
(2005) 11 KL CK 0048
In the High Court Of Kerala
Case No : Writ Petition No. 481 of 2003

Kamaladevi

APPELLANT

Vs

Gopalakrishnan

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Kerala Education Act, 1958 — Section 5A, 5B, 6, 6(1), 6(2)
Kerala Education Rules, 1959 — Rule 2, 3, 4, 9
Kerala Municipalities Act, 1994 — Section 272(1)
Kerala Panchayat Raj Act, 1994 — Section 209A

Citation : (2006) 1 ILR (Ker) 110 : (2006) 1 KLT 315

Hon'ble Judges : Rajeev Gupta, C.J;S. Siri Jagan, J

Bench : Division Bench

Advocate : V.P. Seemandini, for the Appellant; C. Rajendran, M.K. Chandramohandas, S. Santhosh Kumar and Rajit, for the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—The appellant is the manager of an aided U.P.School. She is challenging the judgment of the learned Single Judge in O.P. No. 35376/2000 reported in 2002 (2) KLT 502. The appellant was not a party to the said Original Petition. However, aggrieved by the general directions in the said judgment, which resulted in the educational authorities issuing consequential directions to the disadvantage of the appellant in the form of Annexures A3 to A5, the appellant has come up in appeal on obtaining leave of this court for the same. The facts necessary for disposal of the Writ Appeal are summarised hereunder.

2. The Original Petition, which was disposed of along with a connected O.P. No. 4010/2002, the common judgment in which is impugned in this appeal was filed by the President of the Parent Teacher's Association of Government Girls High School, Kollam, the 1st respondent herein, complaining about the advertisement hoarding erected by the second respondent in the Original Petition inside the school compound of Government Girls H.S., Kollam. The petitioner therein sought quashing of Ext.P1 permission granted by the Corporation of Kollam to the 2nd

respondent to erect a hoarding for the purpose of displaying advertisements inside the said School compound. The learned Single Judge, after analysing Section 5B of the Kerala Education Act, 1958 as also the Rules under Chapter IV of the Kerala Education Rules, came to the conclusion that the erection of hoardings inside school compounds violates Section 5B of the Kerala Education Act, 1958. Thereafter the learned Single Judge went on to consider the similar provision in Section 6 of the Act applicable to aided schools. After construing Section 6, the learned Single Judge entered a finding that erection of hoarding for display of advertisements inside the premises of an aided school comes within the ambit of Section 6 of the Act. On a general finding that permission to put up such hoardings inside school compounds other than for educational purposes would injure the well-being of the children studying in the schools, the learned Single Judge issued directions both to the Secretaries of the local bodies vested with powers u/s 209A of the Kerala Panchayat Raj Act, 1994 and Section 272(1) of the Kerala Municipality Act, 1994, to take appropriate action to see whether advertisements at the premises of educational institutions have been erected with due permission and to take action for removal of those advertisements from the premises of the educational institutions in case the same are placed or exhibited without permission. The learned Single Judge further directed the Secretary to the Government, General Education Department to issue appropriate instructions 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. The Chief Secretary to the Government was also directed to take appropriate steps in the light of the 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. It is aggrieved by such general directions that the appellant has approached this court, after obtaining leave to appeal, challenging the said judgment, in so far as it affects her rights to put up or to permit others to put up hoardings inside the school compound owned by her.

3. We have heard learned counsel for the appellant and the learned counsel for the 1st respondent, the petitioner in the Original Petition.

