

(2008) 09 GAU CK 0083
In the Gauhati High Court

Shyamanta Thakur and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-09-2008

Acts Referred:

Assam Non-Government Educational Institutions (Regulation and Management) Act, 2006 — Section 10(1)(b)
Assam Secondary Education Act, 1961 — Section 24(1), 24(2)
Assam Town and Country Planning Act, 1959 — Section 10(2)
Assam Town and Country Planning Zoning Regulations — Regulation 11(4)(E9)
Constitution of India, 1950 — Article 226, 30, 30(1)

Citation : (2009) 6 GLR 137 : (2009) 1 GLT 193

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—The case of the petitioners may, in brief, be set out as follows:

(i) All the 31 writ petitioners, in this writ petition, are residents of Digambar Chuk, Jorhat Town, in the district of Jorhat. It is their claim that their residences are situated on either side of a nine feet wide lane, which links the lane to the main road; the lane is so narrow that the premises, standing on either side of the lane, can be used for no purposes other than residential purpose. The area, where the petitioners reside, is a wholly residential area and, hence, it is, otherwise also, not convenient to use the premises, which stand on either side of the lane, for any purpose other than residential purpose. The lane, in question, being too narrow, two vehicles coming from opposite directions can pass with great difficulty. Hence, any attempt by anyone to use the said lane for any commercial or public activity would lead to chaotic situation.

(ii) The respondent-Hindi High School has been operating from rented premises, located at the main road, Digambar Chuk. The usual rush of vehicles, dropping and picking up children from the school, did not have any adverse impact on the convenience of the people of the locality concerned; but the scenario appears to be, now, changing. For the purpose of constructing a permanent school building,

the respondent-Hindi High School has purchased a plot of land measuring 4 kathas covered by Dag No. 1439 of Periodic Patta No. 314 of Jorhat Town, Block No. 6. This plot of 4 kathas of land is located inside the said 9 feet lane of Digambar Chuk. Considering the breadth of the said plot of land, the land, so procured by the respondent-Hindi High School, is not suitable for constructing any building for the purpose of using the same as a building for a High School, because the shifting of the school, inside the lane, would give rise to a chaotic condition inasmuch as vehicles entering the lane for the purpose of dropping and/or picking up children as well as entry of the parents and guardians of the students would choke the lane causing thereby great inconvenience to the residents of the lane.

(iii) Apprehending the inconvenience, which would be caused to them, and non-feasibility of construction of a school building in a residential area with a merely 9 feet wide lane, the residents of the area requested the Deputy Commissioner, Jorhat, to interfere and restrain the construction of the school building.

(iv) In fact, in the year 1998, the respondent-High School had made an attempt to start construction of a permanent school building and reacting to the same, when the residents submitted a representation, dated 8.3.1998, to the Deputy Commissioner, Jorhat, seeking his interference, the Deputy Commissioner called for a report from the Additional Deputy Commissioner (Development), Jorhat. According to the report, so submitted, the site, where the school building is, now, sought to be constructed, is a completely residential area and the construction of the school building would create problems in the locality. The Inspector of School, Jorhat, had, therefore, directed, vide letter, dated 29.4.1998, the respondent-High School to stop construction of the building immediately. Consequent upon the letter, so issued on 29.4.1998, construction of the school building was stopped; but, on 15.1.2006, (i.e., after a gap of about 8 years), the respondent - High School has laid down the foundation stone for construction of the school, building inside the said lane and started construction of the boundary wall. Once again, some of the residents of the area submitted a representation, dated 17.1.2006, to the Deputy Commissioner, Jorhat, with copies to the Inspector of Schools, Jorhat, the Chairman, Jorhat Development Authority, and the Chairman, Jorhat Municipal Board, informing them about the inconvenience, which the construction of the school, had resulted into and also the chaos that it would cause and, therefore, requested that requisite permission for construction of the school building be not granted. By his letter, dated 25.1.2006, Deputy Commissioner, Jorhat, requested Inspector of Schools, Jorhat, to look into the matter and submit a report. As the school authorities continued to proceed with the construction work of the school building on the said site, the petitioners and some others submitted yet another representation, dated 17.7.2007, to the Deputy Commissioner, Jorhat, and the Chairman, Jorhat Development Authority, with request not to grant any permission for such construction.

