

(2010) 02 MAD CK 0194

In the Madras High Court

Case No : Writ Petition (MD) . No. 739 of 2009 and M.P. No. 1 of 2009

K. Bose

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 08-02-2010

Acts Referred:

Constitution of India, 1950 — Article 21A, 45

Citation : (2010) 02 MAD CK 0194

Hon'ble Judges : Prabha Sridevan, J;B. Rajendram, J

Bench : Division Bench

Advocate : K.R. Laxman, for the Appellant; D. Ganthiraj, Government Advocate for Respondents 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Prabha Sridevan, J.—The Petitioner is aggrieved by the school playground being used as a pathway by the Municipality and by the residents of M.G.R. Nagar and has filed this public interest litigation.

2. It is stated that on 04.07.2008, an Executive Committee Meeting of the Parents and Teachers Association was held in the Government Higher Secondary School, Usilampatti, which is a very old school established in the year 1925. There are 1366 students studying in the said school. The school has also one playground and the children are engaged in extra curricular activities, i.e., 100 students are in National Cadet Corps and 50 students are in National Service Scheme etc. On considering the strength of the school, the Government, in the year 2006, constructed 32 class rooms in the ground available at a cost of Rs. 1,25,00,000/- with the financial aid of NABARD. Even in 2006, the residents of M.G.R. Nagar, felt that it was easy to use the school ground as a pathway as an access to their houses.

3. It is alleged that the sixth Respondent had not taken any immediate action to restrain those persons from using the school ground as a pathway. It is further

alleged that though a proper road is available on the other side, through which they have an access, they are making an attempt to lay a road to cross the school ground. Though several representations were made to the authorities, there was no positive response. It is also alleged that the safety of the students is under threat and because of the vehicular traffic, the students are also disturbed. A detailed representation was made to the third Respondent and by acknowledgment dated 11.10.2007, the third Respondent replied that the issue is referred to the fourth Respondent. The fourth Respondent visited the school premises. No effective action was taken. Finally, the present Writ Petition was filed.

4. When the matter came up for hearing on 18.01.2010, we requested the learned Special Government Pleader to ensure the presence of Tahsildar, Usilampatti. The Tahsildar, Usilampatti appeared in Court along with relevant records. From the survey map, it is seen that the alleged road runs through the school playground. From the records, we find that there are complaints given regarding the laying of the road. There is no dispute that it is a Government School.

5. In the counter filed by the fourth Respondent, it is stated that a Peace Committee Meeting was held, but, in spite of strenuous efforts, no amicable solution could be arrived at. On 28.12.2008, a Peace Committee Meeting was held by the Revenue Divisional Officer, Usilampatti. There it was resolved to remove the jalli stones kept by the Municipal Authorities and also to carry out the laying of metal road only after verification of the records of the disputed property, whether it belongs to the Panchayat Union School or Government Higher Secondary School. Now, it is admitted that the school belongs to the Government.

6. Mr. M. Thirunavukkarasu, representing on behalf of M.G.R. Nagar People, submits that if the said road is not provided, the residents of M.G.R. Nagar will not have any access to their houses. He also submits that a Civil Suit has been filed and the same is pending. Mr. E. Baskaran, Tahsildar, Usilampatti, Madurai District, Mr. D. Sellappan, Usilampatti Municipality and Mr. A. Sekar, representing the Headmaster of the school are present in Court.

7. The Learned Counsel for the Petitioner submitted that recently even cars go through the school property. It is clearly a playground which is being used as a thoroughfare.

8. The Hon'ble Supreme Court in Avinash Mehrotra Vs. Union of India (UOI) and Others, observed:

24. Education occupies an important place in our Constitution and culture. There has been emphasis on free and compulsory education for children in this country for a long time. There is a very strong historical perspective. The Hunter Commission in 1882-1883, almost 125 years ago, recommended universal education in India. It proposed to make education compulsory for the children.

26. Our original Framers of the Constitution placed free and compulsory education in the directive principles. The unamended Article 45 provided that:

45. Provision for free and compulsory education for children.-The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

27. The Kothari Commission on Education set up by the Government of India in 1966 strongly recommended free and compulsory education for children up to 14 years. The Commission observed that there is no other way for the poor to climb their way out of this predicament.

32. Education remains essential to the life of the individual, as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens.

36. Likewise, the State's reciprocal duty to parents begins with the provision of a free education, and it extends to the State's regulatory power. No matter where a family seeks to educate its children, the State must ensure that children suffer no harm in exercising their fundamental right and civic duty. States thus bear the additional burden of regulation, ensuring that schools provide safe facilities as part of a compulsory education.

37. In the instant case, we have no need to sketch all the contours of the Constitution's guarantees, so we do not. We merely hold that the right to education incorporates the provision of safe schools.

39. In view of the importance of Article 21-A, it is imperative that the education which is provided to children in the primary schools should be in the environment of safety.

9. From this, it is clear that while the children are in school, they should be safe from any physical danger and it is the duty not only of the School Authorities, but also the State to ensure this. The Supreme Court in the above decision had held that the children's right to education means "right to safe education".

10. The United Nations Convention on the Rights of Child sets out Children's Rights in 54 articles and two Optional Protocols. It spells out the basic human rights that children everywhere have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The four core principles of the Convention are non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child. Every right spelled out in the Convention is inherent to the human dignity and harmonious development of every child. The Convention protects children's rights by setting standards in health care; education; and legal, civil and social services.

11. We draw strength from the words "Protection of Children's Right" by setting

standards in ...education.... Therefore, while providing education, the State shall ensure that the atmosphere, where the child learns, does not pose any hazard and does not expose him to risk. Allowing vehicular traffic to go through the school would amount to deliberately exposing the children to risk. The risk does not only involve a mere physical injury that may be inflicted on the child, if the vehicle hits against a child, but, we are also exposing the child to the possible risk of being kidnapped. In these days, when incidence child sexual abuse is rampant, the school authorities cannot be careless. It would be gross violation of duty on the part of the Respondents, if they ignore the illegal laying of the road through the school land.

12. From the records produced before us, it is clear that there is an attempt to use the school ground as a pathway. We can imagine to what physical threat the children will be placed, if cycles, two wheelers and cars can go through the school. Further, it will be a hindrance to the children when play games in the school ground or engage themselves in other extra curricular activities, which the school encourages.

13. Therefore, the following directions are issued:

The authorities shall ensure that the public will not use the school ground as a pathway.

There can be no vehicular traffic nor even a cyclist can go through the school ground.

The authorities shall also block the portion of the road leading to the school playground, where M.G.R. Nagar starts so that it will discourage the persons from using this as a pathway.

This compound wall shall be put up by the school and the officials shall ensure the safety of the school authorities while they are putting up the compound wall.

14. The Writ Petition is ordered as above. No costs. Consequently, connected Miscellaneous Petition is closed.

Registry is directed to post the matter on 22.2.2010 for reporting compliance.