

(2023) 04 KAR CK 0034

In the Karnataka High Court

Case No : Writ Petition No. 21595 Of 2022 (GM – RES)

School Development And Monitoring Committee Government
Lower Primary School Agaralingana Doddi Maddur Taluk
Mandya District – 571428

APPELLANT

Vs

State Of Karnataka & Others

RESPONDENT

Date of Decision : 13-04-2023

Acts Referred:

Right Of Children To Free And Compulsory Education Act, 2009 — Section 38(1)
Karnataka State Civil Services Act, 1978 — Section 3
Karnataka Right Of Children To Free And Compulsory Education Rules, 2012 — Rule
13(5), 13(6)
Constitution Of India, 1949 — Article 21A

Citation : (2023) 04 KAR CK 0034

Hon'ble Judges : M. Nagaprasanna, J

Bench : Single Bench

Advocate : Prakash M.H., Shwetha Krishnappa, B.J. Somayaji

Final Decision : Allowed

Judgement

M. Nagaprasanna, J

1. The petitioner/School Development and Monitoring Committee ('the Committee' for short) of the Government Lower Primary School, Agaralingana Doddi, Maddur Taluk is before this Court seeking a direction by issue of a writ in the nature of mandamus directing respondents 1, 3 and 4 to take immediate action for initiation of process of identification of land and re-building of the Government School in Agaralingana Doddi, Maddur Taluk on consideration of representation submitted by the Committee.

2. Heard Sri M.H. Prakash, learned counsel appearing for the petitioner, Smt. Shwetha Krishnappa, learned Additional Government Advocate for respondents 1 to 5 and Smt. B.J.Somayaji, learned counsel appearing for respondent No.6.

3. Brief facts leading to the filing of the present petition, as borne out from the

pleadings, are as follows:-

The school at Agaralingana Doddi, Maddur Taluk was established 35 years ago in a small area in the village and the present Committee is the School Development and Monitoring Committee of the Lower Primary School. As and when the strength of students would increase, the need for expanding the school with required infrastructure also increased. Many members in the Village then volunteered and donated 10 guntas of land in favour of the State only for the purpose of building the School at Agaralingana Doddi. Later the Government transferred entire records into the name of the school. The Government school then came within the jurisdiction of the Gram Panchayat as it was in the vicinity of Agaralingana Doddi Gram Panchayat. The State then constructed two rooms, a kitchen and toilet both for boys and girls in the area that was donated by the members of the village and established a new building in the said area. From 2003 upto 2018 the school was functioning in its full swing. 25 students, both boys and girls were studying in the said school from first to fifth standard.

4. In the year 2016 the National Highways Authority of India undertakes a project of widening and upgrading Bangalore – Mysore Highway, NH-275 into a ten-lane road. The land in which the school was established was also notified for acquisition as 732 sq. mts. of the school area was sought to be acquired which led to demolition of entire school building. The National Highways Authority assessed the compensation to the building as also for the land and awarded a compensation of `66,95,098. On assessment of compensation present Committee then makes a representation to the 4th respondent for utilization of compensation amount for purchasing an alternative land for construction of a new school building as the amount was more than sufficient for such construction. The said communication comes about on 03-01-2020, now close to three years. The Committee and the Head Master of the School again collectively requested the 2nd respondent/Deputy Commissioner, Mandya District to take immediate action in this regard. The said representation was submitted by the Committee and the Head Master of the School on 13-01-2020, which is also three years old.

5. On 01-02-2020 the 3rd respondent/Deputy Director of Public Instructions ('DDPI' for short) communicated to the 4th respondent/Block Education Officer ('BEO' for short) to submit required documents to his office for steps to be taken for construction/reconstruction of the school building. All the documents were submitted on 28-05-2020. Again on 03-06-2020 the Committee through the Head Master represented to the 4th respondent/BEO to take alternative steps for the purpose of conducting classes in view of demolition of the school building. The Government did not identify any land in the vicinity. The members of the village again came forward by submitting a representation to the Committee for purchase of private land for the purpose of re-building the school. By then a circular was issued by the State on 10-06-2020 directing compensation amount received by the School on its demolition to be immediately deposited to the

consolidated account of the State. Owing to the plight of the children without a proper school building, the Committee again submitted a request identifying about 3 guntas of land for utilization of compensation amount awarded against the demolished school. The 3rd respondent/DDPI communicates to the 1st respondent/Commissioner, Department of Public Instructions for suitable directions. The communication was sent on 29-08-2020. Even then no steps were taken. The 1st respondent/Commissioner directs the concerned again to deposit the compensation amount into the consolidated account by issuing another circular on 17-11-2020.

