

(1987) 10 AHC CK 0021

Allahabad High Court

Case No: F.A.F.O. No. 325 of 1985

Zila Parishad, Ghaziabad

APPELLANT

Vs

Uttar Pradesh Board of Basic
Education, Allahabad

RESPONDENT

Date of Decision: Oct. 16, 1987

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2
- Uttar Pradesh Basic Education Act, 1972 - Section 18A, 18A(1), 18A(2)

Citation: AIR 1988 All 127

Hon'ble Judges: N.N. Mithal, J; K.K. Birla, J

Bench: Division Bench

Advocate: A.S. Kapoor, for the Appellant; N.P. Misra and Premchandra, for the Respondent

Final Decision: Dismissed

Judgement

N.N. Mithal, J.

The Zila Parishad, Ghaziabad, has come up in appeal against the order passed by the Additional District Judge, Ghaziabad, allowing the application for issue of temporary injunction by the respondent. By means of injunction, the appellant has been restrained from raising any kind of construction on the land in dispute.

2. The facts relevant for the purposes of the appeal are that the U. P. Board of Basic Education hereinafter referred to as the Basic Education Board constituted u/s 3 of the U. P. Basic Education Act, 1972 filed a suit against the Zila Parishad, Ghaziabad and the Nagarpalika Ghaziabad for a permanent injunction on the ground that a Junior High School was situated over a piece of land near Clock Tower, Ghaziabad which was run and controlled by the plaintiff. The Junior High School was established in the year 1885 in a building constructed thereon by the District Board, Meerut. In the year 1972 necessity for additional land was felt for requirements of

the school and, therefore, the Nagarpalika, Ghaziabad was approached by the District Board; Meerut for lease of its land to the Board. Consequently District Board, Meerut in 1972, (Sic) Ever since the school is being run in its building and also on the land leased out by the Nagarpalika to the plaintiff.

3. It may be recalled here that Ghaziabad formed part of District Meerut and later on some times in 1975 District Ghaziabad was carved out of the erstwhile Meerut District under the District Boards Act. The rural area of the district was governed by the District Boards established under the District Board Act, 1972. The District Boards were replaced by the Zila Parishads under the provisions of the Kshetra Samities and Zila Parishad Act, 1972. One of the functions of the District Boards and later on of Zila Parishads was to impart education within its jurisdiction, and for the purpose to establish and run schools in rural areas of the district. The responsibility of imparting primary education which was hitherto vested with the Zila Parishad in the rural areas are with the Municipal Board for the Urban Areas and since it was found that the administration of education at the level of local bodies was not quite satisfactory, the Government took over the responsibility for imparting primary education and withdrew the same from the local bodies. For the purposes of imparting education, the Govt. constituted U. P. Board of Basic Education and the work of imparting education at the primary level was entrusted to the said Board. Since a large number of schools were being run either in the premises owned by the District Board or the Zila Parishad and in many cases such schools were being run in rented accommodations, it became necessary to safeguard the interest of the institutions so that they could continue to function in the same premises as hitherto. In order to achieve the aforesaid objective, Section 18-A of the Act provided for creation of new rights in respect of institutions, being run in such buildings. Section 18-A(1) deals with those cases in which the school was being run by the local body after taking the building or a part thereof as tenant and according to the said subsection, tenancy in respect of such building stood transferred in favour of the Basic Education Board from the appointed day i.e. from 25th July, 1972. Sub-clause (2) of Section 18-A, however, deals with those cases in which the building or a part thereof belonged to the local body and was occupied by it for purposes of a basic school. In such case, from the appointed day, the Basic Education Board was deemed to have become a licensee on behalf of the local body in respect of such building or part on such terms and conditions as the State Government may determine.

