

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 21ST DAY OF OCTOBER, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 6058 OF 2020 (EDN-RES)

C/W

WRIT PETITION NO.9554 OF 2020 (END-RES)

IN W.P.NO.6058/2020:

BETWEEN:

NEXGEN EDUCATION TRUST(REGD.)
HAVING OFFICE AT NO.320, AYAPPA SOCIETY,
MADHAPUR, HYDERABAD – 81.
MANAGING SRI CHAITANYA TECHNO SCHOOL,
PRESENT PROPERTY ID.NO.103145, 102186
(FORMER SURVEY NO.340/1 OF TUMKUR)
HORPETTE EXTENSION,
BEHIND SHIVA SHANKARI FUELS,
NH-4, KOTHI THOPU,
TUMKUR – 572 102.
REP. BY ITS AUTHORIZED REPRESENTATIVE/
SECRETARY SRI. RAMA RAO PANTHINA.

...PETITIONER

(BY SRI. P.D. SURANA, ADVOCATE)

AND:

1. STATE OF KARNATAKA,
REPRESENTED BY
PRINCIPAL SECRETARY FOR EDUCATION,
DR. AMBEDKAR VEEDHI,
MULTI-STORIED BUILDING,
BENGALURU – 560 001.
2. DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS,
PUBLIC EDUCATION DEPARTMENT,
TUMKUR – 572 103.

3. DEPUTY SECRETARY,
DEPARTMENT OF EDUCATION,
(PRIMARY & SECONDARY)
DR.AMBEDKAR VEEDHI,
MULTI-STORIED BUILDING,
BENGALURU – 560 001.

...RESPONDENTS

(BY SMT. PRAMODHINI KISHAN, AGA FOR R1 – R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENDORSEMENT DATED 31.05.2019 ISSUED BY THE R-2 (DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS), TUMKUR PRODUCED HEREWITH AS ANNEXURE-G AND REVISION PETITION NO.174/2019 ORDER DATED 03.02.2020 PRODUCED AT ANNEXURE-H AND MADE BY THE R-3 AND THE DEPUTY SECRETARY, DEPARTMENT OF EDUCATION (PRIMARY AND SECONDARY) AS APPELLATE PARTY IN REVISION PETITION NO.174/2019.

IN W.P.NO.9554/2020:

BETWEEN:

NEXGEN EDUCATION TRUST(REGD.)
HAVING OFFICE AT NO.320, AYAPPA SOCIETY,
MADHAPUR, HYDERABAD – 81.
MANAGING SRI CHAITANYA TECHNO SCHOOL,
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BENGALURU – 560 001.
2. DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS,
PUBLIC EDUCATION DEPARTMENT,
TUMKUR – 572 103.

...RESPONDENTS

(BY SRI. PRAMODHINI KISHAN, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ENDORSEMENT DATED 26.05.2020 ISSUED BY THE R-2 (DEPUTY DIRECTOR OF PUBLIC INSTRUCTIONS), TUMKUR, PRODUCED HEREWITH AS ANNEXURE-S.

THESE WRIT PETITIONS COMING ON FOR **FINAL DISPOSAL** THIS DAY THROUGH VIDEO CONFERENCE, THE COURT MADE THE FOLLOWING:

ORDER

Petitioner a registered Educational Trust which at the very first para of the Writ Petition assures “*to provide educational facilities to all sections of societies on no profit and no loss basis*” is knocking at the doors of Writ Court essentially grieving against the denial of permission for

establishing a School for imparting education at the level of 1st to 8th Std in English medium, vide Endorsement dated 31.05.2019 issued by the 2nd respondent-DDPI at Annexure-G, it's Revision Petition No.174/2019 challenging the same having been negatived by the Government vide order dated 3.2.2020 at Annexure-H.

2. After service of notice, the respondents have entered appearance through the learned Additional Government Advocate who having filed the Statement of Objections on 29.9.2020, resists the Writ Petitions making submission in justification of the impugned orders and the reasons on which they have been structured.