4. The contention of the learned counsel for the 1st respondent is that the appellant has obtained necessary permission from the Guruvayur Municipality as stipulated u/s 272(1) of the Kerala Municipality Act, 1994, for putting up the said hoarding. Therefore, notwithstanding Section 6 of the Kerala Education Act, the general directions issued by the learned Single Judge pursuant to which the educational authorities have issued Annexures A3 to A5 orders directing the appellant to take immediate steps to remove the hoardings and advertisement boards from the school premises violate her rights to use the property owned by her to her best advantage. According to her, the erection of hoarding inside the school compound does not in any way affect the functioning of the school or the education of the children studying in the school and as such, the prohibition imposed by the judgment of the learned Single Judge and the consequent orders of the educational authorities are violative of her property rights. The counsel for

the appellant would submit that even going by Section 6 of the Act, there is no absolute bar in putting up hoardings inside the school compound. The only restriction therein is that the same should not be done without the previous permission in writing of such officer not below the rank of a District Educational Officer and therefore, the sweeping directions issued by the learned Single Judge and the educational authorities are not in accord with the provisions of Section 6 and impinges on the appellant's right to put up hoardings with the permission of the educational officer. He would further submit that in so far as the appellant has obtained appropriate permission u/s 272(1) of the Kerala Municipality Act, 1994, she has complied with the statutory requirements and therefore, she cannot be legally prohibited from granting permission to persons of her choice to erect such hoardings inside the school compound.

5. Before dealing with the contentions, we may also note another relevant fact. A neighbour of the appellant's school has filed IA No. 2517/2003 in this appeal seeking impleading of himself as a party to the Writ Appeal. By order dated 22.1.2004 the said I.A. has been directed to be posted along with the Writ Appeal. His complaint is that a suit filed by him against the erection of the hoarding on the ground that the same violates his easement rights preventing the light and air to his property has been vitally affected because of the interim order passed by this Court in this appeal in C.M.P. No. 2101/ 2003 whereby the appellant was permitted to continue to display the advertisement board shown in Annexure A6 on the eastern boundary wall of the school compound. Counsel for the petitioner in I.A. No. 2517/2003 was also heard in the matter. We feel that he is a necessary party to this appeal in view of the interim order passed in this appeal and therefore we have allowed the said impleading application.

6. Since we are now concerned only with the directions against aided schools in this appeal, what is relevant in the circumstances is only Section 6 of the Kerala Education Act although the school involved in the Original Petition was a Government school and the judgment deals with Section 5B of the Act which relates to Government Schools mainly. However, we shall extract hereunder both the sections since an argument was advanced on the basis of comparison of the two sections. Section 5B reads thus:-

5B. Restriction of 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 u/s 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.)

Section 6 reads thus:-

6. Restriction on alienation of property of aided school:- -

(1) Notwithstanding anything to the contrary contained in any law for the time being in force, no sale, mortgage, lease, pledge, charge or transfer of possession in respect of any property of an aided school shall be created or made except with the previous permission in writing of such officer not below the rank of a District Educational Officer, as may be authorised by the Government in this behalf. The officer shall grant such permission applied for unless the grant of such permission will, in his opinion adversely affect the working of the school.

(2) Any person aggrieved by an order of the officer refusing or granting permission under sub-section (1) may in such manner and within such time as may be prescribed, appeal to the Government.

(3) Any transaction made in contravention of Sub-section (1) or Sub-section (2) shall be null and void.

(4) If any educational agency or the manager or any school acts in contravention of sub-s. (1) or of an order passed under Sub-section (2) Government may withhold any grant to the school.

7. The contention of the appellant is that in Section 5B concerning Government schools alone there is total prohibition against alienation of property of Government schools and use of land belonging to schools for any purpose other than educational purpose, whereas in Section 6 there is no such absolute prohibition. It only restricts alienation of property of aided school without previous permission in writing by the District Educational Officer and the officer concerned is vested with the discretion to grant permission applied for, if such permission in his opinion does not adversely affect the working of the school. It is the contention of the counsel for the appellant that putting up of hoardings on the boundary of the school property would not in any way adversely affect the working of the school and as such, prohibition now imposed by the impugned judgment would prevent the appellant from applying for permission, for using the school property for the purpose of putting up of hoarding, to the District Educational Officer which is not contemplated by the Section.

8. Before dealing with the contentions, we must straightaway notice that even though according to the appellant, she has been permitting erection of such hoarding for a good number of years, she has no case that she has obtained permission of the educational officer for erection of the hoarding as contemplated u/s 6 of the Act. The fact that she was able to continue to do the same without applying for permission and without any action being initiated itself would justify the directions in the judgment, as it is clear that without such directions, the implementation of Section 6 by the educational officers has not been effective so far.

