
(2010) 10 MAD CK 0131

In the Madras High Court

Case No : Writ Petition No. 4493 of 2009 and M.P. No's. 1 and 2 of 2009

The Managing Trustee/Chairman A.D.J. Dharmambal
Polytechnic College

APPELLANT

Vs

The Principal Secretary Department of Higher Education The
Government of Tamil Nadu, The Principal Secretary
Commissioner of Technical Education and The Chairman/
Governing Council Valivalam Desikar Polytechnic College

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Citation : (2010) 10 MAD CK 0131

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : R. Muthukumarasamy, for M. Sekar, for the Appellant; Lita Srinivasan, Government Advocate for Respondents 1 and 2, G. Thilakavathi, for Respondent 3, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—This writ petition has been filed seeking to quash the order dated 02.03.2009 of the first respondent and to

forbear the respondents from in any manner dispossessing or disturbing the lawful possession and occupation of land and building known as the old

Government Technical Higher Secondary School (Vocational) premises from the year 1986 on payment of rent.

2.The brief facts leading to the filing of the writ petition are as follows:

(a) The petitioner and the third respondent, two private educational institutions, claim over 10 acres of land and the building thereon at

Nagapattinam.

(b) The Government assigned 50 acres of land to the third respondent during

1950's and the third respondent started a Polytechnic viz., Valivalam Desikar Polytechnic College in 1960 in the land assigned to them.

(c) The Government decided to start 14 Junior Technical High Schools including the one at Nagapattinam during 1965. In this regard, the

Government required 10 acres of land from the third respondent, out of the 50 acres of land assigned to them. Accordingly, the third respondent donated 10 acres of land to the Government for the said purpose.

(d) The Government put up the building and commenced the Courses. Higher Secondary School (Vocational) was run by the Government in the

building raised on the 10 acres of land. The building was only on 2 acres of land and 8 acres of land was vacant. However, there was a poor

response from the students for the vocational courses and hence, the Government decided to close those Higher Secondary Schools (Vocational)

including the one at Nagapattinam.

(e) In the meantime, the third respondent sponsored the petitioner herein to start a Women's Wing in their Polytechnic, when the petitioner

proposed to donate Rs. 6.00 Lakhs during 1979-1980 for starting a Women's Wing in the third respondent Polytechnic, as there was no

educational institution in Thanjavur District imparting technical education to women.

(f) When the petitioner decided to start a Women's Wing in the third respondent Polytechnic, the petitioner expressed his desire to develop the

Women's Wing into a full fledged Women's Polytechnic, for which course, the third respondent sponsor had no objection and in fact, the third

respondent assured to donate 10 acres of land for the said purpose.

(g) In these circumstances, the Government issued an order in G.O.Ms. No. 1358, Education Department, dated 28.07.1979 sanctioning the

opening of a Women's Wing by the petitioner in the third respondent Polytechnic. The proposed Women's Wing was permitted to have Diploma

Course in Electronics and 30 students were to be admitted in the Women's Wing. The Women's Wing functioned from the academic year 1979-

1980.

(h) As stated above, the Higher Secondary School (Vocational) Nagapattinam became defunct and did not function after 1985-1986.

(i) While so, the petitioner was permitted by the Government of Tamil Nadu vide G.O.Ms. No. 905, Education Department, dated 30.06.1986 to

have a full fledged Women's Polytechnic with effect from 1986 1987 with a total intake of 120 girl students in 4 courses viz., Electronics

Engineering, Computer Science, Instrumentation and Civil Engineering.

(j) The Director of Technical Education issued a proceedings dated 13.08.1986 permitting the petitioner to run the full fledged Women's

Polytechnic, Nagapattinam in the existing accommodation available in the Government Higher Secondary School (Vocational) attached to

Valivalam Desikar Polytechnic, Nagapattinam, on rental basis, for one year, from the academic year 1986-1987. It was stated that the rent for

accommodation to be fixed and the quantum of rent so fixed would be intimated in due course.