6. In the meantime, again the members of the village came forward to sell 10 guntas of land and on that accord, the Committee communicated to the 4th respondent on 06-02-2021 requesting him to assess the probable value of the land so identified. In reply, the Committee comes to know that a communication is received by the Head Master directing him to deposit `68,00,000/- immediately to the consolidated account of the State. On 03.12.2021 the 4th respondent/BEO communicated to the 3rd respondent/DDPI highlighting the problems of running the school in the village and it was opined to run the classes in any suitable building and to provide requisite amenities immediately. Since the school was not being set up, the members of the village began to protest for identification of the land and construction of school building.

7. The representations between one office to another, from the 1st respondent to 4th respondent, galore. But, the school was not set up. This led to the Committee taking up a small room and setting up a school so that the children should not go out of education. The small room does not have any amenity. It does not have a kitchen or a wash room. Representations were given again for construction of a new school building and a decision to be taken forthwith in that regard. The amount of compensation still lied in the joint account of the Committee and the Head Master of the School which had by then became `72,40,221/- with interest. Since no action is taken for close to 3 years after demolition of the school building, the petitioner/Committee is knocking at the doors of this Court in the subject petition seeking a direction as quoted hereinabove.

8. The learned counsel appearing for the petitioner would vehemently contend that the plight of young children who need education, and for the purpose of education need all the amenities is clearly ignored by the State. The State has been issuing communication after communication from one office to the other, but has not rendered its decision to establish a new school. He would take this Court to the photographs appended to the petition which would demonstrate the school being run in a small room. He would submit that fundamental right of children under Article 21-A of the Constitution of India has been completely given a go-bye by the State; the children have a fundamental right to free and compulsory education is taken away by the action of the State. He would submit that what the petitioner is asking is for establishment of new school out of the

funds that have come as compensation, on the demolition of the earlier school building. But, the State wants the compensation amount to be deposited in the consolidated account of the State and then wants to release it. In the process, children have no school building. He seeks a mandamus from the hands of this Court.

9. Per-contra, the learned Additional Government Advocate would vehemently refute the submissions to contend at the outset that the Committee has no locus to knock at the doors of this court and it did not have any right whatsoever that it is contending. The compensation amount should first come to the consolidated fund of the State and only then the State would release funds for establishment of a new school building. She would submit that all the 25 students in the school are now directed to be accommodated in a school already functioning in Hunasemarada Doddi which is either 500 meters or 1 km. away from the earlier school building which stood demolished, and would submit that in accordance with law the building would be re-constructed only after the compensation amount being deposited, but would admit that the compensation amount is in the joint account of the Head Master/Mistress and the Committee.

10. In reply, the learned counsel for the petitioner would submit that the school identified by the State where the students are to be accommodated, already has students in it. Apart from that the children have to cross a state highway to gain access to the said school. Therefore, the young children cannot be put to risk to attend to the school where the children are sought to be accommodated. He would insist on a mandamus for construction of school building immediately.

11. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

12. Frederick Douglass, once wrote that it is easier to build strong children than to repair broken men. Though these were lines written in the context of slavery in the United States of America, I would paraphrase it to the present scenario observing that it is necessary to build strong children, for which it is imperative to repair the broken will of the officials manning such offices. It is trite that social and economic development of the nation depends upon its educated population. For a successful democratic system, education is a fundamental requirement. The right of children for free and compulsory education was envisaged under the 86th amendment to the Constitution of India, which is later enacted by the Parliament on 04-08-2009. The Act describes the modalities of the importance of free and compulsory education for children between 6 and 14 years in furtherance of their fundamental right under Article 21-A of the Constitution of India. The Act came into force on 01-04-2010, India then became one of the 135 countries to make education a fundamental right of every child. The Act makes education a fundamental right of every child between the ages 6 to 14 and specifies minimum norms in elementary schools. Therefore, the State is under the constitutional obligation to provide education to all children of the age of 6 to 14 years for which purpose it is the duty of the State to provide/create necessary

infrastructure and effective machinery for proper implementation of the said right, failing which, the right to education guaranteed under Article 21-A would remain illusory. The right under Article 21-A has become a mockery in the case at hand, not at the instance of any private players, but at the instance of officials of the State owing to the ever known malady of "red tapism".

