tank should be constructed on a school ground without permission of the authorities. However, the fact remains that playgrounds are essential to a school, without which, a school cannot be permitted to function. The need for playgrounds and sports and games activities in a school cannot be undermined. Chapter IV rule 3 of the Kerala Education Rules, 1959 (for short 'KER') requires that there must be a playground for every school for games and sports, which shall contain sufficient clear space for that purpose and the compound should be kept fairly levelled, clear of ranked vegetation. There has to be co-ordinated efforts amongst the Government bodies, including educational institutions and sports organisations to achieve the avowed object of the national sports policy which require activities to be formulated to enhance impact response in schools.

13. With the above laudable purpose in mind, when the contents of Ext.P1 are appreciated, it can be noticed that Government had failed to consider whether the transfer of possession of 2.30.64 acres from the Government UP School, Ramavarmapuram for the construction of the college of Music, would deprive the former of its playground. The authority had failed to bear in mind whether the remaining extent of land that would be available with the school, would be sufficient to create a playground of the same extent or manner as presently enjoyed by the school. No report to that effect has also been placed before this Court, to conclude that a playground can be established on the remaining land. Reference to the communication under the RTI Act, produced as Ext.P11 indicates that, if possession of the area where the playground is presently situated is handed over for construction of a building for the Music College, the remaining extent will not be suitable for sports and games as it is filled with trees and other growths. Of course, trees and growth can be cut and removed. However the records do not indicate whether the nature and lie of the property would enable the setting up of a playground.

14. Though the learned Special Government Pleader pointed out that the remaining extent of land available with the Government UP School, Ramavarmapuram is 4.04 acres, which is sufficient in extent for constructing a playground, no materials have been produced to indicate that, while issuing Ext.P1 order, the authority had considered the said aspect. Even though it was submitted that the trees and other forest like growth can be cleared from the school premises, still, there are no materials available from the impugned order, to indicate that there was any consideration of those aspects.

15. Taking note of the allegation of the petitioners that the remaining extent of

land available with the Government UP School, Ramavarmapuram is in an 'L' shape, which would not permit construction of a school playground, this Court is of the view that, in the absence of relevant factors having been considered in Ext.P1, the impugned order cannot be justified under law. It was essential for the authority that issued Ext.P1, to have considered whether the Music College could have been constructed in the remaining extent of land available with the Government UP School, Ramavarmapuram, without depriving it of a school playground.

16. While considering the grant of permission to transfer possession of 2.30.64 acres from the Government UP School, Ramavarmapuram for the construction of the College of Music, the authority was exercising a discretionary power. The conclusion arrived at, no doubt, must be based on objective considerations and the exercise of the power must be influenced by factors that are lawfully to be taken into account and not by ignoring or disregarding the relevant factors. In that process, the opinion formed must be preceded by an application of mind, which must be evident from the impugned order itself.

17. Though judicial restraint must be maintained while considering interference with administrative decisions, if the order under challenge does not reflect consideration of relevant factors or fails to eschew the irrelevant factors, it would become incumbent for the Court to intervene. If the relevant factors are not reckoned and irrelevant aspects are made the basis of a decision, the order faces the risk of being interfered with as being arbitrary or unreasonable. Reference to the decisions in *State of U. P. and Another v. Johri Mal* [(2004) 4 SCC 714] and *Rameshwar Prasad and Others (VI) v. Union of India and Another* [(2006) 2 SCC 1] are relevant. In the latter of the cases, the Supreme Court had observed that:

"A person entrusted with discretion must, so to speak, direct himself properly in law. He must call his attention to matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules he may truly be said to be acting unreasonably.It is an unwritten rule of law, constitutional and administrative, that whenever a decision - making function is entrusted to the subjective satisfaction of a statutory functionary, there is an implicit obligation to apply his mind to pertinent and proximate matters only, eschewing the irrelevant and the remote."

18. Though it was vehemently argued that the remaining extent of land, after transfer of the area for construction of a college building, is more than sufficient as per KER for construction of a school including its playground, this Court is of the view that the nature and lie of the property ought to have been identified and analysed to consider whether the extent and lie of the property in the instant case would be able to include a playground for the UP School especially since a playground has to be of a particular size and shape.

19. The mere existence of some space scattered around, would not suffice the

requirement of a playground. In a sketch handed over across the Bar by the learned Special Government Pleader, it was noticed that the balance area available with the school may not be sufficient to set up a playground. Of course that is a matter to be identified and considered. Suffice to say, the materials available do not indicate consideration of the question regarding availability of sufficient area to create a new playground for the Government UP School, Ramavarmapuram.

20. Having regard to the above circumstances, this Court is of the view that, the Government had failed to consider whether the transfer as contemplated in Ext.P1 would deprive the Government UP School, Ramavarmapuram of its playground, Ext.P1 order stands vitiated.

Accordingly, Ext.P1 order is set aside and the Government is directed to reconsider the matter, after granting an opportunity of hearing to the petitioners as well as the Headmistress of the Government UP School, Ramavarmapuram, and pass appropriate orders afresh.

The writ petition is allowed as above