(k) It is also not in dispute that the petitioner occupied the accommodation in the Government Higher Secondary School (Vocational) with the

consent of the third respondent.

(l) The petitioner also has 15 acres of land adjacent to the lands owned by the third respondent institution. The petitioner requested the

Government to allot the building of Government Higher Secondary School (Vocational) at Nagapattinam, that is now occupied by the petitioner.

(m) The Government issued an order in G.O.Ms. No. 440, Education (J2) Department, dated 26.03.1990 directing the Director of Technical

Education to submit his report regarding the request of the petitioner for transfer of building belonging to the Government Higher Secondary School

(Vocational).

(n) The Government also issued another order in G.O.Ms. No. 933, Education (J2) Department, dated 05.07.1990 announcing the closure of 14

Higher Secondary Schools (Vocational) including the one at Nagapattinam. In the said G.O., the Government approved for transfer of the building,

equipments, library books, furnitures of the Government Higher Secondary Schools (Vocational) to the respective aided Polytechnics by collecting

nominal rent, since the lands were donated by the respective private Polytechnics.

(o) Pursuant to the aforesaid G.O., the building of the Government Higher Secondary School (Vocational) at Nagapattinam along with the fixtures

therein, were handed over to the petitioner on 26.06.1992, by the Assistant

Engineer, P.W.D., Technical Education Section, G.P.T. Campus,
Trichy.

(p) While so, in 1993, the third respondent herein claimed for 10 acres of land and the building thereon, where the Government Higher Secondary School (Vocational) functioned, as per the directions of the Government in G.O.Ms. No. 933, Education Department, dated 05.07.1990, referred to above.

(q) The Additional Director of Technical Education (Polytechnics), Chennai wrote a letter dated 07.07.1993 to the petitioner to hand over the land and building to the third respondent in compliance with G.O.Ms. No. 933. The petitioner wrote a reply dated 20.09.1993 stating that the G.O.Ms. No. 933 would not apply to the petitioner in view of the special circumstances, wherein the petitioner was in occupation of the land and building of Government Higher Secondary School (Vocational) Nagapattinam.

(r) While so, the petitioner wrote letters dated 25.11.1994 and 20.01.1995 to the Government and to the Director of Technical Education respectively, making it clear that they only needed the building of the Government Higher Secondary School (Vocational) and the lands of about 2 acres on which the building stands and the petitioner was willing to hand over 8 acres of land. In fact, the petitioner expressed their willingness to part with an equivalent area of 2 acres of land from the adjoining area belonging to the petitioner and to hand over the same to the Government and the balance 8 acres of land to the Government or to the donor (the third respondent herein).

(s) In the meantime, the third respondent filed a writ petition in W.P. No. 11986 of 2001 praying for a direction to the respondents therein to implement the Government Order in G.O.Ms. No. 933, Education Department, dated 05.07.1990 by handing over the lands to an extent of 10 acres along with the building thereon. The petitioner herein was the fifth respondent in the said writ petition. This Court disposed the said writ petition on 25.08.2008 directing the third respondent herein to submit a representation to the Government with regard to the relief sought for in the writ petition, within a period of four weeks from the date of the said order and on such representation being submitted, the Government was directed to pass appropriate orders thereon, on merits and in accordance with

law, within a period of 12 weeks thereafter.

(t) The third respondent made a representation dated 15.10.2008 staking their claim for 10 acres of land and the building thereon as per G.O.Ms.

No. 933. The said representation was made pursuant to the order passed in W.P. No. 11986 of 2001. Admittedly, the said representation was not furnished to the petitioner.

(u) Likewise, the petitioner made a representation dated 28.10.2008 to the Government referring to the order passed in W.P. No. 11986 of 2001

and requested the Government to permit them to retain the 10 acres of land and the building thereon.

(v) The Government passed the impugned order in G.O.(1D) No. 34, Higher Education Department, dated 02.03.2009 directing the petitioner to

hand over 10 acres of land and the building thereon to the third respondent. Hence, the petitioner has come up with the present writ petition.

