
(2000) 11 CAL CK 0028
In the Calcutta High Court
Case No : Writ Petition No. 4397 (W) of 2000

Raja Ram Mohan Roy Children's Academy	APPELLANT
Vs	
State of West Bengal and Others	RESPONDENT

Date of Decision : 29-11-2000

Acts Referred:

Constitution of India, 1950 — Article 19, 19(1), 21, 226, 243
West Bengal Municipal Act, 1993 — Section 64(2)

Citation : (2001) 2 CALLT 119

Hon'ble Judges : Dilip Kumar Seth, J

Bench : Single Bench

Advocate : Saktinath Mukherjee, Samarjit Gupta and Rahul Mohan Biswas, for the Appellant; L.C. Bihani and Gautam Kumar Thakur for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Dilip Kumar Seth, J.—In this petition the petitioners have challenged the taking over of management of a school, being the petitioner No. 1 in this writ petition, by the Municipal Authorities, on various grounds mentioned hereafter. Initially the writ petition was dismissed and an appeal having been preferred, the matter has since been remitted for trial by the learned single Judge after having passed certain interim orders while formulating the area of the question of law to be examined. On the basis whereof, it appeared to the appeal Court, that there was a prima facie question to be gone into.

2. The Municipality had purported to claim that the land on which the school is situated, is a vested land and belong to the Municipality and as such the Municipality has a right to take-over the said school. It is further alleged on behalf of the Municipality that the school was being mismanaged by a few of the members of an unregistered association who are managing the school. The funds of the school belong to the guardian of the students and to the school, but the same is being syphoned out by the Managing Committee for their own private

purpose. The teachers and the guardians had been complaining to the Municipality about the mis-management of the school with regard to Inadequate steps in imparting education to the children jeopardising their career and inadequate payment of salary to the teachers and the staff. On this ground the Municipality had sought to takeover the management of the school as well as taken-over the fund of the school.

3. The appeal Court had granted an interim order under which the Inspector of Schools has been running the management in the interregnum period. The appeal Court had granted liberty to the petitioners to apply for interim order before the learned single Judge and thus the matter had come up on 22nd September, 2000 when and an elaborate and reasoned order was passed and an interim order was passed allowing continuance of the management of the school by the Inspector along with the Board of the School and as well as the management of the fund by the Inspector and the Board Jointly with certain other restrictions with regard to the management of the school and use of the said building.

4. Today, the matter has since been taken up for hearing. Mr. Mukherjee, learned counsel appearing for the petitioners, contended that West Bengal Municipal Act in Section 75 deals with vesting of property to the Municipality. Pointing out to clause (b) of Section 75 of the West Bengal Municipality Act, 1993, he contended that it is only public land vested in the State and not belonging to any Government department or statutory body or corporation vest in the Municipality. Unless the land is a public land, even if it is vested in the State, the same does not automatically vest in the Municipality. He then contends that the petitioners were raiyats or under-raiyats under the intermediaries whose interest has since been vested in the State which is being treated to be a vesting of the land overlooking the fact that though the interest of intermediary had vested, but the interest of the raiyats and under-raiyats has since been retained and as such there cannot be any vesting. He then contends that even if assuming but not admitting the land is vested to the Municipality, still then it cannot take over the Management of the School in the absence of any specific provision provided in the Statute under which Municipality is created, empowering it to supersede the management of a private school and take-over the same by Itself or to manage the fund of the said school all by itself. There is no law in the 1993 Act which empowers the Municipality to take-over such management of the school. He next contends that even if the land stands vested to the Municipality still then the Municipality cannot dispossess the petitioners even assuming but not admitting that they are trespassers, by taking law in their own hands except through due process of law. In this connection, he had relied on certain decisions to which reference would be made at a later stage. He then contends that the Municipality being a creature of Statute, it can act and exercise such powers that have not been conferred upon it by the Statute and it cannot go beyond the powers conferred upon it unless the Statute provides the power. He then refers to Article 19(1)(g) of the Constitution of India and points out that running of a school by

private individuals is a trade on business within the meaning of clause (g) of Article 19(1) of the Constitution and it can be restricted only by law, which according to him cannot be an executive action, but a law enacted by legislature. He therefore prays that the management, money, property and the staff of the school be returned to the petitioners and the petitioners may not be saddled with the liability of any staff whom the Municipality had appointed in the mean time.