3. Having heard the learned counsel for the parties and having perused the petition papers, this Court is inclined to grant indulgence in the matter for the following reasons:

(a) The substantive ground for denying permission for establishing the school is that, the petitioner-Trust has not produced the conversion order of the land in question to non-agricultural purpose; in other words, the land continues to be agricultural in nature; this is apparently wrong; this land having been converted to non-agricultural user

(industrial) by the Tumkur District Deputy Commissioner's order dated 23.5.1986, now figures in Yellow Zone in the statutory Revised Master Plan [2031], formulated under the provisions of Sections 9 & 14 of the Karnataka Town and Country Planning Act, 1961, a copy of the CDP is at Annexure-W; in view of a Division Bench decision of this Court in **Special Deputy Commissioner Vs. Bhargavi Madhavan, ILR 1987 KAR 1260**, there is no requirement of one more formal conversion order that otherwise was warranted in terms of Section 95 of the Karnataka Land Revenue Act, 1964; the same ratio is reiterated by another Division Bench in W.A.No.100124/2018 between Hubli Dharwad Urban Development Authority Vs. State and another, decided on 22.10.2018; therefore, there is a grave error of law apparent on the face of the impugned orders that have occasioned a great injustice to the petitioner.

(b) The above apart, the Tumkur Urban Development Authority constituted under the provisions of the Karnataka Urban Development Authorities Act, 1987, vide letter dated 20.7.2018 has specifically stated that the land in question can be used for educational purpose in view of its inclusion in the Approved Comprehensive Development Plan (Revised-

II)-2031; the content portion of the said letter, a copy whereof is at Annexure-D, reads as under:

“ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದಂತೆ, ಉಲ್ಲೇಖಿತ ನಿಮ್ಮ ಮನವಿಯಲ್ಲಿ ತುಮಕೂರು ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ತುಮಕೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರ್ 340/1 ರ ಜಾಗಿಯು ಭೂ ಉಪಯೋಗವನ್ನು ಹಾಗೂ ವಸತಿ ವಲಯದಲ್ಲಿ ಶೈಕ್ಷಣಿಕ ಶಾಲಾ ಉದ್ದೇಶಕ್ಕೆ ಅವಕಾಶವಿರುವ ಬಗ್ಗೆ ತಿಳಿಸುವಂತೆ ಕೋರಿದುತ್ತೀರಿ.

ಪರಿಶೀಲಿಸಲಾಗಿ, ಸಲ್ಲಿಸಿರುವ ಸರ್ವೆ ನಕ್ಷೆಯನ್ವಯ ತುಮಕೂರು ತಾಲ್ಲೂಕು, ಕಸಬಾ ಹೋಬಳಿ, ತುಮಕೂರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬರ್ 340/1 ರ ಜಾಗೆಯು ತುಮಕೂರು ನಗರದ ಸ್ಥಳೀಯ ಯೋಜನಾ ಪ್ರದೇಶದ ಅನುಮೋದಿತ ಮಹಾಯೋಜನೆಯ (ಪರಿಷ್ಕೃತ-11) -2031 ರಂತೆ ವಸತಿ ಮತ್ತು ಕೆರೆ ಬಫರ್ ಉದ್ದೇಶಕ್ಕೆ ಕಾಯ್ದಿರಿಸಲಾಗುತ್ತದೆ. ವಲಯ ನಿಯಮಾವಳಿಗಳನ್ವಯ ವಸತಿ ವಲಯದಲ್ಲಿ ಪ್ರಾಧಿಕಾರದಿಂದ ವಿಶೇಷ ಸಂದರ್ಭದಲ್ಲಿ ಅನುಮತಿಸಬಹುದಾದ ಶೈಕ್ಷಣಿಕ ಉದ್ದೇಶಕ್ಕೆ (ಪ್ರೈಮರಿ ಶಾಲೆವರೆಗೆ) ಅವಕಾಶವಿರುತ್ತದೆ ಎಂಬ ವಿಷಯವನ್ನು ತಮಗೆ ಈ ಮೂಲಕ ತಿಳಿಸಲಾಗಿದೆ.”

