



2023/KER/49913

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

THURSDAY, THE 10TH DAY OF AUGUST 2023 / 19TH SRAVANA, 1945

WP(C) NO. 7988 OF 2020

PETITIONER/S:

SWAROOP V.
S/O. VELAYUDHAN, MANAGER, PAMM UPPER PRIMARY SCHOOL,
KALLEPPULLY P.O. PALAKKAD 678 005.
BY ADVS.
R.HARISHANKAR
PARVATHY NAIR

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, DEPARTMENT
OF GENERAL EDUCATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM 695 001.
- 2 THE DIRECTOR OF GENERAL EDUCATION,
OFFICE OF THE DIRECTOR OF GENERAL EDUCATION,
THIRUVANANTHAPURAM 695 001.
- 3 THE DISTRICT EDUCATIONAL OFFICER,
OFFICE OF THE DISTRICT EDUCATIONAL OFFICER,
PALAKKAD 678 001.
- 4 ASSISTANT EDUCATIONAL OFFICER,
OFFICE OF THE RESISTANT EDUCATIONAL OFFICER,
PALAKKAD 678 001.
- 5 P. VIJAYAKUMARI,
W/O. SRI., MADHAVAN , VIMALA C.N. PURAM, NEAR SHIVA
TEMPLE, PALAKKAD 678 005, (FORMER MANGER AND
EDUCATIONAL AGENCY), PAMM UPPER PRIMARY SCHOOL,
KALLEPPULLY P.O. PALAKKAD).
- 6 CHIEF MANAGER AND AUTHORISED OFFICER,
KARNATAKA BANK LTD, ASSET RECOVERY MANAGEMENT BRANCH,
III FLOOR, KARNATAKA BANK BUILDING, KODIALBAIL,
MANGALURU 575 003.
- 7 MANAGER,
KARNATAKA BANK LTD, PALAKKAD BRANCH, D. NO. 18/248, MR
HERITAGE, PALAT JUNCTION, WEST FORT ROAD,



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PALAKKAD 678 001.

OTHER PRESENT :

GP V. VENUGOPAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 10.08.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**JUDGMENT**

(Dated this the 10th day of August, 2023)

The petitioner is the Manager of PAMM Upper Primary School, an aided school in Palakkad. The school was established in the year 1905, and the former Educational Agency of the school was one Balameenakshi Amma. Due to her old age, she requested the permission of the 4th respondent to transfer the management of the school without involving a change of ownership to the 5th respondent. As per Ext.P1, sanction was accorded to transfer the management of the School without involving a change of ownership in the name of the 5th respondent. Thereafter, the original Educational Agency, Smt. Balameenakshi Amma expressed a willingness to transfer the management of the School with ownership, and Ext.P2 was passed by the 2nd respondent on 13.06.1988,



granting permission for the transfer of management with ownership in the name of the 5th respondent. On 09.07.2018, the 4th respondent issued an order appointing the petitioner as the manager of the School with effect from 29.01.2018 as per Ext.P3.

2. The School has more than 400 students studying in classes from I to VII. The property of the School extends to 1 Acre and 8 cents covered by five documents, viz. 3723/1988, 3724/1988, 3616/1988, 222/1992, and 4046/2001 of SRO, Palakkad, which are belong to the 5th respondent Educational Agency. The properties covered by Document Nos.3616/1988 and 4046/2001 were agreed to be sold to the petitioner under an agreement for sale dated 29.01.2018. The property covered by Document No.222/1992 was proposed to be sold under an agreement for sale dated 29.01.2018 to one C.A Reghunath who is the Manager of AUP Aided School, Vellikad,



Palakkad. All the five properties lie as one contiguous plot with defined and identifiable boundaries. While so, the petitioner received Ext.P6 notice dated 12.02.2020 issued by the 6th respondent. Ext.P6 contains 3 items of properties, and item no.2 and 3 are properties standing in the name of Smt.Vijayakumari/5th respondent. The description in the document shows that it is a residential property in R.S No.118/13, R.S No.187/1, in Block No.38 of the Palakkad Taluk. The said two properties are part and parcel of the School covered by document No. 3616/1998 and 222/1992, owned by the 5th respondent Educational Agency. Going by Ext.P6, the said two properties are given as security for providing financial assistance to a firm named M/s. Auxin Systems in Thrissur.

3. The petitioner approached this Court challenging Ext.P6, the notice of sale of immovable property, and to set



aside the same. A declaration is also sought that the 5th respondent has no right to mortgage item no.2 and 3 properties without obtaining permission as required under Section 5A and Rule 2 of Chapter X of the Kerala Education Act, 1958 and the Rules 1959.

4. Though notice was issued from this Court to respondents 5 to 7, there is no appearance for the respondents. Hence, the writ petition in their absence.

5. The counsel for the petitioner, Adv.R.Harishhankar, submits that since the School is aided without permission in writing, as per Section 6 read with Rule 2 of Chapter X of Kerala Education Act, 1958 and the Rules 1959, the Educational Agency cannot mortgage the properties. Section 6 of the Kerala Education Act, 1958 reads as follows:

“6. Restriction on alienation of property of aided school:-(1) Notwithstanding anything to the contrary contained in any law for the time being in force, no sale, mortgage, lease, pledge, charge or



transfer of possession in respect of any property of an aided school shall be created or made except with the previous permission in writing of such officer not below the rank of a District Educational Officer, as may be authorized by the Government in this behalf. The officer shall grant such permission applied for unless the grant of such permission will, in his opinion, adversely affect the working of the school.

