

(2004) 10 MAD CK 0037

In the Madras High Court

Case No : W.A. No's. 3051 and 3209 of 2004

Sri Sankara Bala Vidyalaya Matriculation School managed by
Sree Saradha Educational Trust

APPELLANT

Vs

The Commissioner and Secretary to the Govt. of Tamil Nadu,
The Director, Directorate of Matriculation Schools, The
Inspector of Matriculation School and Radha Subramanian

RESPONDENT

Date of Decision : 29-10-2004

Acts Referred:

Easements Act, 1882 — Section 62

Matriculation School Code — Section 11

Tamil Nadu Public Building (Licensing) Act, 1965 — Section 5(1)

Citation : (2004) WritLR 836

Hon'ble Judges : P.K. Misra, J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : AR.L. Sundaresan, for the Appellant; P. Rathinavelu, Government Advocate for respondents-1 to 3 and R. Subramanian, for Hema Sampath for 4th respondent, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—These appeals are directed against the common order of the learned single Judge in W.P. No. 26826 of 2003

and W.P. No. 7430 of 2004 dated 15.7.2004. The writ petitioner is the appellant in these appeals.

2. In the writ petitions, the petitioner has prayed for a Certiorarified Mandamus to quash the order of the Director of Matriculation Schools dated

15.9.2003 and 4.3.2004, withdrawing the recognition and refusing to extend the temporary recognition to the petitioner school for running

Standards I to X and for a direction to the second respondent to continue to issue the certificate of recognition from time to time on the petitioner

complying with the provisions of the Act and Rules relating to the conduct of Private Schools.

3. The case of the writ petitioner is that the petitioner is a Public Trust organised for the cause of promoting education among the poor and the

needy. It was established by one K.M.Subramaniam, who was a Chief Sales Officer of M/s.Binny Limited and was also a social worker, Member

of the City Municipal Corporation and subsequently of the Tamil Nadu Legislative Assembly. On 10.8.1962, he executed and registered a trust

deed, under which, ""Sri Saradha Educational Trust"" was established. K.M.Subramaniam, his wife Saradha Subramaniam and S.Venkateswara

Iyer were the trustees at that time. In the year 1966, K.M.Subramaniam, the owner of the property under dispute, resolved to lease out the

property to the Trust. It was also resolved to permit the Trust to put up the construction of additional buildings on the property. The petitioner

claims that the lease deed was also approved on 28.3.1967 in favour of the Trust for a period of 25 years on a monthly rent of Rs. 500/- to Mr.

K.M.Subramaniam. The Trust took over the school, which later became a Secondary Educational School and is now a Matriculation School,

imparting education upto X Standard. At present, about 500 students were studying with a strength of 30 teachers and 10 non-teaching staff. The

school was being managed by a School Committee, of which, the deponent of the affidavit was the Correspondent.

4. The property over which the school had been put up belonged to the joint family of K.M.Subramaniam. The father of the

petitioner/Correspondent filed a suit for partition in O.S. No. 1676 of 1997 on the file of the City Civil Court, Chennai, for partition of the property

by metes and bounds of the plaintiff's 1/6th share. A preliminary decree was passed on 28.4.2003, declaring the plaintiff's entitlement only for

1/11th share in the property. Aggrieved by the trial Court not granting a decree for 1/6th share, the plaintiff filed an appeal, which was pending

before this Court when the writ petition under appeal was pending. The first appeal has now been disposed of by a Division Bench of this Court by

judgment and decree dated 9.8.2004, dismissing the appeal, confirming the preliminary decree of the trial Court, declaring 1/11th share in favour

of the plaintiff.

5. According to the petitioner, in view of the pendency of the said suit, one of the sharers had addressed a letter to the Director of Matriculation

Schools, stating that the school had no rights over the property and hence, liable to be evicted in view of the decree of the Court and hence, the

temporary recognition ought not to be extended. As a result, the second respondent passed an order suspending the temporary recognition. In

W.P. No. 26826 of 2003, the said order was questioned and interim stay of suspension was granted in the said writ petition upto 21.1.2003.