The interpretation placed by the learned AGA on the text of this letter that it only indicates conversion potential of the land and not the conversion as such to educational purpose, is bit difficult to countenance; the words used in official correspondence cannot be interpreted by employing the rules applicable to statutory construction; even otherwise, it was open to the answering respondent to solicit from the concerned authority any clarification in this regard; however, such a positive approach was not adopted and nowadays same cannot be expected from the officialdom, is the heart burn of the citizens.

(c) The respondents in their Statement of Objections seek to justify the impugned orders stating that there is non-compliance of Rule 3(4) of the Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc) (Amendment) Rules, 2018; the said provision reads as under:

“Every private body of persons desiring to establish and maintain an educational institution imparting pre-primary, secondary and higher secondary education or any part thereof shall own or have on lease for a minimum period of thirty years following minimum contiguous extent of land for the building and playground of the educational institution with permission from relevant authorities to use for educational purposes:”

The land in Sy.No.340/1 is taken by the petitioner-Trust on lease basis for a period of thirty years vide registered Lease Deeds both dated 23.8.2018 at Annexures – B & B1, is not in dispute; the said land having been converted to industrial purpose way back in May 1986 has no longer retained its agricultural character; such a converted land can be put to residential use because of inclusion *per se* in the Comprehensive Development Plan; residential purpose necessarily includes educational ones; it is profitable to reproduce para 18 of the judgment in Hubli Dharward Urban Development Authority Vs. State of Karnataka, supra:

“18. It is also not in dispute that the conversion granted by the Deputy Commissioner as long back as 2.7.1965 from agriculture to industrial purpose on payment of Rs.500/- is not challenged by the appellant. The said order passed by the Deputy Commissioner has reached finality. It is also not in dispute that the very appellant has permitted the petitioner for the change of land use of 20 acres out of 81.12 acres in Sy.No.88/P-1 from industrial to residential purpose under the provisions of Karnataka Town and Country Planning Act, 1961. The said order has reached finality. It is also not in dispute that the properties in question is within the limits of Corporation, if that is so, in view of the dictum of the co-ordinate bench of this Court stated supra, there is no need to obtain permission from the Deputy Commissioner, which was already granted as long back as 2.5.1965. The endorsement issued by the present appellant is without any basis, as the learned Single judge has rightly quashed the same...”

The reasoning in the impugned orders is repugnant to both fact matrix & legal position applicable thereto; thus, they are vulnerable for challenge.

4. The Tumkur City Corporation has issued an approved building plan and the building licence dated 24.08.2018 at Annexures-E & F for the construction of a huge four storey school building (G+3) with the floor area totally measuring 4127.88 sq.mtrs.; the site on which it is erected itself measures 6151.05 sq.mtrs.; accordingly a magnificent building is constructed for the purpose of

housing the school only with investment of money running into crores; the City Corporation has issued 'Occupancy Certificate' dated 29.12.2018 at Annexure-S specifically certifying that "...building which is constructed for Educational purpose is certified as Fit for Occupancy"; the Health Officer of City Corporation has issued 'No Objection Certificate' dated 19.10.2019 at Annexure-R to the effect that the building is perfectly in order with full facilities for drinking water, toilets and that the same is fit for school; the Karnataka State Pollution Control Board has issued a letter dated 22.01.2020 at Annexure-T to the effect that no clearance is required from its side.

5. The contention of the answering respondents that in terms of infrastructure, the petitioner satisfies only 67% of the requirement, is bit difficult to countenance in the absence of the material particulars thereof being stated either in the impugned orders or at least in the Statement of Objections; a bare statement would not do; this apart, what is lacking in terms of infrastructure whether touches the centrality of requirement, is also not forthcoming; be that as it may; common sense tells that, the available facilities in the school building in question certainly do not fall short of those

obtaining in any Government schools in the locality, as rightly contended by the learned counsel for the petitioner; after all, what was lacking could have been pointed out to the petitioner so that it would have made the same good in a time bound way; that exercise strangely has not been undertaken; this court gathers an impression that somehow the powers that be, are working to ensure that this school shall not come up, for an indefinite period of time and that the reasons for the same remaining inscrutable, give scope for assuming ulterior motives.

