PETITIONER:
SRI VIDYA MANDIR EDUCATION SOCIETY (REGD.)

Vs.

RESPONDENT:
MALLESWARAM SANGEETHA SABHA

DATE OF JUDGMENT30/07/1994

BENCH:
(K.RAMASWAMY AND R.M. SAHAI, JJ.)

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. The appellant-society has been running a school at 11th Cross West Park Road, Malleswaram in Bangalore City. The said school has been in existence for about 22 years and was shifted in 1976 to the present premises. The school has got about 1500 students. Adjacent to the school there is an open land about 300 ft. x 75 ft. It is the claim of the appellant that they have applied for allotment of land of 100 ft. x 75 ft. to use it as a playground for the children as there is no open land for playground. It is their claim that the municipal corporation had not allotted the land and that therefore they moved a petition. Their petition has been dismissed by the corporation without considering their request. When the matter has gone to the High Court under Article 226, initially the learned Single Judge remitted the matter for reconsideration by the corporation, but on appeal, in the impugned judgment in Writ Appeal No. 2407 of 1990, the Division Bench by order dated 25-3-1992 interfered with and dismissed the writ petition of the appellant. Thus this appeal, by special leave.

3. It is not in dispute that the appellant has been running the school for about 22 years and that there is no independent land for use as a playground by the students around 1500. Admittedly, Respondent 1, Malleswaram Sangeetha Sabha obtained lease of the land from the municipal corporation to an extent of 100 ft. x 75 ft. which is adjacent to the school. The appellant claimed allotment of same land near about the school. The High Court found that the appellant had

+ Arising out of SLP (C) No. 15992 of 1992

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not made any specific claim to allot that particular land, a vague reference was made to allot any land adjacent to the school and that therefore the appellant cannot claim as of right for any allotment. In view of the fact that from 1976 the school is being run in the present premises and adjacent to this the land allotted to the 1st respondent admittedly was vacant at that time. Reasonably when the school claimed for allotment, the allotment may be adjacent to the school

so that the land could be used by the children as their playground without any difficulty. Obviously the municipal corporation was to allot the vacant land adjacent to the school instead, it had granted lease to the 1st respondent. Under those circumstances we find it is just and proper that the municipal corporation should allot the adjacent land allotted to the 1st respondent to the appellant's school for using it as a playground. It is also pointed out that after this land, there appears to be another vacant land of an extent of 200 ft. x 75 ft. as stated in the Plan-Annexure 'E' filed in this Court as part of the documents and if that land is vacant municipal corporation would consider the allotment of 100 ft. x 75 ft. in that land to the 1st respondent for using it for construction of the building for musical concert. In case of any difficulty any other vacant land in that area may be considered for allotment on lease to the first respondent.

4. Under these circumstances the order of the High Court is set aside and there shall be a direction to the municipal corporation to allot the land of 100 ft. x 75 ft. which was allotted immediately to the 1st respondent to the appellant-society and within a period of three months from the date of the receipt of the order an equal portion may be allotted near about the place to the 1st respondent as stated earlier.

5. The appeal is allowed but in the circumstances without costs.

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