

HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)

PUBLIC INTEREST LITIGATION (PIL) No. 3436 of 2020

Gomti River Bank Residents through Secretary
Girdhar Gopal Petitioner

Through:- Mr. Prashant Chandra, Senior Advocate with Ms.
Radhika Singh, Advocate

v/s

State of U.P. through Principal Secretary, Housing
and Urban Development and others Respondents

Through:- Mr. H.P. Srivastava, Additional Chief Standing
Counsel for respondent Nos.1 to 3 and 7, Mr.
Ratnesh Chandra, Advocate for respondent No.6 and
Mr. Sudeep Seth, Senior Advocate with Mr.
Siddharth Lal Vaish, Advocate for respondent No.8

CORAM : **HON'BLE RAJESH BINDAL, CHIEF JUSTICE**
 HON'BLE ALOK MATHUR, JUDGE

ORDER

1. The issue raised in the present petition filed in public interest inter-alia, is pertaining to commercial and non-residential activities being carried out in the residential areas. Parking places, restoration of foot paths, construction in violation of master plan in the residential areas and shifting of dairies from the residential areas, are other issues.

2. For the present, the issue has been specifically raised with reference to number of schools, which are running in residential areas. List thereof has been annexed at page 27 of the paper book. Specific reference was also made to a school situated at Jopling Road, Lucknow, which has also been impleaded as respondent No.8 in the present petition.

3. It was submitted that respondent No.8 had got permission for construction of a multistory housing complex in Plot Nos. 55 and 55 (part). However, during the course of construction of housing complex in the said plot, on one side tin-shed was raised and school was running there, which is in violation of the parameters laid down for construction and running of a school. Reference was made to the judgement of Hon'ble the Supreme Court in **Avinash Mehrotra v. Union of India and others, (2009)6 SCC 398**, wherein Hon'ble the Supreme Court laid down certain standards to be complied with by the schools in terms of National Building Code of India, 2005. It was submitted that the school is running in a temporary tin-shed for the last 2-3 years with no permission from any Authority. It is admitted, even by the respondent No.8 in its counter affidavit filed in June, 2021, that the school is running in a temporary structure. It was further submitted that a residential house was purchased by respondent No.8 vide transfer deed dated October 20, 2021. The aforesaid house is on Plot No.54 (part), having area of 1,378.4 square meters with covered area of 495 square metres and second class construction. At present, about 400 students are studying there, which is in violation of the standards laid down for running a school. This is one of the examples, as it is claimed that other schools named in the present petition are also running in violation of various parameters laid down for the purpose.

4. Though the petition is pending in this Court for the last more than two years but the State has chosen to remain silent and not filed its counter affidavit despite the fact that in this week, the matter has been listed for third time.

5. The learned counsel appearing for respondent No.8 raised a preliminary objection regarding maintainability of the present petition filed in public interest, as the petitioner has not disclosed its credentials as required under the High Court Rules. He further submitted that after filing of the present petition, in which no interim order was granted by this Court, a

member of the petitioner association filed a Civil Suit under Section 91 of the Code of Civil Procedure, 1908 praying for the same relief. Once statutory remedy for the same relief has already been availed of by the petitioner, the present petition in public interest should not be entertained. As number of factual aspects have to be gone into, the Civil Suit is the proper remedy. The present petition has been filed not in public interest but in private interest, as the issue sought to be raised is only against respondent No.8.

6. Though the fact that school was running in a temporary structure since 2019 is not disputed, however, it was stated that after purchase of the building in Plot No. 54 (part), the school was shifted in that building after renovating the same. The proper infrastructure was also provided before shifting the students in that building.

7. The learned counsel appearing for Lucknow Development Authority submitted that permission was granted for raising multistory housing complex on Plot No.55 only. In case, there was any violation in construction of the building in terms of sanctioned map, the Authority will take action, however, it has not been noticed till date.

8. Before we take a final view on the preliminary objection raised by learned counsel for respondent No.8 and also on the issues sought to be raised by the petitioner in the larger public interest, especially the safety of the children for which one instance has been pointed out giving all details where, even as per the admitted facts, a school with about 400 students is being run in a residential building over a plot having area of 1,378.4 square metres with covered area of 548 square metres, we may consider a situation where in case any untoward incident takes place either inside or outside the schools, which are running in buildings or places without complying with the required guidelines, there will be much hue and cry. It is not only the duty of the State to monitor the functioning of such schools but also to ensure that the same are being run only after complying with the required guidelines. In the case in hand, the school in question is not a very small one

and isolated rather it is one of the well known chain of schools in the city.

9. At the first instance, we deem it appropriate to have true picture of the status on the spot with reference to the schools as mentioned by the petitioner in the petition, namely :

- (i) Primary School, Jopling Road, Lucknow
- (ii) Star Montessori School, Jopling Road, Lucknow
- (iii) Little Millenium School, House No.16, Sector B, B-16, LDA, Vastant Kunj, Lucknow
- (iv) Al-Huda Model School (Nanpara Masjid), Lucknow
- (v) City Montessory School, Lajpathrai Marg, Parehta, Gokhale Vihar, Butler Colony, Lucknow
- (vi) Red Hill School, 23, Gokhale Vihar Marg, Lucknow
- (vii) The Lucknow Public Collegiate, Jopling Road, Butler Colony, Lucknow
- (viii) CMS, Jopling Road
- (ix) Teachers Institute, Dalibagh
- (x) Kidzee Galaxy Education, Dalibagh, Lucknow
- (xi) Akanksha School
- (xii) Pramodini Junior High School
- (xiii) My School - preschool (as informed by learned counsel for the petitioner, it is not functioning and the same has been closed)
- (xiv) Purple Turtle Preschool
- (xv) Euro Kids Preschool
- (xvi) AIIS Lucknow, 46/3, Wazir Hasan Road, Lucknow

10. Accordingly, we direct constitution of a Committee for carrying out the inspection and submission of a report to this Court about the fact as

to whether these schools are complying with the required guidelines with reference to the number of students studying therein for which detailed direction has been given by Hon'ble the Supreme Court in **Avinash Mehrotra's case** (supra) and other parameters laid down by other regulatory bodies. The Committee shall be headed by the District Magistrate, Lucknow. It shall consist of Senior Officers, who are well versed with the guidelines and the parameters required, from Central Board of Secondary Education, Indian Certificate of Secondary Education, U.P. Fire Service Department, State Disaster Management Department, Public Works Department, U.P., Education Department, U.P., Lucknow Development Authority and Police Department, U.P. It may be clarified that the Officers to be appointed by each of the aforesaid Departments shall be of senior level.

11. A copy of this order be communicated by the Senior Registrar of this Court to the District Magistrate, Lucknow for compliance, who shall further coordinate with all the aforesaid Departments for constitution of the Committee to carry out the inspection.

12. As the matter requires urgent consideration looking to the safety of the students and the quality of the education being imparted to them, we expect that the inspection shall be carried out, as expeditiously as possible, and a report is submitted to this Court on the next date of hearing.

13. Adjourned to April 18, 2022.

14. In case, the State fails to file counter affidavit with copy in advance to the learned counsel for the petitioner, respondent No.1 will appear in person in the Court on the next date of hearing.

(Alok Mathur)
Judge

(Rajesh Bindal)
Chief Justice

Lucknow
25.03.2022
Kuldeep/Rakesh