

(2011) 08 MAD CK 0352

Madras High Court

Case No: Writ Petition No. 25434 of 2001

Saivaprakasa Vidhyasalai
Educational and Charitable Trust

APPELLANT

Vs

The Director of Elementary
Education and The State of Tamil
Nadu

RESPONDENT

Date of Decision: Aug. 30, 2011

Acts Referred:

- Societies Registration Act, 1860 - Section 18
- Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 - Section 5, 53, 53A

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: R. Muthukumarasamy for S. Mohana Sundararajan, for the Appellant; I. Arockiasamy, G.A. (Edn) for R1 and R2 and V. Subbiah, Spl. G.P. for R3, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

This writ petition came to be posted on being specially ordered by the Hon"ble Chief Justice vide order dated 16.08.2011.

2. In this writ petition, the Petitioner Trust represented by three Trustees, challenges an order dated 15.05.2001 passed by the first Respondent viz., Director of Elementary Education, Chennai and after setting aside the same seeks for restoration of the Management of Saivaprakasa Vidhyasalai Middle School, Udangudi allegedly founded by the Trust in the year 1916 and the petitioners" being the owner, founder and Educational Agency of the said school and who are deprived of the Management of the school illegally and arbitrarily by respondents 1 and 2

without any notice and without following due process of law, the same should be returned to them and the salary to the teachers should also be disbursed only through the Petitioner Trust and they must be allowed to constitute the School Committee.

3. The writ petition was admitted on 21.12.2001. In the application for interim injunction, only notice was ordered. Subsequently, the interim injunction application came to be dismissed on 28.08.2003.

4. It must be noted that the impugned order itself came to be passed on the Petitioner filing W.P. No. 7402 of 2000 before this Court claiming for a similar relief. By an order dated 26.04.2000, this Court without going into the merits of the case merely directed the Respondents to consider and pass suitable orders on the representations dated 18.12.1998 and 07.10.1999 within a time frame.

5. After getting a direction to the Respondents, the three Petitioners claiming to be the Trustees of the petitioner Trust sent a representation dated 18.03.2001 to the first Respondent. Considering the said representation, the impugned order came to be made. The petitioner claimed that the Trust was established in the year 1916 and the 4 Founders and Authors of the Trust were paternal ancestors of the present Petitioners. The petitioners' great grandfather and his brother purchased the school lands by registered sale deeds and constructed the school building. The stone inscription established in the school will show that the school was established by the Petitioners' paternal ancestors. A permanent recognition was granted to the said School by an order dated 09.01.1925. They have dedicated the entire properties to the Trust and hence, all the properties of the school were only that of the Trust. The Trustees never alienated or transferred the properties or the right of the Management by any legal document including to one Saivaprakasa Vidhyasalai Paripalana Sangam, which is a Society registered on 22.07.1926. The said society has no locus standi or right to gift the Trust properties to the Government. Therefore, the gift deed dated 06.01.1968 is only void and non est in the eye of law. The Trustees are in continuous enjoyment and possession of the Trust properties and also paying the water charges to the school building. The District educational authorities have released Government grant to the educational agency namely the Trust through its Manager till 31.12.1976 even after the alleged gift deed for over nine years. The execution of the gift deed was a real fraud on the Government. The person who signed the gift deed was not even the resident of Udangudi and it was registered at Tirunelveli and not at the Sub Registrar Office, Udangudi, in which jurisdiction the properties lie. One Namasivaya Mudaliar and his son Thirunavukkarasu and his daughter in law's brother Rmalakshmanan have connived with other close relatives to cause irreparable loss and hardship to the Trust. The said Namasivaya Mudaliyar was a school teacher and retired as headmaster in the year 1962 and settled at Srivilluputhur. None of the donors were living in the village. The society itself has become defunct in the year 1946. Since the owners of the

property have not gifted the deed, the gift itself is void. The District Educational officer is not a competent authority to authorise the registration of any document. The function of office of the Deputy Inspector of School, Udangudi in the portion of a school building is only with the permission of the Trust and it had taken place long before the gift in the year 1968. Therefore, that factor has no relevance for the government occupying the place. The Trust being the lawful educational agency, the property should be returned to the Trustees.

