

The Principal Indian School of Learning Vs. Indian School of Learning and Ors

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Court : Jharkhand

Decided On : Aug-22-2016

Appellant : The Principal Indian School of Learning

Respondent : Indian School of Learning and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI Civil Review No. 46 of 2016
The Principal, Indian School of Learning, ISM Annexe, Dhanbad Petitioner
Vrs.

1. Indian School of Learning, Jharia 2. The Union of India through Secretary, Ministry of Human Resources Development (Dept. of Secondary and Higher Education), New Delhi 3. The Indian School of Mines, through Director, Indian School of Mines, Dhanbad 4. The Estate Officer, Indian School of Mines, Dhanbad Respondents with W.P.(C) No. 4480 of 2016 Dipak Kumar Singh Petitioner Vrs.

1. The Union of India represented through Secretary, Ministry of H.R.D (Dept. of Secondary and Higher Education) New Delhi 2. State of Jharkhand through Principal Secretary, School and Literacy Dept., Dhurwa, Ranchi 3. The Indian School of Mines through Director, ISM, Dhanbad 4. The Estate Officer, ISM, Dhanbad 5. The Sub-Divisional Officer, Dhanbad Respondents with W.P.(C)

No. 4478 of 2016 Smt. Pratima Agarwalla Petitioner Vrs.

1. The Union of India represented through Secretary, Ministry of H.R.D (Dept. of Secondary and Higher Education) New Delhi 2. The Indian School of Mines through Director, ISM, Dhanbad 3. Indian School of Learning, Jharia, Dhanbad through its Secretary Respondents CORAM: HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioners : Mr. Rahul Kumar Gupta(C.Rev.46/16) : Mr. Indrajit Sinha(W.P.C. No. 4480/16) : Mr. Nitin Kr. Pasari(W.P.C. No. 4478/16) For the I.S.M.Dhanbad : M/s Anoop Kr. Mehta, Krishna Shankar For the State : J.C to A.G. For the U.O.I : J.C to ASGI0422.08.2016 Defect No. 1 in Civil Civil Review No. 46 of 2016 is ignored as counsel for the review petitioner submits that he had preferred an intervention application in W.P.C. No. 5228 of 2015, which was however closed on account of withdrawal of the writ petition by the writ petitioner therein vide order dated 22.7.2016. Surviving defect no.2 however is not being ignored. Respondent no.5 be deleted from -2- the array of parties as it is not a party in the connected writ petition.

2. Heard learned counsel for the parties.

3. In order to address the grievances raised by the individual petitioners which has a thread of commonality in each of the writ petitions, the relevant prayer and certain facts there in are being discussed separately.

4. Civil Review No. 46 of 2016:- The review petitioner has sought review of the order dated 22.7.2016 passed in W.P.C. No. 5228 of 2015 where under the writ petition was allowed to be withdrawn at the instance of the writ petitioner, on the grounds that its intervention application being I.A. No 4299 of 2016 was impliedly rejected. This review petitioner, though a party in the eviction proceedings before the Court of Estate Officer, Indian School of Mines (I.S.M.), Dhanbad in Eviction Case No. 1 of 2013(Annexure-1) and Misc. Appeal No.24 of 2014 (Annexure-2) arising there from, judgments dated 14.8.2014 and 27.7.2015 respectively, did not assail the orders/ judgments in question, if aggrieved therefrom. It was a party in those proceedings apart from Indian School of Learning, Jharia which was writ petitioner in W.P.C. No. 5228 of 2015 i.e., a society registered under the Societies