4. As would be apparent from the facts stated earlier the District Board had its own land and building in which it was running the Junior High School prior to 1972. However, in that year, additional land was taken by it on lease from the Nagarpalika, Ghaziabad and a lease deed in that regard was executed between the parties. It is not denied that the school was being run ever since in the original building and also in the additional land which was obtained under lease from the Nagarpalika: It would thus be seen that as regards the property in which the school is being run

since 1885, the District Board was its owner, and thereafter the Zila Parishad became its owner and with effect from 25th July 1972, the Basic Education Board became its licensee by virtue of Section 18-A(2) while in respect of the land which was taken on lease by the District Board in 1972 and of which the Zila Parishad later on became tenant, the tenancy stood transferred in favour of the basic Education Board. The plaintiff thus had two different status viz. a licensee of the portion which was owned by the Zila Parishad on or before 25th July, 1972 and as tenant in respect of the land in which the District Board and then the Zila Parishad was tenant on behalf of the Nagarpalika. It appears that sometimes before the filing of the suit, the Zila Parishad wanted to raise constructions over the portion of the land which was taken by it on lease from the Nagarpalika, Ghaziabad in 1972 and to establish a shopping centre. A resolution to this effect was also passed by the Zila Parishad and the plan was also got approved from the Development Authority, Ghaziabad. The contention of the plaintiff was that under the provisions of Section 18-A, the Zila Parishad had no right or title to interfere with the possession of the Basic Education Board on any portion of the land of which it was either a tenant or a licensee and to deprive it of its user in any manner. The contention of the Zila Parishad, however, was that it was a lessee on behalf of the Nagarpalika and according to the terms of the lease deed, the Zila Parishad could pass a resolution for raising constructions on the land and as such the Basic Education Board had not right to prevent it from doing so.

5. After considering the various provisions of Section 18-A and also the stipulations contained in the lease deed, the court below has come to the conclusion that the Zila Parishad had no right to raise construction over any portion of the land which was once occupied by the Junior High School as a tenant. The court was of the view that the entire land formed part of the tenancy and as such Sub-clause (I) of Section 18A applied to the case. Looking to the larger interest of the society and looking to the balance of convenience and likelihood of irreparable injury being caused to the plaintiff, the court granted injunction against the application.

6. Sri R.B. Mehrotra, learned counsel who argued the appeal with some vehemence urged that the approach of the court below was totally improper and the view that Section 18A(1) applied to the present case was erroneous. He also submitted that the terms of the lease deed have been wrongly interpreted and on account of this the court has fallen in grave error in granting the injunction.

7. We have heard the learned counsel for the parties at some length and we are not at all impressed by the submission made on behalf of the appellant. Before we proceed to decide the legal propositions raised before us, we would like to first refer to a line plan of the school building and the surrounding land filed as Annexure "3" to the affidavit in support of the stay application and compare it with another map which the appellant had filed as Annexure "1" to the rejoinder-affidavit. A comparison of the two in the light of the boundaries given in the lease deed it would

be obvious that the land leased out by the Nagarpalika in 1972 was towards north-west of the school building. The proposed plan shows that the entry of the class room which is shown near the south-west corner of the land (sic). It also shows that a quarter which existed towards the north-west of the Town School Building is proposed to be demolished and it is to be constructed anew towards the north-east adjoining the building of the Town School itself. It is obvious that a large number of shops would come into existence and their entrance will be right near one of the class rooms and the amount of disturbance which is likely to be caused to the students is not very difficult to imagine. It is surprising that a decision like this has been taken by the Zila Parishad which is supposed to look after the interest of the common man. We are informed that the Zila Parishad even today is not an elected body and is being run through the Administrator. When Local-self Government is taken away from the grass root level and the administration of the local bodies is left at the mercy of the executive, such results would be inevitable and quite natural for there is no one to check or counter-check the actions of the executive and when such uncontrolled powers are wielded by the local bodies, many of its actions are bound to be arbitrary and capricious. There cannot be any better example of this than the case before us. It is surprising that the authorities that be did not even bother to examine the disastrous results which it was likely to have on the institution and on the future of the students to whom the education was being imparted in the Town School. Behind all this executive action, there is greed and greed alone. Ghaziabad is a very fast growing suburb town of Delhi and every inch of the land there is as precious as gold. The desire to construct the shopping centre is nothing more than a desire to earn more rent from the buildings constructed by the Zila Parishad in order to augment its income, notwithstanding the far-reaching damages which were likely to be caused to the future of the students studying there.