Subsequently, the temporary recognition itself came to an end on 9.1.2004. The petitioner, therefore, applied for extension of the temporary

recognition. While the proceedings were pending and inspection of the school by the authorities was being conducted, the rival group of family

members/sharers had also approached this Court in W.P. No. 14566 of 2003, praying for consideration of their objections by the authorities. By

order dated 22.7.2003, it is stated that this Court had directed the authorities to give opportunity to the rival group (fourth respondent) and to

dispose of their representation dated 6.8.2002. Pursuant to that order, after hearing both parties, the Director passed an order dated 15.9.2003,

holding that the Management cannot run the school in the present circumstances, consequently withdrawing the temporary recognition with effect

from 9.1.2004, directing the closure of the school in the disputed premises and giving suitable directions to the Management to make proper

alternative arrangements for the transfer of children to other schools and that the Inspector of Matriculation Schools will render necessary

assistance in carrying out the said directions. It is as against the said order, the petitioner has filed W.P. No. 26826 of 2003. By a subsequent

order dated 4.3.2004, the Director informed that even by the earlier order dated 15.9.2003, it was made clear that temporary licence cannot be

granted to the school beyond 9.1.2004 and that as there was violation of the rules regarding the minimum required space as contained in the Tamil

Nadu Matriculation Schools Rules, the school cannot be allowed to function any further. As against the said order, the petitioner had filed W.P.

No. 7430 of 2004. K.Raviraja Pandian,J., by a common order, disposed of both the writ petitions. These writ appeals have been filed against the

said common order.

6. Mr. AR.L.Sundaresan, learned counsel for the appellant, after stating the facts relating to the formation of the Trust, the establishment of the school and its growth, contended that the formation of the Trust and establishment of the school was intrinsically connected with each other. The other sharers of the property were equally bound by the decisions of the Trust. The decree by the civil Court related only to a very negligible share of 1/11 and the Trust, having put up the superstructure, cannot be deprived of its control and the dominant interest over the property. The land had been in the possession of the school ever since the formation of the Trust in the year 1964 and at present, the total extent of the superstructure was 15,000 sq.ft.

7. Learned counsel further contended that it was not within the competence of the educational authorities to deal with the issue of title or as regards the shares of the parties. The school has been functioning for the past more than 45 years and the authorities cannot ignore the effective possession by the petitioners merely because there was a preliminary decree for partition. The authorities failed to note that the Trust is not a party to the partition suit and hence, the decree cannot bind the Trust. The Trust is also taking steps to be impleaded in the suit.

8. Learned counsel contends that the withdrawal of the licence and recognition can be only on grounds as contained in Section 11(b) of the Code of Matriculation Schools and not on any other grounds, which are not available under the Code/ Regulations. A preliminary decree in a partition suit by a co-owner cannot be interpreted as entitling the authorities to deny the renewal of the licence, which the school is otherwise entitled to.

9. It is further contended that the respondents, who are now opposing the renewal, were also part of the Trust and the administration of the Trust.

One of the defendants, Hariharan, had signed the cheques for payment to be made to the Contractors towards the payment for putting up additional construction to the school. There was no objection from any quarters when the additional buildings were put up. He had also filed a suit for permanent injunction against the fourth respondent and the other co-owners, contending that the irrespective of the shares of each co-owner, the Trust and the school have to be preserved and that the property was indivisible.

10. Learned counsel further contends that in the background of the facts of the case, a valuable civil right had accrued in favour of the Trust, as

provided u/s 62(b) of the Easements Act. A licensee, acting on the licence with the knowledge of the licensor, had put up construction by incurring

heavy expenses for which, the contesting parties have acquiesced by conduct. Learned counsel further contends that the Trust property was not

available for partition and hence, the property on which the school was situated should have been held as not available for partition.

11. Learned counsel also referred to a recent Government Order passed by the Government on 21.7.2004, fixing a minimum extent of 6 grounds

for establishing a school and that the existing schools were given three years" time to comply with the said requirement. Even in terms of the said

Government Order which came to be passed only subsequent to the impugned order, the said time limit was still available to the petitioner and

therefore, it would not be proper to order eviction of the school or to refuse extension of the licence on the ground of lack of space.