9. What the learned Single Judge has done in this particular case by the impugned judgment is to construe Section 6 and to come to the finding that

erection of hoarding would amount to alienation of property of an aided school which use of school properties of aided schools would adversely affect the well-being of the children and therefore would adversely affect the working of the school as contemplated in the said Section. It is under such circumstances that the learned Single Judge directed the educational authorities to take appropriate steps to prevent such putting up of hoardings. The learned Single Judge has, in the judgment, in his own inimitable style described how such display of advertisement in hoardings inside the school compounds would affect the mental make up of the children studying in the school. We are in perfect agreement with the findings and the wholesome sentiments expressed by the learned Single Judge in the judgment regarding the possible adverse effect of display of such advertisement on the young impressionable minds of the children. From our day to day experience, going by the various advertisements displayed on sides of the roads, it is clear that there is no room for doubt about the adverse effects such advertisements would have on the impressionable minds of the young children. Of course, one may ask that if there is no prohibition for erection of such advertisements by the sides of the roads, through which also the very same children travel, how it can be harmful to them when the very same advertisement is displayed in hoardings inside the school compound. We are of opinion that there is a vital difference. When these advertisements appear by the sides of the roads, the moral rights and wrongs of such advertisements may not have much impact in their mind. But when it appears in their own school compounds there would be a stamp of authority on such advertisements and therefore they are sure to gather the impression that if it is allowed to be displayed in their own school, it can only be morally right since the authorities would permit only right things inside the school.

10. In fact the Kerala Education Act and Rules contain other provisions also intended at prevention of influences which may be detrimental to the mental development of the children, which provisions relate to the use of the school properties themselves. Rule 2 of the same Chapter stipulates that sites for school buildings should be on elevated level and they should be well drained and in clear and healthy surroundings. The site should be accessible to all communities. While Rule 3 enjoins the Manager to make efforts to see that trees are planted in the school compound, the same is subject to the condition that such planting shall not unduly reduce the space available for play and obstruct the entry of the light into the class rooms or in the course of time damage the structure. R. 15 stipulates the uses for which school buildings and properties can be put to. Rule 4 of Chapter IV of the Kerala Education Rules mandates that the school buildings shall be situated away from places of burial or cremation grounds and liquor shops. R. 15 reads thus:

15. Use of school building and properties:-

(1) The premises of an educational institution (Government or Private) or any subsidiary building appertaining to it or a playground or vacant site belonging to

the institution, whether adjacent to or removed from it, shall ordinarily be used only for the purpose of functions conducted by such institution. But the executive Authority of the local body concerned in the case of an institution under the control of a local body, the District Educational Officer in the case of a Government school and the Manager in the case of a Private school, is empowered to grant permission on such conditions as he deems fit to impose for the use of such building, or ground or site belonging to the institution for holding public functions arranged by the management or by a department of the State or the Government of India or for any other purposes.

The authority concerned should obtain the orders of the Director in doubtful cases.

((2) xxxxxxxx) (Deleted by Legislative Assembly.)

(3) All school buildings and properties shall be made available free of rent for the purpose or holding public examinations and teachers meetings under the auspices of the Department or approved by the Government.

R. 17 prohibits use of schools as prayer houses or as places of public worship, even while permitting imparting of religious instructions in school subject of course to specific conditions. (R. 18). Further R. 15A reserves power on the Government to issue directions that the school buildings and, their properties (Government or private) shall not be used for any purpose specified in such directions and such directions when issued are binding on the departmental authorities and the Educational Agencies. These provisions would make it abundantly clear that despite the property rights of the manager or the educational agency over the school properties, the Kerala Education Act and Rules do put restrictions over the use of the school property, overriding the other laws relating to property rights in the interests of the well being of the children. Therefore, it is clear that property rights of owner of the school are only subservient to the welfare of the students and therefore the welfare of the children statutorily overrides such rights. This is further fortified by the non-obstante clause with which Section 6 starts namely, "Notwithstanding anything to the contrary contained in any law for the time being in force, xxxx." This is with a view to developing the minds of the children in healthy surroundings and atmosphere so that they would grow up as better citizens who are to decide the fate of the country in the not so far off future. This laudable object cannot be fettered by the avaricious desire of the manager to make some fast and easy money by permitting use of the school property for putting up hoardings, for advertisements which might harm the mind of the children.