Registration Act, 1848 running the school in question in the leased premises of I.S.M., Dhanbad since 1987. Surprisingly, instead of laying an independent challenge to the orders, if aggrieved, the review petitioner had sought to be impleaded in the writ petition preferred by the Society, which was being withdrawn in view of certain developments brought on record through I.A. No. 4296 of 2016 filed therein. The writ petitioner had stated that it is shifting to a new campus in compliance of the orders passed in eviction proceedings and also made a representation pursuant thereto dated 23.6.2016 bearing reference no. AQ/11/16-17 to the Deputy Commissioner, Dhanbad. -3- The respondent- I.S.M., Dhanbad in their counter affidavit filed in the said writ petition had brought on record the undertaking on behalf of the Secretary of the writ petitioner Society before the Director, I.S.M., Dhanbad dated 1.8.2015(Annexure-A) to vacate the premises in question by 31.3.2016 duly supported with affidavit also enclosed thereto. It had referred to the 1400 students enrolled therein with 100 students of the employees of the I.S.M., Dhanbad . This request was made in view of the Session 2015-16 having progressed for 4 months and fate of students being put to risk, if the shifting was undertaken in mid session. On that undertaking the petitioner Society was permitted to occupy the premises in question till 31.3.2016 as per the sand of the respondent- I.S.M., Dhanbad, brought on record in the said counter affidavit. It is also pointed out by learned counsel for the I.S.M., Dhanbad that Secretary of the Society had in its affidavit stated that it shall not take any admission of the students any further in the above said school. On these grounds obviously the writ petitioner chose to withdraw the writ petition and was permitted to do so as it sought to honour its undertaking by shifting to the new premises.

5. As have been observed herein above, the order passed in Eviction Case No. 1 of 2013 dated 14.8.2014 and Misc. Appeal No. 24 of 2015 dated 27.7.2015 have not been challenged on independent grounds, if any by the review petitioner for the reason best known to him, till date.

6. Learned counsel for the review petitioner has sought to convey that writ petitioner Society represented by the Secretary did not further the case of the review petitioner, who being the Principal was very much part of the proceedings in the inferior Forum and Court. Based on that impression that the Society is

espousing the cause of the school in proper manner, it had chosen to remain in the background. It had thereafter sought to be impleaded in W.P.C. No. 5288 of 2015 through I.A. No. 4299 of 2016. -4- 7. In these background facts, since the writ petitioner Society was bound by its undertaking to vacate the premises in question and that it had chosen not to press its challenge to the orders passed by learned Estate Officer and Learned Principal District Judge in eviction proceedings, the writ petition was permitted to be withdrawn. The review petitioner, if had an independent cause of action on account of being aggrieved by the eviction orders, though an employee of the Society, could have well laid an independent challenge to the eviction proceedings through a duly constituted petition but has surprisingly failed to do so even after withdrawal of the writ petition by the Society. No grounds for maintaining the review petition in terms of the principle laid down under Order 47 Rule 1 C.P.C are being made out on the part of the review petitioner. It is another matter that the review petitioner, if has a dispute with the Society or its Secretary, the writ jurisdiction or the review jurisdiction of this Court is not the proper forum where such inter se dispute between them can be adjudicated. The review petitioner may in any other forum raise its grievance with the Society in question. Therefore, this Court is not satisfied that any grounds for entertaining the review petition is made out. Accordingly, the review petition is dismissed.

8. W.P.(C) No. 4480 of 2016:- The sole petitioner has approached this Court as a Parent of the Student studying in Indian School of Learning, Dhanbad purportedly espousing the grievances raised herein in a representative capacity. However, the writ petition is not in a representative capacity as no such authorization of any other parent is on record neither does the affidavit of the writ petitioner disclose so. In fact, the writ petition has been filed in personal capacity by the petitioner. The prayer made herein are however being noticed hereunder as it needs to be addressed. (i) For issuance of writ of certiorari of a writ in the -5- nature thereof or any other appropriate writ/writs, order/orders, direction/directions for quashing of the order dated 14.08.2014 passed by the Estate Officer, I.S.M., Dhanbad I.S.M, in Eviction Case No. 01 of 2013 whereby the Indian School of Learning, Dhanbad has been held to be in an unauthorized occupation of public premises belonging to I.S.M., Dhanbad, and also held liable to be evicted from the said premises under

Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and also directed to vacate and handover the possession of the premises to the I.S.M., Dhanbad. (ii) For quashing of the judgment passed by the Learned Principal District Judge, Dhanbad dated 27.07.2015 in Misc. Appeal No. 24 of 2014. (iii) For issuance of an appropriate writ/order/direction upon the Respondents as to allow the educational institution, situated over total lands of approximately 3 acres with having 3 stories school building comprising of 40 rooms to continue imparting education over the premises as allotted by the I.S.M., Dhanbad in the manner, as it has been functioning since more than 2 decades. (iv) For restraining the Respondents to not to give effect of the order dated 14.08.2014 passed by the Estate Officer, I.S.M., Dhanbad, in Eviction Case No. 01 of 2013 as well as the order dated 27.07.2015 in Misc. Appeal No. 24 of 2014, and the order dated 29.7.2016 passed by the learned SDO, Dhanbad during the pendency of this writ application.

9. This petitioner in order to support the averments made in the writ petition by referring to the agreement/lease entered into between the I.S.M., Dhanbad and the Society, Indian School of Learning since 12th November, 1989 and subsequent eviction proceedings in the Court of Estate Officer, ISM, Dhanbad in Eviction Case No. 1/2013 and Miscellaneous Appeal No. 24 of 2014 before District Judge, Dhanbad arising therefrom has stated that only after coming to know of withdrawal of writ petition being W.P.(C) No. 5228 of 2015 by the Society, he came to realize that the cause of the students have not been projected in a proper manner before this Court who would be subjected to displacement in mid session from the existing school running in the I.S.M. Campus to a new premises being run by the Society, which is at a distance of 7km having only 7 class rooms and no bus facilities etc. available. It is alleged that the said school is a personal property of Ex-secretary of Society of Indian School of Learning. If the students are dispossessed from the school in the mid session, their academic year would be wasted. They, -6- therefore, enjoy a right to education under Articles 21 and 21A of the Constitution of India which the State and Respondent- I.S.M., Dhanbad should come forward to protect.

10. This petitioner obviously does not have a locus standi to challenge the orders passed by the Estate Officer in the Eviction Case No. 1/2003 or the orders passed by Principal District Judge in Miscellaneous Appeal No. 24 of 2014 as they were in respect of eviction proceedings between the lessor and lessee which have culminated in the judgments passed in favour of respondent-I.S.M., Dhanbad. This petitioner's case though raised in individual capacity seeks to espouse cause of 1400 students, when no other parent has come forward to raise such an issue. The society after having lost its case in the eviction proceedings and having undertaken to vacate the premises was under obligation to follow suit. The question relating to sufficiency of infrastructure and other facilities in the school run at a new campus by the said Society are obviously matters which cannot be gone in the present proceedings. The petitioner in the capacity of a parent of a student may chose to send its ward to the premises where the school is being run but the question relating to sufficiency of infrastructure or amenities at the new campus is a question of fact which cannot be decided in the writ jurisdiction by this Court. This Court however taking a sympathetic view of the resultant situation of shifting of the school in itself from an existing campus run for more than 27 years cannot also loose sight of the resultant inconvenience and displacement caused to a large number of students in the new campus. These are issues which can well be raised before the Management of Indian School of Mines, Dhanbad through the Society in question to be considered on objective and sympathetic grounds taking into account all relevant attended factual details.