(v) Apart from the inconvenience caused to the petitioners as residents of the

area and the non-feasibility of establishing a High School at a plot of land located by the side of a 9 feet wide lane, construction of the school building, on the present plot of land, is also in violation of the provisions of the Zoning Regulations, adopted by the State Government u/s 10(2) of the Assam Town and Country Planning Act, 1959. In fact, u/s 11(4)(E-9) of the Zoning Regulations, the required size of the plot of land for a High School building shall be two bighas. This apart, u/s 10(1)(b) of the Assam Non-Government Educational Institutions (Regulation and Management) Act, 2006, a non-government educational institution is required to possess not less than two bighas of land for a single-story building in urban areas and not less than one bigha, in one plot, for multi-storied building in urban areas. Furthermore, under the Regulation for Recognition of High Schools, High Madrassa of the Board of Secondary Education, Assam, framed u/s 24(1) and 24(2) of the Assam Secondary Education Act, 1961, the required size of the plot of land for a single-story building, in urban areas, is two bighas and, in the case of multi-storied building in urban and rural areas, it is one bigha, in a single plot, with provision for play ground.

(vii) Thus, the petitioners' case is that apart from the inconvenience and non-feasibility of the construction of the High School over a plot of land measuring barely 4 bighas and located by the side of the 9 feet wide lane, such construction would also be in violation of the relevant provisions of the Zoning Regulations, Assam Non-Governmental Educational Institutions (Regulation and Management) Act, 2006, and Regulation for Recognition of High Schools, High Madrassa of the Board of Secondary Education, Assam, framed u/s 24(1) and 24(2) of the Assam Secondary Education Act, 1961.

(viii) It is the further case of the petitioners that the requirement of the size of the plot of land is a statutory requirement and is, therefore, binding on the State and its instrumentalities, such as, Jorhat Development Authority, and also on the respondent-High School and that the statutory requirements of the size of the plot under the Zoning Regulations, Assam Non-Governmental Educational Institutions (Regulation and Management) Act, 2006, etc., are independent of each other and non-fulfillment of the conditions, incorporated in any of them, would be contrary to law. Hence, even if, for some reason, the statutory requirements of Non-Governmental Institutions (Regulation and Management) Act, 2006, are found wholly inapplicable to this case, the same, by itself, would not make the statutory requirements of the Zoning Regulations and the provisions, contained in the Regulation for Recognition of High School and High Madrassa of Board of Secondary Education, Assam, inoperative. In short, violation of the provisions of any of the above statutory requirements would render construction of the school building illegal calling for interference of this Court in exercise of its powers under Article 226 of the Constitution of India.

2. The respondent High School did not file any affidavit-in-opposition, but filed a Miscellaneous Application, which gave rise to Misc. Case No. 4048/2007, whereby the respondent High School sought to get the interim order stopping them from

going ahead with their construction work vacated. At paragraph 15 of this Miscellaneous Application, the applicants submitted that their Miscellaneous Application may be treated as their affidavit-in-opposition.

3. As sought for, and as agreed to, by the Learned Counsel for the parties, this writ petition was taken up for final disposal. I have accordingly heard Mr. P.K. Goswami, learned senior Counsel, for the petitioners, and Mr. R.R. Sharma, learned senior Counsel, appearing on behalf of the respondent school. As far as the State respondents are concerned, none has filed any affidavit in this case.

4. From their Miscellaneous Application and the submissions made, during the course of hearing, what transpires to be the case of the respondent High School is as under:

(i) The respondent-High School received FC grant of Rs. 1000 per month and ad hoc grant of Rs. 850 per month from the year, 1994 to 1996. Thereafter, from the year, 1997, till date, the respondent High School has been receiving ad hoc grant of Rs. 1015 per month and FC grant of Rs. 250 per month. Based on these grants, the respondent High School contends that their school is not a Non-Governmental Educational Institution, as defined in Section 2(g) of the Assam Non-Governmental Educational Institutions (Regulation and Management) Act, 2006, inasmuch as the school, in question, is a school run and administered by minority and has had been receiving financial grants/aid from the State Government. Hence, the requirement in respect of the size of the plot of land, as has been provided u/s 10(i)(b) of the Assam Non-Governmental Educational Institutions (Regulation and Management) Act, 2006, is not applicable to the case of the respondent-High School.

(ii) The further case of the respondent High School is that the school authorities had taken 3 kathas of land, on lease, for a period of 30 years by lease deed, dated 13.5.1991, and the school authorities had also purchased a plot of land measuring 2 kathas, in the year 1989, in the name of their school, and yet another plot of land, measuring 2 kathas, was purchased by them in the year 1994.

(iii) Thus, the school authorities have purchased, altogether, 4 kathas of land, the first purchase being in the year 1989 and the second one being in the year 1994. This apart, and as already indicated above, the school authorities have also procured 3 kathas of land, on lease. Hence, the school authorities have 7 kathas of land in the name of the school and the 7 kathas of land satisfy the requirements of the law relevant thereto.

(iv) Yet another ground on which the writ petition is resisted by the respondent-school is that in the light of Chapter II of Section 3 of the Assam Education Rules and Orders, which deal with recognition of schools, no minimum plot of land has been made a condition precedent for starting a school.