6. However, the first Respondent held that the Gift Deed No. 1128 of 1968 was executed on 06.01.1968 by Udangudi Saivaprakasa Vidyasalai Paripalana Sangam, a body registered under the Societies of Registration Act in favour of the Government since the Society was unable to maintain the affairs. It was challenged in a suit by one R.N. Kumaraswamy in O.S. No. 72 of 1976 before the Sub-Court at Thoothukudi claiming himself to be the President of the Saiva Prakasa Vidyasalai Paripalana Sangam. The said suit was dismissed by a decree and judgment dated 18.03.1980. Thereafter, R.N. Kumarasamy filed an appeal in A.S. No. 624 of 1980 before this Court. A Division Bench of this Court while dismissing the appeal suit on 20.01.1987, had observed as follows:

On the contention that the heirs of the founders have the right to assume management of the society, the rules pertaining to the society do not confer any such right. After the formation of the society any hereditary right either to office or right of inheritance to the properties could not be claimed because they belong to the Sangam and which had validly conveyed its rights to the Government. The properties given by the founders of the society u/s 18 of the Societies Registration act, whether acquired before or after its registration, if not vested in Trustees, shall vest in the committee, and any such property in any legal proceeding be referred to as the property of the committee. Therefore, in the absence of any material placed that the properties have vested in the trustees and the committee itself having not only passed a resolution, but amended its Memorandum of Association so as to gift the properties belonging to the Sangam in favour of the Government the founders had lost their rights in the properties covered by Exhibit B 30(4) on the formation of the sangam and on properties vesting in it. Hence this point is also held as against the Plaintiffs resulting in the appeal being dismissed with costs.

7. Though the Petitioners' claim that they were not party to the suit, it was noted that even before the suit was filed, A. Shenbagavel Murugan S/o Late Arumugam Pillai of Udangudi and father of three Petitioners gave a petition dated 30.09.1981 before the District Educational Officer, Tirunelveli South complaining that there were certain persons who were attempting to transfer the property of the Trust and the School. The Deputy Director of Elementary School Education obtained the views of the Society. The said petition was given on 30.09.1981 long before the gift deed was executed on 06.01.1968, the petitioners' claim that they came to know about the gift deed recently was not believed. In view of the same, it was held that the

question of the Petitioners" request to hand over the school and educational institution does not arise and their request to release the salary through the Trust and allow them to form a school committee also cannot be permitted.

8. Mr. R. Muthukumarasamy, learned Senior Counsel appearing for Mr. S. Mohana Sundararajan, counsel for the petitioner once again reiterated similar contentions. First of all, it must be noted that the claim to the properties of the Trust is a civil dispute and the petitioners cannot invoke the writ jurisdiction for getting back the said property. In this context it is necessary to refer to the judgment of the Supreme Court in [Swamy Atmananda Vs. Swami Bodhananda and Others](#), wherein, it was held that writ petition is not maintainable and the only remedy is approaching the civil court. The Supreme Court held as follows:

This appeal is directed against the judgment and order dated 13-10-1999 passed by a Division Bench of the Madras High Court in Writ Petition No. 15089 of 1998 whereby and where under the writ petition filed by Swami Bodhananda had been allowed. The said writ petition was filed for issuance of a writ of or in the nature of mandamus directing the Respondents therein to give all assistance to the appellant in taking over management of the institutions specified therein. The said writ petition was filed having regard to the judgment of the civil court. 2. A decree passed by the civil court must be executed in terms of the provisions contained in the Code of Civil Procedure. The writ petition is not the appropriate remedy therefor. In that view of the matter, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. It, however, goes without saying that the first Respondent herein shall be entitled to execute the decree in accordance with law.