(2) Any person aggrieved by an order of the officer refusing or granting permission under sub-section (1) may in such manner and within such time as may be prescribed, appeal to the Government.

(3) Any transaction made in contravention of sub-section (1) or sub-section (2) shall be null and void.

(4) If any educational agency or the manager of any school acts in contravention of sub-section (1) or of an order passed under sub-section (2) Government may withhold any grant to the school.”

Rule 9 of Chapter III deals with the duties and powers of the Managers of aided Schools. Sub-rule 3 of Rule 9 of Chapter III, reads as follows:

“(3) The Manager shall provide site, building, staff, equipments furniture etc. as per Rules issued under the Education Act and as per orders that may be issued from time to time by the Government and the Department in conformity with the provisions of the Act and the rules issued thereunder.”



Rules 1 and 2 of Chapter X also stipulate that:

“1. Statements containing lists of all movable and immovable properties of aided schools should be sent by the Managers in Form 10 to the District Educational Officer having jurisdiction over the school in the case of Secondary and Training schools and to the Assistant Educational Officer having jurisdiction, in the case of Upper Primary and Lower Primary Schools. The Statement in the case of Upper Primary and Lower Primary Schools should be sent to the Assistant Educational Officer in duplicate. The Assistant Educational Officer will submit one copy of the statement to the District Educational Officer”.

2. The District Educational Officer in charge of the area will be the Officer competent to give permission to create or make a sale, mortgage, lease, pledge, charge, or transfer of possession in respect of any property of an aided school”.

5.1 Rule 2 makes it clear that the District Educational Officer in charge of the area will be the Officer competent to give permission to create or make a sale, mortgage, lease, pledge, charge, or transfer of possession in respect of any property of an aided school.

6. Therefore, a duty is cast on a Manager, and the Manager should submit a statement of movable and immovable



properties to the educational authorities. Without the permission of the educational authorities, the Manager cannot mortgage, sell, or lease the property.

7. The 5th respondent who is an Educational Agency without giving a mandate in Rule 1 of Chapter X and without obtaining permission from the authorities, and Section 6 of the Kerala Education Act, has mortgaged the properties of the School specifically stated as item nos.2 and 3 in Ext.P6 notice, describing it as residential properties, even though it belongs to the School and lying as a playground.

8. In *Purushothama Panikker v. Mohan*¹ a Division Bench of this Court infact, held that the legislative intent behind the ban under Section 6 is the well maintenance and proper conduct of the aided schools, which is absolutely essential in the public interest. There is no reason to exclude court sale from its area of operation and it will have a

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overriding effect on the provisions of Transfer of Property Act.

9. In view of the specific provisions of the Kerala Education Act, 1958 and the Rules 1959, mentioned above, the 5th respondent has no right to mortgage item nos.2 and 3 in Ext.P6 notice. Therefore, the act of the 5th respondent is contrary to the provisions of the Kerala Education Act, 1958, and the Rules 1959 and Ext.P6 is liable to be set aside to the extent of item nos.2 and 3 of Ext.P6.

In result, the writ petition is allowed. Ext.P6 is quashed to the extent it relates to item nos.2 and 3. It is also declared that 5th respondent did not have any right to mortgage the properties without obtaining permission as required under the Kerala Education Act, 1958, and the Rules 1959.

Sd/-

BASANT BALAJI
JUDGE



APPENDIX OF WP(C) 7988/2020

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF ORDER NO. B-1087/1987 DATED 29.05.1987 ISSUED BY 4TH RESPONDENT.
- EXHIBIT P2 TRUE COPY OF ORDER DATED 13.06.1988 OF THE DIRECTOR OF PUBLIC INSTRUCTIONS THIRUVANANTHAPURAM (PRESENTLY 2ND RESPONDENT).
- EXHIBIT P3 TRUE COPY OF ORDER NO. F/261/2018 DATED 09.07.2018 ISSUED BY 4TH RESPONDENT APPOINTING THE PETITIONER AS MANAGER OF THE SCHOOL.
- EXHIBIT P4 TRUE COPY OF SCHOOL PROFORMA FOR THE ACADEMIC YEAR 2019-2020.
- EXHIBIT P5 TRUE COPY OF STAFF FIXATION ORDER NO. F/49224/2019 DATED 16.07.2019 IN RESPECT OF THE SCHOOL.
- EXHIBIT P6 TRUE COPY OF NOTICE OF SALE OF IMMOVABLE PROPERTIES DATED 12.02.2020 SERVED ON THE PETITIONER.
- EXHIBIT P7 TRUE COPY OF THE SKETCH OF THE SCHOOL BUILDING CLASSROOMS, STORE ROOMS, PLAYGROUND KITCHEN AND TOILETS.
- EXHIBIT P8 TRUE COPY OF PHOTOGRAPHS (6 NOS), OF THE SCHOOL BUILDINGS AND PLAYGROUND.