(w) Factually, the petitioner continued to occupy for the past 25 years. Now it is a Polytechnic offering courses to both boys and girls. There are more than 1000 students studying in the petitioner Polytechnic.

3. While ordering notice of motion on 25.03.2009, this Court granted interim stay. The respondents 1 and 2 filed counter affidavit. The third

respondent filed an application to vacate the interim stay granted by this Court. The petitioner filed reply affidavit. More importantly, the petitioner

filed an affidavit of compromise proposal.

4. Heard the submissions made on either side and perused the materials available on record.

5. The learned senior counsel for the petitioner submitted that the petitioner is willing to hand over the RCC main building measuring an extent of

10,164 Sq. Ft. comprising ground and first floor built over an extent of 40,875 Sq. Ft of land and also the vacant land measuring about 8 acres

and the petitioner requires only about one acre that consists of 2 ACC sheds known as Workshop cum Lab and Drawing Hall measuring an extent

of 10,899 Sq. Ft. and the covered passage to an extent of 219 Sq. Ft. and toilet area of 260 Sq. Ft. that form part of the ACC sheds. The learned

senior counsel also produced an affidavit of the petitioner relating to compromise proposal, wherein the aforesaid proposals are incorporated.

6. However, the learned Counsel for the third respondent submitted that the third

respondent is not willing to part with, even an inch of a land to the petitioner.

7. On merits, the learned senior counsel for the petitioner submitted that the impugned order was passed in flagrant violation of principles of natural justice, since the representation dated 15.10.2008 of the third respondent, based on which, the impugned G.O., was passed as well as the report obtained by the first respondent from the second respondent were not furnished to the petitioner and his views were not obtained thereon. The report of the second respondent is relied on by the first respondent to pass the impugned order. Furthermore, the learned senior counsel submitted that the first respondent while passing the impugned order, failed to take into account the Government Orders in G.O.Ms. No. 1358 and G.O.Ms.

No. 440 and the special circumstances that existed as far as the Government Higher Secondary School (Vocational) at Nagapattinam is concerned. Therefore, the learned senior counsel submitted that G.O.Ms. No. 933 could not be blindly applied and in the case of other aided

Polytechnics, which donated lands for starting Government Higher Secondary Schools (Vocational) did not have a Women's Wing like the

petitioner and later a full fledged Polytechnic with the consent of the third respondent. Hence, G.O.Ms. No. 933 could not be applied. In any

event, the learned senior counsel submitted that the impugned G.O., has to be quashed and the matter has to be remitted back to the first

respondent to consider the entire issue in the background of other Government Orders viz., G.O.Ms. Nos. 1358 and 440.

8. On the other hand, the learned Government Advocate for the respondents 1 and 2 and the learned Counsel for the third respondent sought to

sustain the impugned order stating that the G.O., was passed based on the earlier order in G.O.Ms. No. 933.

9. I have considered the submissions made on either side.

10. The founder of the third respondent was the sponsor of the petitioner to start a Women's Wing in his Polytechnic. The third respondent, while

sponsoring the petitioner to start a Women's Wing in their Polytechnic, offered 10 acres of land for the said purpose. The same has been noted by

the Government in G.O.Ms. No. 1358. In this regard, the relevant passage in G.O.Ms. No. 1358 is extracted hereunder:

Thiru. A.D. Jayaveerapandiya Nadar, Managing Trustee, ADJ Dharmambal Trust, Vellipalayam, Nagapattinam has stated that there are no proper facilities for studying technical education by women students of Thanjavur District and hence to set right the imbalance, he has come forward through was newly formed ADJ Dharmambal Trust to start a women's wing in the Valivalam Desikar Polytechnic, Nagapattinam in the first instance, and then, to develop the wing into a full fledged women's Polytechnic. For this purpose, he has proposed to donate Rs. 6.00 lakhs during 1979-80. He has also stated that the Trust is having 33 acres of plantation lands and Rs. 2.00 lakhs in cash and it is proposed to add more money to this Trust. Thiru. K.M. Desikar, sponsor, Valivalam Desikar Polytechnic, Nagapattinam has no objection in starting a women's wing in the Polytechnic by the said Trust and he has assured to donate 10 acres of land for the purpose.