9. Even otherwise, while analysing the scope of Section 53 and 53-A of the Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 the Supreme Court held that the power of the Civil Court in settling the property dispute is still intact and it does not require any reference by the authorities. It is necessary to refer to the following judgment of the Supreme court in [Swamy Atmananda and Others Vs. Sri Ramakrishna Tapovanam and Others](#), . In the following paragraphs, the Supreme Court observed as follows:

49. A dispute as to who is the real educational agency in relation to a private school is not a matter which in terms of the provisions of the said Act would be determined by an authority under the provisions of the said Act. Section 53-A of the Act carves out an exception to Section 53 thereof. In terms of the said provision, any dispute as to the educational institution is to be determined by a civil court having jurisdiction for its decision. The submission of Mr Sukumaran, however, is that the jurisdiction of the civil court is required to be invoked in such matters specified therein by way of reference by the persons interested or by the competent authority. Mr Sukumaran would contend that such a reference would be akin to a dispute pending under the Industrial Disputes Act. We cannot accept the said contention. A party to a dispute

may not join the other in referring the same to the civil court. The party may agree or may not agree there for. A person having a grievance as against another must have a remedy. The maxim "ubi jus, ibi remedium" is not an empty formality. The jurisdiction of the civil court exemplifies the said doctrine. The jurisdiction of the civil court cannot be held to have been ousted unless it is so, expressly or by necessary implication, stated in the statute. In terms of Section 53-A of the Act, a dispute as to educational agency is concededly required to be decided by a civil court. How the jurisdiction of the civil court is required to be invoked is a matter to be examined by the civil court. Unlike a private tribunal or a statutory tribunal which would not derive a jurisdiction unless a reference in terms of the provisions of the Act is made to it, the civil court enjoys a plenary jurisdiction. Furthermore, if and when a dispute arises before the competent authority as regards entitlement of an educational agency in relation to educational institutions, the same must also be referred to the civil court. Statutory authority in terms of Section 5 of the Act cannot be said to have any jurisdiction to determine such a dispute. A statute, as is well known, must be read in such a manner so as to give effect to the provisions thereof. It must be read reasonably. A statute must be construed in such a manner so as to make it workable. The wording "referred by the persons interested" would, thus, mean a person who has a grievance as regards claim of other side relating to educational agency of the educational institutions. It can be done by filing a suit before the civil court. The term "persons", which is plural, has been used having regard to the fact that educational agency need not be a person alone but would also include a society registered under the Societies Registration Act or a body corporate in terms of the Companies Act. In any event, if such a dispute within the contemplation of Section 53-A has to be decided by a civil court, it will not attract the bar u/s 53 which applies only to a question which is required to be dealt with or decided by any authority or officer mentioned in the Act.

52. In *Dhulabhai v. State of M.P.*¹⁸ Hidayatullah C.J. summarised the following principles relating to the exclusion of jurisdiction of civil courts:

(SCR pp. 682 B-H-683 A-C)

(a) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(b) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court. Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary

and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(c) Challenge to the provisions of the particular Act as ultra vires cannot be brought before tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the tribunals.

(d) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(e) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.

(f) "Questions of the correctness of the assessment apart from its constitutionality, are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(g) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.

(See Rajasthan SRTC v. Krishna Kant¹⁹, Dwarka Prasad Agarwal v. Ramesh Chander Agarwal ²⁰, Sahebgouda v. Ogeppa ²¹ and Dhruv Green Field Ltd. v. Hukam Singh ²².)

53. This case does not fulfil the said conditions and the jurisdiction of the civil court was not excluded by reason of Sections 53 and 53-A of the Act.

10. In the light of the above, there is no case made out to entertain the writ petition. Accordingly, the writ petition stands dismissed. However, there will be no order as to costs.