
(1997) 06 MAD CK 0051

In the Madras High Court

Case No : W.A. No. 687/97 and C.M.P. No. 8133/97

Rajendra Matriculation School

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 23-06-1997

Acts Referred:

Citation : AIR 1998 Mad 203

Hon'ble Judges : Thanikkachalam, Acting C.J.;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : A.L. Somayaji of A. Arulmozhi, for the Appellant; G. Thilakavathi, for 6th Respondent, for the Respondent

Final Decision : Allowed

Judgement

Thanikkachalam, A.C.J.

1. The writ petitioner in W.P. No. 18086 of 1996 is the appellant herein. The appellant filed the writ petition for issue of a writ of mandamus, directing the respondents 1 to 3 to take appropriate action and to prevent the 6th respondent school from being shifted or located in the premises bearing S. No. 207/3 of Selavadei Village, Omalur Taluk, Salem district. The learned single Judge, who heard the writ petition, held that as the 6th respondent is not a recognised school and it is only a nursery school, no question of taking any action by respondents 1 to 5 arises at this stage. Accordingly, the writ petition was dismissed.

2. There is a recognised private school situate in Doramangalam Village. The 6th respondent school, which is also a private school, is situate in Jalakandapuram village. As per the orders issued by the Director of Elementary Education the 6th respondent school cannot be shifted to the new location, without seeking permission from the authorities. Further, the 6th respondent school cannot also be located in the new location since the said place is situated hardly 100 metres from the writ petitioner's/appellant's school and such location of school within

one kilometre is prohibited in terms of the orders issued by the third respondent. The writ petitioner has not given no objection certificate to the 6th respondent to locate the school in the place chosen by the 6th respondent. In the circumstances, according to the writ petitioner, the 6th respondent school cannot be permitted to be housed in the place, which is opposite to the writ petitioner's school. The writ petitioner has been representing in this regard, but the respondents 2 and 3 have not taken any action so far. In the circumstances, respondents 2 and 3 were requested to take action against the 6th respondent and to prevent the 6th respondent from locating its school or shifting the existing school to the new location, which is situated opposite to the writ petitioner's school.

3. According to the appellant/writ petitioner the orders of the third respondent issued from 1994 were made it clear that no private school should be allowed to function without getting permission. Further, the orders issued by the third respondent also provide that no new school should be permitted within one kilometre radius of an existing recognised private school, unless no objection certificate is issued by the existing school.

4. On the other hand, the learned Counsel appearing for the 6th respondent, submitted that the 6th respondent nursery school is to be affiliated to C.B.S.E., wherein it is stated that no objection certificate is not necessary for starting a new school. It was further submitted that the writ petitioner is not an aggrieved party to ask for a direction to respondents 2 and 3 to take action against the 6th respondent. In order to support the contention put forward by the 6th respondent, reliance was placed upon the decision reported in 86 LW 401, State of Tamil Nadu v. Savari Cruz. Therefore, it was submitted that no direction need be given to respondents 2 and 6 for taking any steps to prevent the 6th respondent from starting a school in the place, which is opposite to the school belonging to the writ petitioner.

5. We have heard both the learned senior Counsel appearing for the appellant as well as the 6th respondent. The writ petitioner is already having a recognised school in Doramangalam village. The 6th respondent wanted to shift their school from Jalakandapuram Village and start the same opposite to the writ petitioner's/appellant's school and it is now represented by the 6th respondent that the 6th respondent has already shifted the school. There are number of Govt. orders, prohibiting starting of a rival Institution within 1 kilometre radius of the existing recognised private school. Our attention was drawn to the various orders of the Govt. of Tamil Nadu in this respect. The fact remains that the 6th respondent has shifted their new school in the disputed place. The learned single Judge pointed out that there is no necessity to issue any direction to the respondents 2 and 3 to take action against the 6th respondent. In violation of the Govt. Orders, it is also not possible for the 6th respondent to start a new school under whatever scheme, in front of the already existing recognised private school. Even the order issued by the State Govt. as late as 9-5-97 prohibits such a starting of a rival

school within one kilo metre radius without no objection certificate. Now the fact remains that the 6th respondent has now shifted their school to the new place, which is opposite to the recognised private school belonging to the appellant/writ petitioner, that would certainly violate the Govt. Orders issued, as already pointed out. In as much as the 6th respondent has now shifted their school to the place where there is already a recognised private school belonging to the writ petitioner/appellant herein, there is nothing wrong in the part of the writ petitioner/appellant herein requesting the Govt. to take action, in view of the earlier Govt. Orders issued by them. According to the facts arising in the decision in 86 LW 401 cited above by the learned Counsel for the 6th respondent, the writ petition was filed to quash the order granting restoration of recognition to a new school. That was not the fact in the present case.

6. In the circumstances stated above, the order passed by the learned single Judge is not in order according to the facts arising in the writ petition and it stands set aside. Accordingly, this writ appeal is allowed. No costs.

7. C.M.P. No. 8133/97.

Since the main writ appeal itself is allowed today, the above C.M.P., which is for grant of injunction, is dismissed.