11. The founder of the petitioner institution and the founder of the third respondent were philanthropies. The founder of the third respondent, as stated above, sponsored the petitioner to start a Women's Wing in his Polytechnic and also expressed his desire to donate 10 acres of land for the said purpose. While starting a Women's Wing, the petitioner planned to develop the Wing into a full fledged Women's Polytechnic. The said plan of the petitioner was not objected to by the third respondent and he was generous enough to offer 10 acres of land. In the said circumstances, the Women's Wing of the petitioner came into existence during 1979-1980 in the third respondent Polytechnic.

12. The third respondent was assigned 50 acres of land at Nagapattinam for its educational purposes during 1950's. It started a Polytechnic in 1960. In 1965, the Government wanted 10 acres of land out of 50 acres of land assigned to them, to have a Higher Secondary School (Vocational). The third respondent was gracious enough to offer 10 acres of land. At that time also, the founder was at the helm of affairs.

13. In 1986, when the petitioner wanted to have a full fledged Women's Polytechnic in the defunct Government Higher Secondary School (Vocational) building, the third respondent had no objection for the same. That was, in fact, in consonance with the promise made by the third respondent in 1979 to donate 10 acres of land to the petitioner, as found in G.O.Ms. No. 1358. With the consent of the third respondent, the

Director of Technical Education permitted the petitioner to run their full fledged Women's Polytechnic in the Government Higher Secondary

School (Vocational) building.

14. The petitioner wanted the Government to allot the building of the Government Higher Secondary Schools (Vocational) at Nagapattinam. The

Government also considered the request and issued G.O.Ms. No. 440, Education Department, dated 26.03.1990 directing the Director of

Technical Education to submit their report. It is not known as to whether the Director of Technical Education submitted a report. Had the Director

of Technical Education submitted the report at that time, the problem could have been solved.

15. As the Government Higher Secondary Schools (Vocational) became defunct and a failure, the Government issued the G.O. in 1990 declaring

closure of all the 14 Higher Secondary Schools (Vocational) including the one at Nagapattinam. While the Government issued the order in

G.O.Ms. No. 933, Education (J2) Department, dated 05.07.1990 declaring the closure of 14 Higher Secondary Schools (Vocational), the

Government also directed the private aided Polytechnics that donated lands for the High Schools be handed over the building and the land by

collecting the nominal rent. Out of the 14 Higher Secondary schools, 3 schools were attached to private aided Polytechnics including the one at

Nagapattinam and other schools were attached to Government Polytechnics. The other 2 were at Kancheepuram and Gudiyattam. In those two

places, there was no third party like the petitioner herein. But at Nagapattinam, the School building was occupied from 1986 by the petitioner to

run their Women's Polytechnic. The occupation was with the permission of the third respondent.

16. As rightly contended by the learned senior counsel for the petitioner, while issuing G.O.Ms. No. 933, the Government failed to take into

account the special circumstances that existed at Nagapattinam, i.e. the special circumstances of the existence of the petitioner and the Government

Orders in G.O.Ms. Nos. 1358 and 440, referred to above. Therefore, the Government should have taken into account those circumstances, while

passing the G.O.Ms. No. 933. While G.O.Ms. No. 933 relates to all the 14 Higher Secondary Schools (Vocational) including the one at

Nagapattinam, the School at Nagapattinam had its own history, as stated above and that has to be taken note of.

17. In fact, the school building was handed over to the petitioner on 26.06.1992 by the Assistant Engineer, P.W.D., Technical Education Section,

G.P.T. Campus, Trichy. The handing over of the school building at Nagapattinam to the petitioner was after the passing of G.O.Ms. No. 933. This

was also known to the third respondent. At that time also, there was no objection.

