

The Municipality Vs. Dhanya Pradeep

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Court : Kerala

Decided On : Feb-24-2014

Judge : Honourable Mr.Justice Antony Dominic

Appellant : The Municipality

Respondent : Dhanya Pradeep

Judgement :

IN THE HIGH COURT OF KERALAAT ERNAKULAM PRESENT: THE
HONOURABLE MR.JUSTICE K.M.JOSEPH & THE HONOURABLE MR.
JUSTICE A.HARIPRASAD MONDAY,THE24H DAY OF FEBRUARY20145TH
PHALGUNA, 1935 WA.No. 337 of 2014 () IN WP(C).29264/2013
----- AGAINST INTERIM

ORDER

DATED2101.2014 AND

ORDER

DATED0302.2014 IN IA.NO.1302/2014 IN WP(C) NO.29264/2013
APPELLANT(S)/6TH RESPONDENT IN WPC:
----- THE MUNICIPALITY NORTH
PARAVUR, ERNAKULAM DISTRICT-683513 REPRESENTED BY ITS
SECRETARY. BY ADV. SRI.C.S.AJITH PRAKASH
RESPONDENT(S)/PETITIONER & RESPONDENTS1TO57, IN WPC:

 DHANYA PRADEEP, W/O. PRADEEP, AGED 32 YEARS, PRESIDENT PARENT TEACHERS ASSOCIATION, GOVERNMENT LOWER PRIMARY SCHOOL PERUMPADANNA, NORTH PARAVUR-683513.

2. THE STATE OF KERALA REPRESENTED BY ITS SECRETARY TO GOVERNMENT GENERAL EDUCATION DEPARTMENT, SECRETARIAT THIRUVANANTHAPURAM-695001.

3. THE DIRECTOR OF PUBLIC INSTRUCTIONS, JAGATHY, THIRUVANANTHAPURAM-695014.

4. THE DEPUTY DIRECTOR OF EDUCATION, ERNAKULAM AT KAKKANAD-682030.

5. THE ASSISTANT EDUCATIONAL OFFICER, NORTH PARAVUR, ERNAKULAM DISTRICT-683513.

6. THE HEADMASTER, GOVERNMENT LOWER PRIMARY SCHOOL, PERUMPADANNA, NORTH PARAVUR-683513.

7. THE CHILD DEVELOPMENT PROJECT OFFICER, NORTH PARAVUR, ERNAKULAM DISTRICT-683513. R2 TO R7 BY GOVERNMENT PLEADER SHRI SYAMKUMAR R1 BY SRI.V.A.MUHAMMED THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24-02-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: K.M.JOSEPH & A.HARIPRASAD, JJ.

----- W.A. No.337 of 2014 -----

Dated this the 24th day of January, 2014.

JUDGMENT

K.M.Joseph, J.

Appellant is the 6th respondent in the writ petition. The writ petition was filed by the person claiming to be the President of the Parent-Teacher Association of the Government School.

2. Prayers sought for in the writ petition are as follows: "(i) declare that the 6th and 7th Respondents have no authority to construct any building in the property belonging to Government L.P.School, Perumpadanna for commencement of the Anganvadi. (ii) declare that the landed property of Government L.P.School, Perumpadanna shall not be used for the conduct of Anganvadi by another Department. (iii) pass such other order or direction which this Hon'ble Court may deem fit and proper to grant in the circumstances of the case." WANO.337/2014 2

