

Gopinath Dev High School and anr. Vs. State of Orissa and ors.

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SooperKanoon Citation : sooperkanoon.com/531980

Court : Orissa

Decided On : Apr-16-2008

Reported in : (2008)106CALLT44; 2008(II)OLR260

Judge : I.M. Quddusi and; Sanju Panda, JJ.

Appellant : Gopinath Dev High School and anr.

Respondent : State of Orissa and ors.

Judgement :

I.M. Quddusi, J.

1. The Petitioner No. 1 Gopinath Dev High School, Rasulgarh was granted lease of three acres of land in plot No. G.P./1 in Drawing No. 1136 in mouza Goda Gopinath Prasad by the State Government free of premium on yearly rent of Rs. 450./- for establishment of the High School. On 2nd of November, 1987 the lease deed was executed on behalf of the Governor. Vide impugned Order Dated 28.2.2006 the Headmaster of Gopinath Dev High School, Rasulgarh has been asked by the Land Officer, General Administration Department, Government of Orissa to surrender an area measuring Ac.0.400 from the leasehold land which has been alienated in favour of the Housing & U.D. Department for construction of 20' wide road by Bhubaneswar Municipal Corporation, Bhubaneswar for public purpose, i.e., for the use of the inhabitants of the locality to come to the main road. It has been alleged by the Petitioners that the proposed road would divide the

premises of the institution into two parts.

2. In the counter affidavit filed on behalf of Opposite Party No. 1 it has been mentioned that the institution was given three acres of land on lease but it has occupied unauthorized about Ac.5.00 land, i.e. about two acres more land than the land allotted to it. However, it is not the case of the Opposite Parties that the proposed road has been drawn from the area which is in alleged unauthorized occupation of the Petitioner. It is stated that the Opposite Parties conducted an enquiry and found that if the proposed road is constructed, only the primary school and the High School will be divided. In paragraph-3 of the additional affidavit dated 17.9.2007 filed by Opposite Party No. 1, it has been stated as under:

That it is respectfully submitted that as per the direction of the Hon'ble Court dated 2.5.2007, a spot enquiry was made by the Special Secretary and Director of Estates, G.A. Department. Opinion was sought for from the School and Mass Education Department regarding this issue. During spot enquiry it is ascertained that the proposed road is the only road for the inhabitants to go to their residential building. There is no alternative for the Govt. to provide any approach road for the inhabitants.

3. Earlier to that an additional affidavit was filed by Opposite Party No. 1 on 12.4.2007 in which it was stated in paragraph-4 that the proposed road is passing in the side of the Goda Gopinath Prasad M.E. School and if a boundary will be constructed by the side of Goda Gopinath M.E. School the interest of the students will no way be affected. Goda Gopinath Prasad M.E. School and Gopinath Dev High School are two separate and independent institutions having two Headmasters. The Headmasters of both the Schools are separate. The M.E. School is a Government school under the Director, Elementary Education whereas the High School is a privately managed school. Therefore, they are two separate institutions and the proposed road will not divide the Petitioners' institution. The proposed approach road will not divide the High School into two parts. The proposed road is aligned on the western boundary of the school running from North to South. The library building of the High School shown as Block 'c' in the part sketch map attached to the additional affidavit is 15 feet away from the

proposed road and the High School building as shown in Block 'A' is 15 feet away from the proposed road. Goda Gopinath Prasad M.E. School shown as Block 'D' is located 15 feet away from the western side of the proposed road having direct access to the main road.

4. The plea of the Opposite Parties is that the Petitioner school is in unauthorized occupation of Ac.1.937 decimals of land and the area to be consumed for the proposed road is only Ac.0.400 decimals. Therefore, the Petitioner can opt as per their requirement for Ac.0.400 decimals of land out of the Ac.1.937 decimals of land in their unauthorized occupation.

5. Since construction of the proposed road is for public interest and the land required for the proposed road is not out of the leasehold land, considering the facts and circumstances, this Writ Petition is disposed of with the direction that the Opposite Parties may construct the proposed road with the following conditions:

(i) That the plot of the school should not be touched or construction damaged in any way;

(ii) However, if any part of the plot allotted to the school is to be taken for construction of the proposed road, Opposite Party No. 2 shall give alternative land in lieu of the land required for the construction of the road on seeking option of the Petitioners; and

(iii) In the event the road divides the school building and the library, the Opposite Parties shall facilitate the Petitioners to raise construction of the library building adjacent to the school building and the land and necessary funds shall be provided by the Opposite Parties for that purpose. There would be no order as to costs.

Sanju Panda, J.

6. I agree.