

SUPREME COURT OF INDIA

Action Group Res. In Envrn. & Education Development Society

Vs.

Sakky Bai

(G Pattanaik and A Misra JJ.)

29.04.1998

ORDER

1. The appeal is directed against the judgment of the Division Bench of the Andhra Pradesh High Court dated 11-7-1996, dismissing the appeal filed by the present Appellant and confirming the order or directions issued by the learned Single Judge in Writ petition No. 17419 of 1995 as modified in Review Petition No. 15976 of 1996

2. Admittedly, in the disputed premises in the city of Hyderabad, a school was running for the last so many years with the name "Republic High School". The appellants purchased the said building under two registered sale deeds dated 25.2.1995 and 2.3.1995. Shortly after the aforesaid purchase, the correspondent of the School, on whom the management of the school vests under the provisions of the Andhra Pradesh Education Act, 1982 (hereinafter referred to as "the Act"), shifted the School from the said building to a building nearby and delivered vacant possession of the premises to the appellants. Thereafter, as breach of peace was apprehended relating to the possession of the building, the Revenue Divisional Officer initiated proceedings under Section 145 CrPC and finally disposed of the said criminal proceedings by holding that the Republic School was in lawful possession of the building. This order of the Magistrate was challenged by the appellants before the High Court by invoking the jurisdiction under Section 482 CrPC. The High Court came to the conclusion that the proceedings under Section 145 CrPC were totally misconceived in the facts and circumstances of the case and directed that possession of the premises should be restored to the appellants, and pursuant to such direction, possession in fact had been delivered to the appellants on 16.9.1995. On getting possession thereof, the appellants approached the competent authority under

the Act to start a new school in the premises and obtained permission thereof by order dated 23.5.1996. Two inhabitants of the locality where the Republic School was continuing, filed a writ petition before the Andhra Pradesh High Court seeking a direction to the educational authorities to take possession of the premises and to continue the Republic School in the said building. It was also prayed in the aforesaid petition that, since there has been gross mismanagement in managing the affairs of the School, the Government should be directed to take over the management of the educational institution in public interest in exercise of the power under Section 60 of the Act. The learned Single Judge by judgment dated 12.6.1996, allowed the writ petition and directed the State Government to take possession of the property under Section 60 of the Act with the further observation that the present appellants may establish their rights by filing appropriate proceedings in the civil court. By a review petition being filed, the learned Single Judge modified his earlier direction and came to hold that it would be open for the State Government to take appropriate action under Section 60 of the Act and pass appropriate order thereon after holding due enquiry. But so far as the direction that the Republic High School should continue in the building, the review order confirmed the same. On appeal being carried, the Division Bench dismissed the appeal. Hence the present appeal.

3. Mr. Nageshwar Rao, learned Counsel appearing for the appellants, contended that in a writ of mandamus filed by the inhabitants of the locality, it was not open for the High Court to go into the question of title and come to a conclusion on the legality of the two sale deeds by virtue of which the appellants have acquired title to the premises, and the High Court, therefore, committed error in entering into that question. Mr. Rao also submitted that the power to take over management of an educational institution in public interest in accordance with the provisions of Section 60 of the Act vests with the State Government and it is only on being satisfied about the existence of the preconditions therein, the State Government can pass appropriate orders. It was, therefore, not justified on the part of the High Court to issue directions to hold an enquiry for exercising power under Section 60 of the Act, as the learned Single Judge has done in the review order.

4. So far as the question of directing the authorities to restore possession of the building of the Republic High School is concerned. Mr. Rao submitted that notwithstanding the fact the School has been shifted without prior permission of the competent authority as required under the relevant provisions of GO No. 1 of 1994 issued by the Government of Andhra Pradesh, possession having been given to the appellants, it was not competent for the High Court to direct restoration of possession, and in support of the same, reliance has been placed on the decision of this Court in the case of Sohan Lal v. Union of India .

5. Mr. Jitendra Sharma, learned Senior Counsel appearing for the respondents, on the other hand, contended that the respondents who are the residents of the locality, are merely interested to see that the School runs in (he said building until and unless it is shifted to another building in compliance with the provisions of the Rules. That not have been done, the only possible order the High Court can pass is that the status quo ante should be restored. So far as the findings of the High Court on the question of title as well as the direction to the State Government to hold an enquiry to decide the question whether management of the institution would be taken over in public interest or not under

Section 60, Mr. Sharma contends that in the given facts, possibly the High Court has issued such directions rightly, but the inhabitants have no concern in that matter.

6. Having considered the rival submissions at the Bar and having examined the judgments of the learned Single Judge as well as the Division Bench and on the admitted position that under the Rules, no school could be shifted from one building to the other without the permission of the competent authority for such shifting, the so-called shifting made by the management of the school must be held to be in contravention of the provisions of the Rules and therefore was invalid. Necessarily, therefore, the possession which the Manager gave to the appellants was not in accordance with law and the respondents of the locality where the School was running have a right to seek for a mandamus from the Court to the appropriate authority to see that the School must run in the building in question until shifting is made in accordance with law. In that view of the matter, the direction of the High Court that the Republic High School shall continue to run in that building

cannot be found to be invalid in any manner and we, therefore, confirm the said direction and hold that the Republic School shall continue to run in the disputed premises until any shifting if at all is made by following the procedure contemplated under the Rules.

7. So far as the findings arrived at by the High Court on the question of title of the appellants as well as the direction issued by the High Court to hold an enquiry under Section 60 of the Act are concerned, we find considerable force in the submission made by Mr. Rao, learned Counsel for the appellants. The High Court was wholly in justified in deciding the question of title and the legality of the two registered sale deeds and arriving at any conclusion thereon. Not only was it a disputed question of fact but also it was not necessary for the High Court to go into that question. Since title of the appellants has not been challenged by any competent person, which the appellants had obtained by virtue of two registered sale deeds, the High Court erred in law in going into that question. In that view of the matter, we are of the considered opinion that any finding given by the High Court in the impugned judgment in relation to the title of the premises will be of no consequence. Further, the so-called directions to the State Government to hold an enquiry under Section 60 of the Act, were not necessary and accordingly we quash those directions. Any observation made by the High Court in the aforesaid matter will not affect the rights of the parties in any manner.

8. We, therefore, dispose of this appeal with the direction that the Republic High School shall continue to be located in the disputed building until it is shifted in accordance with law. The rent of building of the School has to be paid to the appellants in accordance with law.