12. In their written submissions, learned counsel for the fourth respondent has submitted that the learned Judge has rightly found that there was no

proof of any tenancy and that the petitioner had come to Court with a false case. Not having succeeded in establishing a case of lease, the

petitioner had pleaded oral licence, for which also, there is neither pleading nor proof. The claim that the superstructure was put up only by the

Trust was also false. Both the land and the building were available in the year 1960 itself, as could be seen from the proceedings of the Settlement

Officer dated 25.1.1960. It is further submitted that out of eleven sharers, nine sharers did not want the school to continue and have opted to sell

their respective shares. The Trust has no property by itself. The Trust does not satisfy any of the requirements under the Code for Matriculation

Schools. Any licence u/s 5(1) of the Tamil Nadu Public Buildings (Licensing) Act, 1965, has to be applied only by the owner of the property. But,

the application had been signed by the Correspondent alone, who has no authority to do so. It is further stated that it is the Managing Trustee who

had commenced the litigation by also pleading adverse title and the second trustee had also been given a share. However, not being satisfied with

1/11th share, an appeal was filed, which has also been dismissed by this Court. The claim of the rights of the Trust, as made by one of the parties,

was also rejected. Having thus lost in the civil suit, the son of the Managing Trustee has now taken over the litigation. The trustees are now

enjoying the income even after the rights of the other sharers have been declared and the trustees are pleading the welfare of the Trust and the

students. At any rate, the school cannot be run in the present premises, having regard to the new Government Order dated 21.7.2004.

13. We have considered the submissions of both sides.

14. As the facts stated above would disclose, though the school is stated to have been established in 1960s, it was established on the property

belonging to K.M.Subramaniam, who had died intestate. As such, one of the legal heirs/co-owners filed a suit for partition. Both the trial Court and

this Court, on appeal, have concurrently found that the property was a self-acquired property of K.M.Subramaniam and hence, all the legal heirs

were entitled to their respective shares.

15. After having considered the submissions of both sides and on a perusal of the records, we are of the view that the petitioner/Trust has not

come out with a clear case as to what is the manner of right of the Trust over the property. In the affidavit, it is stated that a lease deed was

executed on 28.3.1967 by the owner of the property for a period of 25 years. Admittedly, no lease deed is filed before the Court and the learned

single Judge has rightly held that the claim of lease has not at all been established. The only reference is to the alleged resolution passed in the

meeting of the trustees on 28.3.1967. A perusal of the xerox copy of the said resolution reads that the draft lease deed prepared by the Advocate

for a period of five years was approved. Neither the lease deed nor the terms of the lease are furnished before the Court. The minority group of

the family members, who are now asserting that the Trust or the school have rights over the property, are unable to project any consistent basis for

their claim. In the partition suit, the second defendant, Hariharan, who is one of the trustees and now sailing with the writ petitioner, pleaded that

the suit property was the ancestral property of K.M.Subramaniam. The school was established and the Trust was also formed in 1964 and that the

Trust had put up additional buildings in the year 1965 and 1974. He further claimed that he has 7/39th share over the entire assets, which should

be divided by metes and bounds. The trial Court, as well as this Court, in the first

appeal, by judgment dated 9.8.2004, have concurrently held that the suit property is not an ancestral property, but is the self-acquired property of K.M.Subramaniam. As K.M.Subramaniam died intestate, his legal heirs are entitled to their proportionate share. One other sharer, the ninth respondent, had raised a contention in the first appeal to the effect that the founder of the Trust sought to transfer the suit property to the Trust and hence, the property was not available for partition. This was rejected by the Division Bench holding that such a pleading had never been raised by the parties and it was positively held as follows:

On the other hand, including all the heirs of K.M.Subramaniam, whether they are class-I or otherwise, have claimed share in the suit property, thereby ignoring the Trust said to have been created, which should follow, the property is available for partition.

16. Now, during the pendency of the first appeal, the said Hariharan, the second defendant, claiming to be the President of the School Committee, had chosen to file a suit for permanent injunction in O.S. No. 5039 of 2003 to restrain the co-sharers from interfering with the running of the school by the Trust. He had filed the suit without disclosing any specific manner of right of the Trust over the suit property. The very plaint discloses that it has been hastily filed with the object of preventing the other sharers to raise their objections before the educational authorities in the matter of granting or extending the permission to the Trust to run the school. Such a suit had been filed on 25.9.2003 and at the same time, the school also filed writ petition before the High Court in W.P. No. 26826 of 2003 to quash the order of the educational authorities, withdrawing the recognition of the school. In fact, as stated earlier, the very same individual Hariharan had claimed that the Trust had put up additional buildings, in which also, he has 7/39th share, which should be divided by metes and bounds.