5. While considering the present writ petition, what is relevant to bear in mind is

that it is not really in dispute that the lane, in question, is a narrow lane, the same being barely 9 feet wide nor could it be disputed that if the school is run from the plot of land, where the construction has been undertaken, it would lead to a chaotic situation inasmuch as a large number of people and their vehicles will have to enter into the said narrow lane, though both sides of this lane are flanked by residential houses. It could also not be disputed that while the purchased plot land, which measures 2 bighas each, form one plot, the plot of the land, which has been taken, on lease, is not a contiguous plot and, hence, all the three plots of land, namely, the two purchased plots of land and the one, which has been taken, on lease, do not form one complete/single plot of land.

6. In the backdrop of the facts, pointed out above, let me, now, come to the merit of the grounds on which the writ petition has been resisted by the respondent High School.

7. As regards the contention of the respondent High School that they do not fall within the definition of the provisions of Non-Governmental Educational Institution, as defined in Section 2 of the Act of 2006, and, hence, the requirement of minimum plot of land provided therein is not applicable to their school, it is appropriate to take into account the definition of Non-Governmental Educational Institution, which reads:

(g) "non-government educational institutions" means schools or junior colleges established and run by an individual or association of individuals or any Non-Government organization or society or trust except schools established and maintained by minorities under Clause (1) of Article 30 of the Constitution of India and imparting education at Primary, Middle, Secondary and Higher Secondary Level without receiving any grants-in-aid from the State Government, Central Government or the State Government. The word "institution" wherever it occurs in the Act shall be construed accordingly.

8. From a careful reading of the definition of Non-Governmental Educational Institution as defined in Section 2(g), it becomes clear that the Act, in question, excludes only those schools, which are established and maintained by the minorities under Clause (1) of Article 30 of the Constitution. While it is the assertion of the writ petitioners that the school, in question, is not a school established and maintained by the minorities under Article 30(1) of the Constitution, the school authorities deny this fact. Since it is the school authority, which seeks exclusion from the application of the Act of 2006 on the ground that their school has been established and maintained by the minorities in terms of Article 30(1), the onus is on the school authorities. No material has, however, been brought on record by the respondent High School to show that the school, in question, can be held to be a school established and maintained by the minorities under Article 30(1).

9. Merely because of the fact, therefore, that the school, in question, is a Hindi High School, it does not become automatically a school established and

maintained by the minorities unless it is further pleaded and shown that the school, in question, has been established by the minorities. Establishment of a Hindi High School, in itself, is not a minority institution. Apart from the medium of instruction, which the school may be using for imparting education, it must be shown that people, at the helm of affairs, constitute minority within the meaning of Article 30(1) of the Constitution. Further more, even if, for a moment, it is assumed that the school, in question, falls within the meaning of the schools established and maintained by the minorities in terms of Clause 30(1) of the Constitution and, consequently, the requirements of the Non-Governmental Educational Institution Act, 2006, are not applicable to the case of the respondent High School, the fact remains that the requirement of the minimum size of the plot of land, provided under the Zoning Regulations and Regulation for Recognition of the High School, High Madrassa of the Board of Secondary Education, Assam, are, undisputedly and undoubtedly, applicable to the case of the respondent-High School too.

10. While dealing with the question as to whether the respondent High School satisfies the requirement of the Zoning Regulations and Regulation for Recognition of the High School, High Madrassa of the Board of Secondary Education, Assam, it needs to be reiterated that under the Zoning Regulations, the admitted position is that the required size of the plot of land, for a High School building, is two bighas. Similarly, under the Regulation for Recognition of the High School, High Madrassa of the Board of Secondary Education, Assam, the requirement of the size of the plot of land, in urban areas, in respect of a one-story building is two bighas and in the case of multi-storied building, in urban as well as rural areas, the requirement is one bigha with further provision for playground. This apart, the entire two bighas of land or the one bigha of land, as the case may be, must be in a single plot along with the provision for playground.

11. In the present case, the definite case of the petitioners is that the plot of three kathas of land, which the respondent High School has obtained, on lease, and the plot of 4 kathas of land, which the respondent High School has purchased by two different sale-deeds, are not contiguous to each other. This, in turn, clearly shows that the entire 7 kathas of land, so obtained by the respondent High School, do not constitute a single plot of land. The statutory requirement of the minimum size of the land, as already indicated above, is for a single plot of land and not the sum total of the different plots of land. The two kathas of land purchased in the year, 1989 and the other two kathas purchased in the year 1994 form a single plot of land measuring, in all, 4 kathas, but the plot of land measuring 3 kathas, which has been obtained on lease, is a different plot. The purchased plots of land and the plot of land, which has been obtained, on lease, are not contiguous to each other inasmuch as these two kathas are separated by a distance of about 300 meters and cannot, therefore, be regarded as a single plot of land.