5. Mr. L.C. Bihani, learned counsel for the respondents, on the other hand, contends that the writ petition is not maintainable in view of the fact that it is being moved by an unregistered association namely Suhrid Sangha which is managing the school. Elaborating his submission, he pointed out that six members of Suhrid Sangha forming the committee of the management of school are running the same and elaborating the mis-management as indicated hereinabove, Mr. Bihani had sought to invoke the equity jurisdiction of this Court having regard to the plight of the students and their wellbeing. So far the vesting of the land is concerned, he contends that the said question need not be gone into in view of the dispute pending before the Civil Court on account of filing of a suit by Suhrid Sangha with regard to the question of vesting. So long the said suit is not decided, the land remains to be a vested land of the Municipality and therefore it is open to the Municipality to take steps particularly in view of the mis-management of the school and the provisions contained in Section 64(2) of the 1993 Act read with Article 243W and Item 13 of the 12th Schedule of the Constitution of India. The School is a primary school which is otherwise amenable to the Jurisdiction of Primary School Board which has authority to implement the provision of the Primary School Education Act with regard to the management of primary school established and run by private Individual under the provisions of the relevant Act and as such the management can be taken over by the Municipality in exercise of its power as conferred u/s 64(2). He then pointed out that imparting of education cannot be a subject matter of trade and business only to enable certain individuals to obtain personal gains at the cost of the students sacrificing their wellbeing and destroying the system of education altogether. In view of the situation, the private individuals cannot be allowed to run the institution and it is in the public interest the management has to be taken-over and when there is a conflict between the private interest and a public interest, the private interest has to yield to the public interest. The Court cannot be an idle onlooker and while exercising equity jurisdiction it is not bound by the rigours of technicalities. The Court has to activate itself to deliver justice in a demanding case where interest of public is in jeopardy. He has also cited certain decisions to which reference shall be made at a later stage. On this ground he has prayed that the writ petition be dismissed.

6. I have heard both the learned counsels at length.

7. So far as the question of maintainability is concerned, it appears that the writ petition has since been filed by Raja Rammohan Children Academy a Private English, Bengali and Hindi medium school established by Suhrid Sangha

managed and controlled by a Managing Committee as petitioner No. 1 and the Secretary of the Managing Committee of the said School as petitioner No. 2. The expression established by Suhrid Sangha does not indicate that the said Suhrid Sangha is managing the school. The school might have been established by the Suhrid Sangha but still it is being managed by a Managing Committee and the said Managing Committee is being represented by the Secretary of the Managing Committee. Thus it cannot be said that the writ petition is being moved by Suhrid Sangha an unregistered society. On the other hand, the school itself is the petitioner being represented by the Managing Committee. The Managing Committee of a School is entitled to be represented by its Secretary. Whether it can be so represented or not, the same has not been questioned. The authority of the School or the authorisation of Secretary has not been questioned. On the other hand relying on paragraph 5, Mr. Bihani had pointed out that the Managing Committee comprises of 6 members of Suhrid Sangha and by reason thereof according to him the School is being managed by Suhrid Sangha. This question need not be gone into in the absence of any material to show that there is no provision providing for running the school through a Managing Committee and representing it by the Secretary. Therefore in the absence of materials it is very difficult to agree with the contention of Mr. Bihani with regard to the maintainability of the writ petition on the ground of being moved by an unregistered association. Relying on the decision in the case of *Sand Carrier's Owner's Union and others Vs. Board of Trustees for the Port of Calcutta and others*, , Mr. Bihani had pointed out that only on the conditions specified in the said decision a writ petition can be maintained. But this decision does not help us in view of the distinguishing features as discussed hereinbefore.