3. The case of the writ petitioner is as follows: Petitioner is the President of the Parent Teachers Association (for brevity "PTA") of Government Lower Primary School, Perumpadanna, North Paravur. PTA is the corner stone of School's Improvement Programme. This position is admitted by the Government vide G.O.(Ms.) No.138/69-Edn. dated 31.03.1969 and G.O.(P) No.178/81/G.Edn. dated 13.10.1981 and subsequent Government Orders. To oversee the all over development of the School, PTA has a pivotal role. Hence, the Government have insisted for formation of PTA in every school. Government Lower Primary School, Perumpadanna, North Paravur is housed in an area of 65 cents of property in Ward No.29 of North Paravur Municipality. Out of the said property possessed by the School, half portion is occupied by the School building, computer lab, pre-primary class rooms, kitchen, latrine, etc. There is one division each in each standard. 52 students are studying in L.P.Section and 21 students are studying in Pre- primary section. The open space remaining in the School is used as play ground for the students. It is submitted that there is dearth of accommodation in the School. No extra building is available in the School. The existing buildings in the School are old and in a dilapidated state. The School building is in pre-KER pattern. There is urgent necessity for reconstruction of the entire building by availing funds from different sources. It is proposed that the open space has to be used for WANO.337/2014 3 construction of the new building without causing interruption of the classes in the existing building. On completion of the construction, the area wherein old building is situated can be used as playground for students. At the same time, there is a threat of acquisition of a portion of the School property for widening of the National Highway. It is submitted that an Anganvadi is functioning in the building belonging to the nearby Primary Health Centre. The North Paravur Municipality has taken a decision to shift the said

Anganvadi to the property belonging to the School by constructing a building therein. So far the Education Department has not granted any sanction for construction of Anganvadi building in the property belonging to the School. In this regard, the Secretary of the Municipality addressed the Deputy Director of Education on 17.05.2012. Again, the Secretary addressed the District Collector stating that the amount is already sanctioned for construction of the building and requested to submit revised estimate. It is submitted that the Deputy Director of Education vide letter dated 18.06.2012 has intimated the Secretary of North Paravur Municipality that a decision can be taken in discussion with the PTA of the School. But, so far, the discussion has not taken place with the PTA. Equally, no consent is granted by the PTA for Anganvadi construction in the School ground. Government vide G.O.(Ms.) No.193/11/G.Edn. Dated 20.09.2011 has made it clear that "if the Government School is having sufficient area, on consultation with PTA, Anganvadi can be opened therein. It is WANO.337/2014 4 submitted that without getting sanction from the Education Department for construction of Anganvadi building, the Municipal authorities have trespassed into the School property and destructed a portion of the boundary wall of the School. In this regard, petitioner has made a representation before the Secretary to Government, General Education Department and the Director of Public Instruction. In this regard, the Headmistress also made a complaint before the Sub Inspector of Police, North Paravur detailing the misbehaviour and harassment suffered by her at the hands of Municipality. The matter was intimated to the Assistant Educational Officer as well. Petitioner has again moved the Government as well as the Director of Public Instruction. Government have at one stage stayed the construction of Anganvadi building in the property belonging to the School. Thereafter, upon the representation submitted by the Chairperson to the Minister for Education, the stay granted was revoked. Hence the writ petition.

4. In the writ petition an interim order of stay was granted. Learned Single Judge essentially placing reliance on Rule 15 of Chapter IV of the Kerala Education Rules prima facie found that the construction of the Anganvadi in the premises of the Government Lower Primary School, Perumpadanna was not permitted and no ground to vacate the interim order. The application filed to vacate the interim order was dismissed.

5. We heard the learned counsel for the appellant, learned WANO.337/2014 5 counsel for the 1st respondent/writ petitioner and the learned Senior Government Pleader for respondents 2 to 7.

6. No doubt, learned counsel for the appellant submitted that the writ petition is filed without there being a resolution. It is pointed out that there is space for construction of the Anganvadi. The construction was commenced. Now there is no reason to stay the construction, it is submitted. Per contra, learned counsel for the writ petitioner would submit that there is lack of space and the Anganvadi can be continued at Primary Health Centre. Whatever it is, we feel that we cannot hold that the view taken by the learned Single Judge should be interfered with us being essentially an interim order. However, without expressing any view on the merit of the matter, we request the learned Single Judge to dispose of the writ petition at the earliest, if possible, on or before 1st week of March, 2014. Writ Appeal is disposed of as above. K.M.JOSEPH, JUDGE. A. HARIPRASAD, JUDGE. cks

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