12. Thus, even if the respondent High School is assumed to have obtained 7

kathas of land, the fact of the matter remains that the plots of land, which they have, do not form a single plot of land and, in such circumstances, they cannot be said to have, at least, one bigha of land for the purpose of running of a school in an urban area.

13. As regards the reference made by the respondent High School to the non-statutory rules of the Education Department, suffice it to point out that under these non-statutory rules, what is permitted is the starting of a school and, hence, no requirement of the minimum size of the plot of land has been mentioned therein as regard school buildings. This apart, the said Assam Education Department Rules and Orders were non-statutory Rules, which have lost their relevance after the enactment of the Assam Non-Governmental Educational Institutions (Regulation and Management) Act, 2006, and the Regulations framed thereunder. The Assam Education Department Rules and Orders are nothing, but non-statutory rules and these are, at best, in the nature of executive instructions or guidelines. These non-statutory rules cannot prevail upon statutory requirements, as may have been set out by the Zoning Regulations, or requirements of the Assam Non-Governmental Educational Institution Act, 2006, or Regulation for Recognition of the High School, High Madrassa of the Board of Secondary Education, Assam. Thus, requirements of the minimum plot of land of 2 bighas for construction of a school, under the Zoning Regulations, would prevail upon all provisions of the non-statutory Assam Education Department Rules and Orders.

14. Similarly, the provisions for requirement of 2 bighas of land for one-story building, in an urban area, or one bigha of land for multi-storied building, in an urban area, as provided under Assam Non-Governmental Educational Institution Act, 2006, and the Regulation for Recognition of the High School, High Madrassa of the Board of Secondary Education, Assam, would also prevail upon the non-statutory Assam Education Department Rules and Orders.

15. Coupled with the above, what is that the provisions as regard establishment of a school vis-a-vis the provisions as regards construction of school building are two separate provisions. The provisions regarding the establishment of a school pertain to the basic requirement for bringing a school into existence and it, therefore, immaterial whether the building is a rented premises or owned by the school authorities. It is in this sense that the Assam Education Department Rules and Orders, which pertain to the establishment of the schools, do not provide anything as regards the minimum size of the plot of land. On the other hand, the requirement of the Zoning Regulations pertain to the building laws in an urban area and, therefore, the minimum size of the plot of land in different categories of buildings have been prescribed. Hence, the mere fact that no minimum size of the plot of land has been prescribed by the Assam Education Department Rules and Orders does not, by itself, imply, as correctly contended by the writ petitioners, that the Zoning Regulations are redundant.

16. What may also be pointed out is that the respondent High School has never

challenged the departmental recognition of their school, which was provisionally granted by the respondents/authorities concerned. The provisional departmental recognition given to the respondent High School by the Director of Public Instructions, way back in the year 1984, required to have, at least, 7 bighas of land for construction of the school building and bighas for play ground. At the time, therefore, when the respondent High School had received their provisional recognition, they knew that then recognition was, provisional and they would be required to have a plot of land, which would satisfy the minimum area prescribed by the respondents/authorities concerned at the time of granting of the provisional recognition. Hence, the respondent school cannot complain of having been taken by surprise, when they are asked to comply with the legal requirements as far as the size of the plot of land, for the purpose of a High School, is concerned. This apart, the permission granted by the Jorhat Development Authority, in the present case, also clearly shows that the size of the plot of land of the school, in question, is 4 kathas and the Chairman, Jorhat Development Authority, granted permission only for one-story building. Apart from the fact that the permission, so granted, is in violation of the Zoning Regulations inasmuch as the Zoning Regulations required that the minimum size of the plot of land be 2 bighas, the fact of the matter remains that this permission has never been put to challenge by the respondent High School meaning thereby that the present permission, on the strength whereof the respondent High School has undertaken the construction work, is in respect of a 4 kathas plot of land. By no means, therefore, they can be said to have satisfied the requirements of the Zoning Regulations, in question.

17. Because of what have been discussed and pointed out above, there can be no escape from the conclusion that the construction, which the respondent High school has presently undertaken, is impermissible in law and cannot be allowed to proceed. Situated thus, it is clear that it is the bounden duty of the remaining respondents to ensure that the respondent High school does not proceed with the construction work, in question.

18. In the result, and for the reasons discussion above, this writ petition succeeds. The respondent High school and its authorities, namely, the respondent Nos. 8, 9, 10 and 11, are hereby prohibited from proceeding with the present construction work of the school at the plots of land, which form the subject-matter of controversy in this writ-petition. The remaining respondents are hereby directed to ensure that the respondent High school and its authorities do not make any construction in violation of law and contrary to what have been discussed, pointed out and directed above.

19. This writ petition and also the Miscellaneous Case No. 4048 of 2007 stand disposed of in terms of the above observations made and directions player in this case.

20. No order as to costs.