8. So far as the second contention of Mr. Bihani is concerned, this Court is definitely exercising its equity jurisdiction while dealing with writ petition. But such equity does not empower this Court to act beyond the Statute. The Court is supposed to deliver justice according to law. The Justice cannot be delivered without law. Unless there is a law empowering this Court to exercise its discretion while deciding the writ petition, it cannot be whatever it likes and whatever it deem just and proper, even though it is not permitted in law. The question of mismanagement that has been raised by Mr. Bihani may be true or may be untrue. But this writ jurisdiction cannot be utilised for the purpose of going into the said question within the scope and ambit of this writ petition, unless it is shown that the Municipality has authority and jurisdiction to take the steps it had taken if there is mis-management of the school. Therefore this question requires an examination having regard to the Jurisdiction of the Municipality as has been urged by Mr. Bihani.

9. So far the question of vesting of land is concerned, it is also not necessary to go into the fact in view of the fact that a suit at the behalf of Suhrid Sangha is pending before the Civil Court. But the fact remains whether the land is vested or not or whether the land has vested to the Municipality, even assuming but not admitting that it is so, still then it does not empower the Municipality to throw

out the occupier of the land except through due process of law. Even if it is assumed that the school is a rank trespasser, still then the Municipality cannot take law in its own hand and throw out the school or take-over management of the School and dispossesses the Committee of Management of the fund and property of the school and deprive it of the management thereof. Mr. Mukherjee had relied on a decision in the case of *Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others*, and *Lalu Jaswant Singh v. Rao Jadav Singh* reported in AIR 968 SC 620 as well as the decision in the case of *Bishan Das and Others Vs. The State of Punjab and Others*, . The decision in the case of *Express Newspapers Private Limited*, it quoted the decision in the case of *Bishen Das* (supra) for approval and had followed the same to the extent that no one can be thrown out of possession without taking recourse to law even if the occupation of such person is unauthorised. Thus the situation even though may be very bad still then the Municipality cannot deprive the school either of its property or of its fund or of the management except through recourse to law.

10. The Municipality is a statutory authority and it is created by a statute. It derives its power and jurisdiction from the Statute and exercises this power within the scope and ambit of the Statute. A statutory authority cannot act beyond the powers and jurisdiction conferred upon it by the Statute. In the case of *Scotts (P) Ltd. and Others Vs. Corporation of Calcutta and Others*, -the said question had come up. While deciding the said case this Court had approved the ratio decided in the case of *Moinuddin Byapari v. Chairman and Municipal Commissioner, Dhaka* reported in 40 CWN 17 and had held that unless the Corporation was vested with the power to put a public street into a different use for setting up a Mina Bazar, it cannot do so. It was also found that the Calcutta Municipal Act had never provided any such power to the Corporation. Thus even in respect of the property of the Municipality, it cannot exercise the power which is not found to have been vested in it. The same principle appears to have been enunciated in *Biswanath Sinha and Others Vs. Sudhir Kumar Banerji and Others*, .and in *Sk. Osman Gani Vs. Baramdeo Singh and Others*, .

11. So far as Section 64(2) is concerned, it has empowered the Municipality on its discretion provided either wholly or partly out of the municipal property and fund in this spheres of education for establishing and maintaining of primary schools. But the said section is circumscribed by the expression used therein, namely that the establishment and maintenance of primary schools can be made by the Municipality either wholly or partly out of the Municipal property or fund. In the present case, the right to the property of the Municipality is disputed, while admittedly the fund does not belong to the Municipality. Thus it Is very difficult to take the side of Section 64. Then again Sub-section (2) of the Section 64 prescribes establishment and maintenance of primary schools. Admittedly the school was not established by the Municipality, it is only the maintenance of the school. The maintenance of school established by the Municipality may be managed by it, but school established by others though may be maintained by the Municipality, it is not possible for the Municipality to manage it unless the