13. On the aforesaid principles if the case at hand is noticed, it demonstrates apathy on the part of the State towards children, notwithstanding the right of the children for free and compulsory education, under Article 21-A of the Constitution of India. The school in the year 2003 was set up in a particular place and its strength grew from time to time. At the relevant point in time there were 25 students in the said school. The school functioned for 15 long years. The students comprised of both boys and girls. The land acquisition for widening of the road blows the school into the wind on its demolition. The problem has cropped up since then not because of lack of funds, as the demolition of the school generated compensation close to `70,00,000/-. Therefore, it is not because of lack of funds that the new school did not come up, but it is because of lack of will on the part of the officers of the State – respondents 1 to 6. The moment the school building was demolished for the purpose of widening of road, the Committee continuously communicated to all the concerned quarters of the State, the State as it is known for its won't of procrastination did not act. It is necessary to notice certain relevant communications. The first of the communication is made on 03-01-2020. This communication is from the BEO to the Tahsildar. It reads as follows:

The BEO indicates to the Tahsildar that there is no school building and because of importance of education to the children sought identification of an appropriate land for construction of a building. The Committee then communicates to the Deputy Commissioner requesting identification and construction of a new building on 13-01-2020. The said communication reads as follows:

The DDPI communicates to the BEO on 01-02-2020 directing compensation amount to be kept in safe account which would be used for construction of a school building. The National Highways Authority deposited the compensation in the joint account of the Head Master and the Committee. The Committee again communicates to the BEO on 03-06-2020 for construction of a school building. The communication reads as follows:

(Emphasis added)

The communication results in a circular by the Finance Department directing deposit of the amount in the consolidated account of the State. The relevant portion of the circular reads as follows:

"....

(Emphasis added)

A communication is again made to the BEO urging that there is urgent need for

construction of the school building by identification of the land. This again results in concern about what happened to the compensation amount and not the plight of the children. A circular is again issued by the 3rd respondent/DDPI directing deposit of compensation amount. The circular reads as follows:

The Government sticks to its stand that the compensation amount should first be deposited in the consolidated fund of the State and later it would consider establishment of a new school building. In the meantime the students are directed to be accommodated in another school which is either 500 meters or one kilometer away. Since students had to cross the highway, the members of the village began to protest for non-establishment of a school in the village where the children could get free and compulsory education in exercise of their right under Article 21-A of the Constitution of India.

14. Photographs are appended to the petition which are not disputed by the State that the school is being run in a small room where the children have no benches to sit, there are seated on the floor both inside the room and outside the room. There is no place to cook food despite it being a mandatory requirement. There is no wash room/toilet to be used by both boys and girls. Without these amenities, the school is functioning in a rented building taken by the Committee with the sole intention that education of children should not suffer. Despite all these being brought to the notice of the State, the State does not take immediate steps for construction of the building, unable to bear the sorry state in which the children were being taught in a room/school room which did not have a toilet even, the Committee is before this Court.

15. The State, in its objections, does not indicate as to when the school building would be constructed or re-constructed by identification of a suitable land, but questions locus of the Committee to file this writ petition. According to the State, School Development and Monitoring Committee has no locus to file the present petition against the State, I decline to accept the said contention. It is to be seen at what stage the Committee is before this Court espousing the cause of the children seeking to enforce the fundamental right of children for free and compulsory education. Therefore, the stand of the State is unacceptable.

16. It therefore becomes necessary to notice the creation of the Committee. The State Government in exercise of its powers under sub-section (1) of Section 38 of the Right of Children to Free and Compulsory Education Act, 2009 has framed Rules i.e., the Karnataka Right of Children to Free and Compulsory Education Rules, 2012. The application of these Rules will have overriding effect over the provisions of the Karnataka Education Act, 1983 where there are no provisions the said Rules would apply. Part-V of the said Rules deals with School Development and Monitoring Committee. Therefore, it is a statutory Committee. The functions of the Committee are manifold. Two such functions which are germane are as follows:

"PART - V

SCHOOL DEVELOPMENT AND MONITORING COMMITTEE (SDMC)

13. Composition and functions the School Development and Monitoring Committee. - (1) There shall be a School Development and Monitoring Committee (SDMC) for every school other than an unaided school. Such Committee shall be constituted within six months of the coming into force of these rules, and reconstituted for every three years. School Development and Monitoring Committees shall have sixteen elected members. Head Teacher or senior most teachers as the case may be shall be Ex officio Member-Secretary, Health worker and an Anganwadi worker in the area where the school is located shall be Ex officio members of the School Development and Monitoring Committee."

... ..

(k) The School Development and Monitoring Committee shall prepare School Development Plan for the financial year after identifying the needs of the school. It shall be the duty of School Development and Monitoring Committee to oversee infrastructure facilities like playground, compound walls, classrooms, toilet, furniture, provision for drinking water etc., for the school. It shall also arrange construction and maintenance of any works as per Annual Work Plan/School Development Plan. It may acquire, purchase or hire immovable or movable property as may be required for proper functioning of the school. It shall protect school premises against encroachment and nuisance. It shall ensure that the school has the Child Helpline Number displayed prominently. It shall also oversee hygiene, upkeep and maintenance of the school, in addition, monitor the school health programmes and facilitate regular health camps for the children in the school;

... ..