11. Therefore, though, this Court is not satisfied that writ or a -7- specific direction can be issued at the instance of the present petitioner in the manner prayed for, but liberty is granted to the petitioner and any other aggrieved parents to approach the Management of Indian School of Mines, Dhanbad through the Society in question raising all grounds of fact which may be germane for taking a sympathetic view in the matter of grant of further time to the Society in question to ensure complete shifting of the existing to the new premises in question. This Court is being persuaded to take such a sympathetic view for the reasons that the school in question is running in the existing premises for about 4 months in the present session also and wholesale shifting to a new campus may take some more time. The Management of Indian School of Mines together with District

Administration on being satisfied with any such exigency to extend further time for shifting of school in question may consider and grant such extension of time as may be deemed appropriate. This, however, in no way could mean that the Society or any other parent, teacher, Principal of the school i.e., the review petitioner in Civil Review No. 46 of 2016 seek continuance as a matter of legal right in the existing premises of Indian School of Mines after expiry of the extended period in the background of the litigation in the eviction proceedings having attained finality.

12. There are other reasons also espoused by learned counsel for respondent I.S.M relating to requirement of space and creation of additional infrastructure to accommodate more than 8000 students in the campus which has been recently notified as Indian Institute of Technology, now a prestigious organization. No further right beyond what has been observed herein above would be claimed on the part of the parent or the principal or the society in question to continue in the premises of the existing school for an indefinite length of time.

13. In case the management of the I.S.M., Dhanbad and the -8- District Administration is inclined to take a sympathetic view by granting further extension of time for shifting of the school to a new campus, it is entitled to take undertaking from all the stakeholders and on expiry of such extended time, it is equally entitled to take steps in accordance with law for eviction of school in question in compliance of the judgment passed in the eviction proceedings.

14. W.P.(C) No. 4478 of 2016:- This writ petition has also been instituted by the sole petitioner claiming himself to be the Teacher of Indian School of Learning, Dhanbad. Though the enclosure at Annexure-1 is said to be the list of Teachers of the said school who have authorized the petitioner to file appropriate case before this Court for redressal of their grievances, but the affidavit on behalf of the petitioner is conspicuously silent on the statement relating to filing of the writ petition in representative capacity on behalf of the others.

15. Be that as it may, the following relief has been prayed for in the present writ petition:- 1(A):- For issuance of an appropriate writs/ orders/ directions directing upon the Respondent no.1 and 2 to take the decision concerning taking over of the

existing elementary school which is being run within the campus of Respondent no.2, since last 3 decades, which would be in conformity with the Instructions issued by AICTE; B) For issuance of an appropriate writs/ orders/ directions directing upon the Respondent No.1 & 2 to allow the existing elementary school to run from the existing place, which is established and situated within the campus of Respondent no.2, since last 3 decades and appoint its office bearers in the governing body of the existing elementary School; C) For issuance of an appropriate writs/ orders/ directions directing upon the Respondents not to close down the existing elementary School, inasmuch as the School is established and situated in one corner of the plot of land of Respondent no.2, covering an area of not even 1% of the total land already occupied by Respondent No.2 16. Going through the averments made in the writ petition, it can only be observed that petitioner is only a Teacher of the School in question, which is run by the Society, Indian School of Learning, registered under Societies Registration Act, 1860. The Society in itself -9- has lost its battle in the eviction proceedings as has already been referred to in forgoing paragraphs of this order. This writ petitioner in the capacity of Teacher, therefore, cannot insist upon running of the School in the campus of I.S.M., Dhanbad itself as no such legal right is created in favour of the petitioner I.S.M. Dhanbad cannot be burdened with such obligations dehors any corresponding legal duty. Apparently, the decision to shift the existing school to a new campus is the underlying reason for this petitioner also to approach this Court for interference. However, no legal right is made out on behalf of the present petitioner to seek such interference in a concluded eviction proceedings and on undertaking given by the Society itself in question pursuant where to it is in the process of shifting.

17. The observation made in the other writ petition W.P.C. No. 4480 of 2016 could however also abide the present case. Petitioner and / or any other aggrieved teacher may also make such representation through the Society before the management of I.S.M., Dhanbad for any suitable extension of time for shifting of the school from existing campus. The writ petitions are disposed of with the aforesaid observations. All pending I.A.s are closed. (Aparesh Kumar Singh, J.) A. Mohanty