Municipality is so empowered under the law. In this case, there is nothing to show that the Municipality is so empowered. Thus again the word "maintenance" connotes the running of a school by maintaining the school which is different from running of a school through management of the school. Maintenance and management are two different words and connote two different spheres. Therefore the maintenance of a Primary School provided in clause (a) Sub-section (2) of Section 64 cannot be said to empower the municipality to manage the school not-established by it by taking over the management of a school established by private individuals when there is nothing in the Municipal Act empowering the Municipality to take over the management of private school. Even though a public interest is involved, when though the teachers and guardians may require the Municipality to do so.

12. Reference to Article 243W does not meet the situation because of the reasons that Article 243W prescribes that subject to the provisions of the Constitution, the legislature at a State may by law endow (Sic). Thus the provision provided in clause (b) of Article 243W relating to providing powers and authority by law in order to enable the Municipality to carry out the responsibility conferred upon it in relation to the matters listed in the 12th Schedule particularly, Item 13. Unless a law to that effect is enacted by the State Legislature in terms of Article 243W of the Constitution the Municipality can not exercise such power. My attention has not been drawn to any such legislation by the State Legislature. The specific provision provided in Article 243W that enactment of such law by the State does not include an enactment through executive action. The law as it is understood in the Constitution is a law enacted by the Legislature and not by executive action.

13. Relying on a decision in the case of Maneklal Chhotalal and Others Vs. M.G. Makwana and Others, , Mr. Mukherjee had pointed out that the right permitted under Article 19(1)(g) is subject to law as provided in clause (6) of Article 19, means a law enacted by the Legislature and not otherwise. Therefore in the absence of any law on the field enabling Municipality to take over management such an action cannot be acceded to by law.

14. In case there is a conflict between individual interest and public interest, surely the private interest has to yield to public interest, but that must be according to law. It cannot be left to the wild discretion of the Court without there being any law. Unless the law empowers the Court to support the action taken by the Municipality, even if it appears to the Court that it is in the public interest, such a step ought to be taken, but still then the Court cannot do so dispense justice according to law and not without the law.

15. It may be provided in a particular legislation governing the field of education namely by the Primary Education Act or the power conferred on the Primary School Board to take care of such situation, but unless it is provided in law, the Primary School Board also cannot take any step in relation thereto. Even then such question is not germane to this case since the State Government has not

come forward neither the Primary School Board has taken any steps. Therefore this question remains open and the submission made by Mr. Bihani in this regard is not required to be gone into.

16. In the result the writ petition succeeds and is allowed. Let a writ of Mandamus do issue commanding the respondents to restore the property, fund, money and the management of the school to the petitioners within a period of two weeks from the date of a copy of this order Is served upon the Principal as well as the Inspector. However the amount out of the fund that has been utilised by the Inspector of the Principal for the management of the school and running of the school and for the payment of salary to the staff working in the school immediately before the management was taken over may be adjusted and given credit of. However an account thereof shall be furnished by the Inspector and the Principal so long they were in management of the school and by the Municipality for the period between the management was taken over and the Inspector had taken charge. Any staff that might have been appointed in the school by the Municipality shall be treated to be the staff of the Municipality for which the school will not bear any responsibility and the salary paid to them from the school fund shall be reimbursed by the Municipality to the school fund within four weeks from the date of service of certified copy of this order. Let a writ of Mandamus do issue accordingly. Let a writ of prohibition do issue against the Municipality restraining it from interfering with the management of the property and fund of the school until and unless it is so empowered through proper legislation with regard to management of private Institutions. The ownership of the land however shall be subject to the result of the suit pending between the parties or otherwise. No order is made as to costs.

Let urgent xerox certified copy of this judgment be given to the learned advocates for the parties.