11. We have absolutely no doubt in our mind that such display of advertisements inside the compound are likely to adversely affect the mental well-being of the children. It is the duty of this court as also of the whole society, which includes the appellant also, to see that young impressionable children are not affected by such activities which can be prevented under law by virtue of Section 6 of the

Kerala Education Act. As such, we do not find anything wrong or violative of any of the rights of the appellant in the impugned judgment or the directions issued by the educational authorities pursuant thereto. The appellant who is also involved in the noble avocation of imparting education to the young should also be more concerned about the well being of the children than about a few thousands of rupees which she may earn by permitting putting up of such hoardings. In other words apart from the statutory prohibition, it is also the moral duty and obligation of the appellant as a citizen or parent to see that such activities are prevented inside the school premises. The appellant is bound by the Kerala Education Act and the Rules made thereunder and duty bound to conduct the school in accordance with the provisions thereof under Rule 9 of Chapter III of the Kerala Education Rules. All her rights proprietary or otherwise can only be subject to the provisions of the Kerala Education Act and Rules. In so far as the Kerala Education Act specifically puts restrictions on the right of the appellant in respect of the use of the school properties, the appellant cannot complain of deprivation of any of her rights by the directions in the impugned judgment.

12. Here another aspect also has to be noticed. Rule 1 of Chapter IV of the Kerala Education Act prescribes that every school should normally have a minimum site area as specified in the schedule appended to the Rule. If in schools having only the minimum site area, any area is to be given for erection of hoardings naturally the site area would be reduced to that extent which would result in such schools having less site area than the minimum prescribed. As such granting permission for erection of hoardings in such schools would result in violation of the mandatory provision of the said rule at least in such schools and for that reason also erection of hoardings inside the school compound would be impermissible, under law, which would be a relevant consideration while deciding whether erecting hoardings in school properties is a permissible act.

13. The contention of the appellant that the learned Single Judge has foreclosed her light to apply for permission of the educational officer u/s 6, by the sweeping directions in the judgment, also does not find favour with us. We do not find any such foreclosure anywhere in the judgment. The educational officer can grant such permission only if such permission will not adversely affect the working of the school. When the question arises as to whether putting up of hoardings inside school compounds would adversely affect the working of the school, this Court has a duty to decide that question, which alone has been done by the learned Single Judge. Even if such decision would ultimately lead to the result complained of by the appellant, this Court cannot shirk from its duty, and the result is only a natural consequence of such decision, which result cannot vitiate the decision in any manner.

14. Further we note with approval the direction issued by the learned Single Judge in paragraph 5 of the judgment to the effect that, while granting permission u/s 209A of the Kerala Panchayat Raj Act, 1994 and Section 272(1) of the Kerala Municipality Act, 1994 for display of advertisements within the area of

the local authority, the Secretary of the local authority is bound to apply his mind to all aspects of the matter which includes Sections 5A and 6 of the Kerala Education Act. The fact that even when other conditions in those Sections in the said Acts are satisfied, a separate written permission of the Secretary of the local authority is contemplated would necessarily imply that while giving such permission other relevant aspects one of which is as to whether the use of the school compound would adversely affect the working of the school, should also be taken into account.

15. In the above view, we do not find any merit in the Writ Appeal and accordingly the same is dismissed, but without any order as to costs.

Now that the appeal is dismissed, there is no impediment for the additional 4th respondent who has been allowed to be impleaded to continue to prosecute the suit said to have been filed by him.