(m) The School Development and Monitoring Committee may also involve all parents in the activities of the school and to motivate them to offer constructive suggestions to the local authority and School Development and Monitoring Committee for improving the school. It shall also address grievances or complaints made by students, parents, teachers and non-teaching staff of the school."

"(6) It shall be the duty of School Development and Monitoring Committee to ensure any money received by it for the discharge of its functions under the Act, shall be kept in a separate account, to be made available for audit every year. It shall also supervise all properties, funds and finances of the school. It may issue appeals and applications for money and funds in furtherance of its functions to receive, collect, and accept any gifts or donations, either in cash or in kind or of any property, either movable or immovable; and spend the same in fulfilment of all or any of its functions. It shall not be interpreted as authorizing collection of donation from parents."

(Emphasis added)

The afore-quoted clauses of sub-rule (5) of Rule 13 and sub-rule 6 would clearly indicate the powers of the Committee to acquire and purchase any movable or immovable property for the proper functioning of the school. It is the work of the Committee to protect the school premises against encroachment and nuisance. It is also the function of the Committee to address grievances of students, parents and teachers; to oversee infrastructure facilities for the school children, to supervise all properties and finances of the school. Therefore, the Rules formulated by the State in terms of the Central enactment give certain rights to the Committee.

17. The Committee has framed its byelaws called the Karnataka Gram Panchayat (School Development and Monitoring Committees)(Model) Bye-Laws, 2006 in terms of Section 3 of the Karnataka State Civil Services Act, 1978. Under the Bye-laws the functions of the Committee are also indicated. Bye-law 10 deals with Powers and Functions of the Committee. Clauses (j) and (q) of the said bye-laws are germane to be noticed and they read as follows:

“(j) Acquire, purchase or otherwise own or take on lease or hire temporarily or permanently immovable or movable property or any rights or privileges, as may be necessary or convenient for the furtherance of any/some or all of its functions under clause 10 of these bye-laws.

... ..

(q) Supervise all properties, funds and finances of the school and the SDMC.”

(Emphasis added)

The bye-laws also empower the Committee to acquire, purchase or otherwise own or take on lease or hire temporarily certain properties that are necessary for furtherance of its functions qua the school, supervise all properties and finances of the School. Therefore, it is not that the Committee is toothless and the allegations are truthless.

18. The communications made between the offices clearly indicate that the right to free and compulsory education of children, particularly in the Government school, is treated with utmost callousness, which cannot be countenanced. The State ought to have taken immediate steps, on receipt of compensation amount in the year 2020 from the National Highways Authorities, in reply to the representation of the Committee to construct school building without any loss of time, so that the young children would not lose their education. The officers who handled these files are responsible for such apathy towards the cause of the children in the Government school. It is to be noticed that these children are wholly dependent on free and compulsory education that they are given as their fundamental right under Article 21-A of the Constitution of India and the same cannot be rendered illusory by sheer red tapism on the part of officers of the State. Therefore, in the peculiar facts of this case, the petitioners are entitled to

issue of mandamus to respondents 1 to 6 to act forthwith, identify/approve identified land for the construction of school building and construct it and get the school functioned immediately. Since Legislative Assembly elections are now notified and the officers of the State would be utilized by the Election Commission of India, I deem it appropriate to permit construction of the school building after identification of the land from 01-06-2023 and report such compliance to this Court.

19. It shocks the conscience of the Court looking at the state of the children and the lackadaisical attitude of the State. What should be the concern of the State towards the education of a child can best be illustrated by a fact that is in public domain. In a remote place on the Island of Hokkaido, Japan there lives a girl who goes to the High School. The only child who goes to the school was at that place. The trains run by the State stop there only few times a day, once to pick up the girl for school and later, to drop her back when the school day is over. The train station exists only for one school going child and the trains run at the cost of the State for one school going child. It is, therefore, the people round the globe tipped their hats in praise of the Japanese Government for making education even of one child a top priority. It was lauded as good governance at the grass-root level. Therefore, the officers of the State must remember that right of every citizen matters and no child can be left behind. The issue before this Court is not "just one school", it is "even one school". This Court would not permit the State to reduce the fundamental right of children under Article 21-A of the Constitution of India, to a "mere rope of sand".

20. For the aforesaid reasons, I pass the following:

ORDER

(i) Writ Petition is allowed.

(ii) A mandamus issues to respondents 1 to 6 to act in unison and begin and complete the task of identification, construction and functioning of the School without any loss of time.

(iii) Identification of land and construction of building shall commence from 01-06-2023 and completed within four months.

(iv) The petitioner/Committee shall report to this Court compliance with the aforesaid directions by the State. The State is also at liberty to place on record compliance with the directions from time to time before this Court.

I.A.No.1/2023 also stands disposed, as a consequence.