17. In short, the writ petitioner group is attempting at every possible method of stalling the legal consequences of a valid decree of partition and the orders of the educational authorities, refusing to extend the recognition, in view of the dispute between the parties and the resultant non-fulfilment of the various requirements under the Regulations.

18. In this writ petition, it is true that this Court need not go into the inter se dispute between the parties and it is sufficient to see whether the action

of the educational authorities in refusing to grant extension of the licence and withdrawing the recognition are correct and justified. The fact remains

and is admitted that the majority of the co-owners of the property, who are also having major share in the property, do not want the continuance of

the school in the premises and want to give effect to the decree for partition by metes and bounds and to sell their respective shares. In the said

background, is it obligatory on the part of the authorities to grant recognition is the question to be decided.

19. The order dated 15.9.2003, being impugned in W.P. No. 26826 of 2003, has dealt with the infirmities and violations of the Regulations by the

petitioner. It is true that the said order came to be passed on the objections by one of the co-owners. But, it cannot be stated that the co-owner

does not have the right to object, having regard to his interest in the property and that he is also armed with a decree for partition.

20. After hearing both sides, the authorities have taken note of the following features, while passing the order dated 15.9.2003:

(i) Partition decree declaring only 1/11th share in favour of each of the sharers and the majority of the sharers having opted to sell their respective

shares and therefore, there being no unanimity among the co-owners in favour of running the school.

(ii) The resultant land area after the partition or the sales as opted by the majority of the co-owners will leave only very little land, which will not be

administratively sufficient or feasible. The continuance of the school will be against the departmental regulations.

(iii) The interest of the children who are of tender age and their future have to be safeguarded.

21. Consequently, the Director of Matriculation Schools directed the Management to take steps to close the Institution and that there were

compelling reasons to withdraw the recognition forthwith. However, in view of the hardship which the students have to face, the recognition would

be extended temporarily only upto 9.1.2004 and will not be extended beyond that date under any circumstance. Subsequently, in view of non-

compliance of the said directions, the second impugned order dated 4.3.2004 was issued, refusing to grant any further extension.

22. We are unable to find fault with any of the three grounds thus stated by the authorities for passing the impugned orders. There can be no

dispute over the fact that for obtaining permission from the authorities either under the Tamil Nadu Public Buildings (Licensing) Act, 1965, or under the Code for Matriculation School, for running the school, the authorities under the Act cannot issue such a licence or grant recognition in the absence of all the legal heirs/co-owners agreeing for such a licence being granted. The said requirement is admittedly absent in the present case.

The possession of the petitioner Trust, if any, is only by a minority group and their possession is only a litigious possession and cannot be treated or construed as a legal possession. The educational authorities are entitled to insist upon proper and legally valid possession. As on date, there is a valid decree for partition and confirmed by the High Court, and on the strength of the decree, the majority of the sharers have opted for division and selling the property and have objected for the renewal. Therefore, there is no possibility of the fulfilment of the essential requirement of the owners being in agreement for running the school. If there is more than one owner, consent of the other co-owners have to be shown. The Management should have title, or at least, legal possession of the property. The authorities have to give utmost concern to the welfare and the future of the children. They cannot be left in the lurch in the fight between the two groups of co-owners. Public interest is involved in the running of the school and the authorities cannot be silent spectators. When the basic requirements are admittedly not fulfilled, the authorities are, in fact, duty bound to cancel the recognition and to ensure alternative steps to accommodate the children in other schools. The fate of the children cannot be kept hanging due to the inter se dispute between the legal heirs of the founder. Further, extending the licence would mean that the decree of the Court for partition would be rendered impossible of enforcement and when the majority of the co-owners have come before the educational authorities raising objection for the continuance of the school, it is not open to the educational authorities nor will they have any power to ignore or reject the valid claims of the parties which are based on a decree of the civil Court.

23. In the background of the above facts, we are unable to sustain any of the contentions of the learned counsel for the petitioner. At least, when the first appeal was pending, the result of the appeal was awaited regarding the rights of the parties. Now that the first appeal had also been

dismissed, the decree for partition cannot be ignored. In fact, to a certain extent, the so-called rights of the Trust had also been considered in the

judgment, as mentioned above, and whether the property would be available for partition or not. Positive findings have also been rendered that the

property was available for partition notwithstanding the contention that the property belongs to the Trust.