18. In fact, the founder of the petitioner institution wrote letters dated 25.11.1994 and 20.01.1995 expressing their willingness to hand over 8

acres of land to the Government or to the donor Polytechnic as decided by the Government. He required only 2 acres of land on which the

buildings stand and the Polytechnic was run. Furthermore, the petitioner was willing to compensate by giving 2 acres of land for the same. In this

regard, para 7.2 of the letter dated 25.11.1994 is extracted hereunder.

7.2. As far as the lands are concerned the GHSS (VS) building is occupying an area of less than 2 acres as shown in sketch. Balance lands are not

being put to use and can be taken back either by the Government or by the Donor Polytechnic as decided by Government. The ADJ Dharmambal

Women's Polytechnic has 15 acres of land and does not require extra lands. Nearly 2 acres of land can be made available as marked "A" in the

sketch which belongs to the ADJ Dharmambal Women's Polytechnic and which land lies adjoining to the 10 acres of land belonging to the GHSS

(VS). This transfer of 2 acres can be made in lieu of the land belonging to the GHSS (VS) and on which the GHSS (VS) building are situated. No

rent may be levied for the lands belonging to the GHSS building as these were not used at all by the ADJ Dharmambal Women's Polytechnic and

in fact the building were handed over only on 26.06.1992 by the Assistant Engineer PWD Technical Education Section Trichy.

Paras 7.1 to 7.3 of the letter dated 20.01.1995 of the petitioner are also extracted hereunder:

7.1. We do not require the lands belonging to the GHSS (VS). The same can be used by Government as requested in reference 6 cited above as

the ADJ Dharmambal Trust possesses 15 acres of land which is lying adjoining to the lands of the GHSS (VS).

7.2. However we have no other alternative except to continue to function in the GHSS (VS) building (on rental basis) until action is taken as per

G.O.Ms. No. 440 dated 26.03.1990 for the transfer of the said building to the ADJ Dharmambal Trust.

7.3 The building of the GHSS (VS) stand on a land of about 2.00 acres and is situated in the North-East Corner of the 10 acres of land. The

Management is willing to part with an equivalent area of 2 acres of land from the adjoining area belonging to the ADJ Dharmambal Trust lands and

hand over the same to Government.

Those letters were written by the founder of the petitioner institution. Thereafter, it seems that the legal heirs of both the petitioner and the third

respondent came to the picture. The third respondent filed the writ petition in W.P. No. 11986 of 2001 claiming the entire 10 acres of land and the

building thereon, which they donated to start a Government Higher Secondary School (Vocational).

19. When the said writ petition was heard, it seems that the petitioner herein, who was one of the respondents, did not bring to the notice of the

third respondent about their willingness to hand over 8 acres of vacant lands, as stated in the letter dated 25.11.1994 and 20.01.1995. Under such

circumstances, the writ petition was disposed with a direction to the third respondent to make a representation to the Government setting out their

claim and the Government was directed to pass orders thereon, within a stipulated time.

20. Based on the said order, the third respondent claimed the entire 10 acres of the land and the buildings thereon. The petitioner herein also made

a representation dated 28.10.2008 claiming the entire land and building for their purpose. Both the representations were made by the legal heirs of

the founders. In these circumstances, the impugned order was passed without taking into account the aforesaid facts. That is, the petitioner was

willing to give back 8 acres of land and made it very clear in his 2 representations referred to above. Those representations were not taken note of

by the Government, while passing the impugned order. Furthermore, the petitioner was also willing to part with 2 acres of land for retaining 2 acres

of land and buildings thereon. The first respondent also failed to take note of the earlier orders in G.O.Ms. Nos. 1358 and 440 referred to above

as well as the promise made by the third respondent to donate 10 acres of land to the petitioner to have a Women's Polytechnic. Moreover, now

the petitioner filed an affidavit setting forth compromise proposal. Had the petitioner proposed this compromise proposal, when he made his

representation dated 28.10.2008, the Government could have passed a different order.