8. The court below has taken the view that the entire premises was on lease with the Zila Parishad and as such its tenancy passed on and stood transferred to the Basic Education Board from the appointed day. This view, however, does not appear to be entirely correct. As we have seen above, the Town School was in existence from before since 1885 together with some area around which, was also owned by the Zila Parishad on the appointed date. To such property which includes the main Town School Building and some area around it, Sub-clause (1) cannot apply. The Zila Parishad being the owner thereof, the Board will only acquire licensee rights in respect thereof in terms of Sub-clause (2) of Section 18-A.

9. The Zila Parishad was tenant only of that portion of land which its predecessor had taken on lease in 1922 from the Nagarpalika, Ghazibad. That land obviously lies towards the north-west of the Town schools building and it is on this portion that the Zila Parishad now proposes to establish Shopping Centre although according to the approved plan (Annexure "Ra-I"), some portion of the old building on lease with Zila Parishad from Nagarpalika, the Basic Education Board will acquire lessee rights

u/s 18-A(2). It is not denied that the entire land which was on lease with the Zila Parishad was not being used for the purposes of school either as a play-ground or otherwise and that a portion of it was excluded from user by the school so as to escape the consequences which follow from Section 18-A(2).

10. The case of the appellant was that under the terms of the lease, it was entitled to raise any construction of any kind over the land leased out to it, the only impediment being that there should be a proper resolution passed in that behalf by the Zila Parishad which was very promptly done in this case. The main stress of Shri Mehrotra was on the wordings of the lease deed and he contended that with the previous consent in writing of the District Board it had the right to erect or suffer to be erected on any part of said demised premises any building other than and except the school to be erected and will not without such consent as aforesaid make any alteration in the plan etc. The contention raised, therefore, is that without any reference to the lessor, the District Board lessee itself could pass a resolution to erect a building for purposes other than school also. Such a reading of the conditions of the lease would be committing violence with its language. The relevant term of the lease is as under : --

".....

for school on the said demised premises school in accordance with a plan to be approved in writing of the District Board erect or suffer to be erected on the part of the said demised premises any building other than and except the school hereby covenanted to be erected and will not without such consent as aforesaid make any alteration in the plan or elevation of the said school or carry on or permit to be carried on the said premises any trade or business whatsoever or use the said or permit the same to be used for any purpose other than as agreed....."

11. On a bare perusal of the clause would show that the only and only building that can be erected on the demised land was a school building and to make necessary alteration in the plan of the school and its user for a purpose other than the one agreed to was not at all permitted. Therefore, on a reading of the terms of the lease deed also, the appellant cannot have any right to raise constructions over the land leased out by the Nagarpalika Ghaziabad, to the appellant. Besides this, under Clauses (1) and (2) of Section 18-A, the plaintiff-respondent was either tenant or licensee of the premises in question and as such also the said rights could not be violated by the Zilu Parishad in any manner. Once the rights of the licensee have been conferred on the plaintiff-respondent by statute, the same cannot be taken away or interfered with by the appellant without infringing the statutory provisions. From the above it is obvious that the plaintiff had been successful in establishing a strong *prima facie* case requiring serious consideration at the trial. It has also been able to establish the balance of convenience and likelihood of irreparable injury in its favour. If the buildings are allowed to be raised at this stage, lot of public money will go waste if the suit was to ultimately succeed and later on many complications

will arise as the shopkeepers who will occupy the new building will oppose their uprooting which will give rise to multiplicity of proceedings. In the meanwhile, as long as the Shopping Centre is allowed to run, it is also likely to seriously affect the education and future of the students to whom education is being imparted in the Town School. Looking to all these aspects in a proper perspective, the order under appeal is fully justified and we find no reason to upset the same.

12. In the result the appeal fails and is accordingly dismissed with costs.