24. A contention was raised as though the entire superstructure had been put up only by the Trust, but it does not appear to be factually correct.

The Schedule appended to the plaint not only mentions the vacant land, but also includes the house thereon. Assuming that the Trust had put up

any additional building with a right to claim compensation, the Trust may have a right to claim the value of the same before the appropriate forum,

subject to the Trust being able to substantiate its claims on facts and law. However, that factor alone cannot confer the Trust with any right to retain

the possession of the property and to expect the educational authorities to ignore the decree for partition and specific objections from the co-

owners.

25. The contention that Section 62(b) of the Easements Act would be attracted and that the licensee had acted on the licence and had put up

constructions with the consent of the original owner, etc., cannot also be sustained in the face of a valid decree for partition. The trustees have been

parties to the suit, and at least, two co-owners had raised contentions regarding the rights of the Trust and the Division Bench, having found against

the claims of the Trust, the parties cannot now be heard to raise such contentions based on the Easements Act. More so, these writ appeals relate

only to the validity or otherwise of the orders of the educational authorities. The impugned orders have to be tested only in terms of the Code and

Regulations relevant for recognition and permission to run the school. Having regard to the disagreement between the co-owners and rights

declared in their favour by the civil Court, the impugned orders have to be sustained. Moreover, as stated earlier, the petitioner has not been able

to put forward any consistent case regarding his rights over the properties either as a lessee or as a licensee.

26. We are not required to consider the effect of the new Government Order passed by the Government in G.O. (2D) No. 48, School Education

Department dated 21.7.2004, fixing a minimum required land area of 6 grounds for every Matriculation School as a condition for recognition and

the time given thereon to the existing schools to comply with the said requirement. The impugned order has to be tested on the grounds stated

thereon and this Court need not go into the said Government Order, which has nothing to do with the inter se dispute between the co-owners,

which had, actually, resulted in the passing of the impugned orders. It may be that as a result of the Government Order, the school has to be

shifted, at any rate, from the disputed premises sooner or later, within the stipulated time. But, the said Government Order will have no relevance

for the validity or otherwise of the impugned orders.

27. Therefore, we do not find any reason to interfere with both the impugned orders and the order of the learned single Judge.

28. We also find that enough time had been given to the petitioner school to close down or to shift the school within a time frame and also to

ensure proper steps to make alternate arrangements for the students to be accommodated in other schools. It is not fair on the part of the petitioner

to scuttle or stall the effect of a valid decree for partition and the rights of the other parties thereon. It is the father of the petitioner who had filed the

suit for partition and the trustees have also been parties to the suit, each claiming their own share. To our specific question, it is admitted that the

dissenting co-owners do not derive any benefit or share from the income of the school. It is but natural that they are entitled to object and it would

be unjust to stand in the way of the parties to the suit, to receive the benefits of the decree. However, considering the welfare of the students who

have to be shifted to other schools and that their interest should not be affected, the second respondent is directed to extend the temporary

recognition/permission only till the end of the current Academic Year, namely, 30.4.2005. This indulgence is more than what the petitioner

deserves, bearing in mind that extension was already given by the authorities and the attitude of their self-interest and adopting delaying tactics.

One of them files a suit for bare injunction even after the decree for partition to which he is a party which is nothing but abuse of process. In the

writ petition in W.P. No. 7430 of 2004, the petitioner does not even implead the contesting party respondent who came to be impleaded only at a

later stage, at the instance of the said respondent. Therefore, though we are convinced that the appellant does not deserve any indulgence, while

dismissing the appeals, we are giving a direction to the second respondent to extend the recognition till 30.4.2005 only in the interest of the

students and it is made clear that the second respondent shall not grant any further extension beyond the said period for any reason, nor this Court

will entertain any such petition for extension. The time is long enough for the petitioner to make alternate arrangements.

With the result, the writ appeals are dismissed. However, the second respondent is directed to extend the temporary recognition only till

30.4.2005 and no further extension of time shall be granted and also to ensure proper transfer of the students to other school without affecting their

studies. Consequently, W.A.M.P. Nos. 5650, 5651, 6012 and 6013 of 2003 are also dismissed.