21. On the other hand, as stated above, the petitioner claimed 10 acres of land and the building thereon in their representation dated 28.10.2008,

that is contrary to the earlier representations dated 25.11.1994 and 20.01.1995. However, now the petitioner has filed an affidavit setting forth

their compromise proposal. Paras 3, 4 and the last para of the compromise proposal are relevant and the same are extracted hereunder:

3. In order to amicably settle the matter and in the interest of the both the institution the petitioner herein as a gesture of compromise is willing to

surrender the main building in Survey No. 667 excepting two ACC sheds known as workshop cum lab and drawing hall. The workshop cum lab

measures an extent of 6,924 Sq. ft. and the drawing hall admeasures an extent of 3,975 Sq. ft. Apart from these two halls, the covered passage to

an extent of 219 Sq.ft and toilet in an area of 260 Sq. ft. form part of the these sheds. An extent of 10 ft of land beyond the workshop cum lab

which can be used as passage for students and also for the purpose of maintenance of building is proposed to be retained. Thus in all ACC

building measuring an extent of 11,378 Sq. ft. is proposed to be retained over a land measuring an extent of 42,429 Sq. ft. The drawing No. 1

shows the particulars of land proposed to be retained and the remaining land meant for surrender by the petitioner. Drawing No. 2 shows the topo

sketch of the Government owned RCC main building and ACC sheds. Drawing Nos. 3 and 4 indicates the area and building ready to be

surrendered and drawing No. 5 indicates the land and ACC building proposed to be retained by the petitioner. If these land and ACC building is

surrendered, the AICTE approval will be lost and withdrawn. The management has no other source or means to construct further building as it is

struggling hard to run the institute.

4. The petitioner states that with the limited resources and funds, they are constructing a new building for the purpose of shifting to their own

premises. This construction process will be completed in a period of six months by which time the petitioner will vacate and hand over the RCC

main building measuring an extent of 7,299 Sq. ft. in the ground floor and an extent of 2,865 Sq. ft. in the Ist floor(Totaling to 10,164 Sq. ft.) and

built over an extent of 40,875 Sq. ft of land in T.S. No. 667 part southern portion. Besides this main building in T.S. No. 667, the petitioner is

willing to surrender an extent of 3,83,212 Sq. ft. of land in survey Nos. 667 Part, etc., marked as red portion in the drawing No. 1. On the other

hand the petitioner is willing to surrender the entire nine acres of land held under its use for the purpose of institute to the third respondent herein

forthwith and the building in occupation in a period of six months from the date of the order passed by the Hon"ble Court.

5. ...

In the light of the above submissions made, the petitioner herein prays that this Hon"ble Court may be pleased to pass appropriate orders for the

retention of the above mentioned 11,378 Sq.ft of ACC building over a land measuring 42,429 Sq.ft as per drawing No. 5 and also grant six

months time for shifting the class rooms, library and staff room etc. from the surrendered portion upon payment of the value fixed by the

Government or any reasonable amount fixed by this Hon"ble Court and thus render justice.

22. Further, as rightly contended by the learned senior counsel for the petitioner, the first respondent did not furnish the copy of the representation

sent by the third respondent and sought his views thereon. Likewise, the first respondent ought to have forwarded the representation of the

petitioner to the third respondent and his views should have been sought. The first respondent also relied on a report from the second respondent

to pass the impugned order. The said report also should have been furnished to the parties before taking a decision thereon. Hence, as rightly

contended by the learned senior counsel for the petitioner, the impugned order was passed in flagrant violation of principles of natural justice.

23. For all the aforesaid reasons, the impugned order is quashed and the matter is remanded back to the first respondent to pass orders afresh

after taking into account the affidavit of compromise proposal of the petitioner and also the entire matter commencing from G.O.Ms. Nos. 1358

and 440 and decide the same on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order.

24. The writ petition is allowed on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.