6. Way back in 1930, in Interview with Izvestia, **Rabindranath Tagore**, had powerfully diagnosed: *‘In my view the imposing tower of misery which today rests on the heart of India has its sole foundation in the absence of education’*; **Jean Dreze and Amartya Sen** in their treatise “An Uncertain Glory – INDIA AND ITS CONTRADICTIONS” in Chapter V at pages 107 to 109 write as under:

“The role of basic education in the process of development and social progress is very wide and critically important. First, the capability to read and write and count has powerful effects on our quality of life; education leads to an informed life, to communicate with others, and to be generally

*in touch with what is going on. In a society, particularly in the modern world, where so much depends on the written medium, being illiterate is like being imprisoned, and **school education opens a door through which people can escape incarceration.** Second, our economic opportunities and employment prospects depend greatly on our educational achievements... Third, illiteracy muffles the political voice of people and thus contributes directly to their insecurity ... Fourth, basic education can play a major role in tackling public health problems in general and public health in particular ... Fifth, educational development has often been the prime mover in bringing about changes in public perceptions of the range and reach of what can be called human rights ... Sixth, education can also make a difference to the understanding and use of legal rights... When people are illiterate, their ability to understand, invoke and use their legal rights can be very limited... Lack of schooling can directly lead to insecurities... Seventh,...the schooling of young women can substantially enhance the voice and power of women in family decisions... Eighth, even though education is no magic bullet against class barriers, it can make a big contribution to reduce inequalities related to the divisions of class and caste... Last but not least,*

learning and studying can be immensely enjoyable ... quite apart from the long run benefits people receive from it..."

7. 86th Amendment to the Constitution has introduced Article 21A with effect from 12.12.2002 which reads "*The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.*" This provision is strengthened by adding clause (k) to Article 51A which enacts that it is a duty of a parent or guardian to provide opportunities for education to his/her child or ward between the age of six & fourteen years; the importance of these new provisions can be understood by the observations of the Apex Court to the effect that without Article 21A, the other fundamental rights are rendered meaningless; without education, a citizen may never come to know of his other rights; since there is no corresponding constitutional right to higher education, the fundamental stress has to be on primary and elementary education, so that a proper foundation for higher education can be effectively laid vide **BHARTIYA SEWA SAMAJ TRUST vs. YOGESHBHAI AMBALAL PATEL**, (2012) 9 SCC 310;

8. It needs to be noted that the Parliament has enacted the Right to Education Act, 2009 and expanded its scope by a few amendments *inter alia* imposing an obligation even on private schools to admit students from the State Government quota, subject to certain conditions; this is because of the fact that the school education in the country *inter alia* suffers from the limitation of coverage; there are not enough number of government/public schools to cater to the societal need; a corresponding statutory duty is cast on the private schools to make the fundamental right to free education at the primary level, meaningful; if the applications for grant of permission to establish such schools are mindlessly declined, that would muffle the inner voice of the aforesaid constitutional amendments that are complimented by legislative instruments; the first sentence in the first paragraph of the Writ Petition, reads - "*That the petitioner Trust has one of its object, is to establish educational institution and provide educational facilities to all sections of societies on no profit and no loss basis*"; this has not been controverted by the respondents in their Statement of Objections; there is some material on record to show that the petitioner-Trust has been running several educational

institutions; the version of the answering respondents that the petitioner-Trust is not adhering to Government Orders, lacks material particulars, to say the least; the school building in question is completely surrounded by a compound wall; in cities like Bangalore, several schools and fuel stations co-exist & function as peaceful neighbours; it is nobody's case that precautionary measures cannot be taken to avoid likely accidents; therefore, the existence of a petrol pump beside it, is only a feeble ground to deny permission;

9. The above aspects have not factored even in the penumbra of impugned decision making at the hands of the answering respondents; they have invoked the provisions of Rule 4 of Karnataka Educational Institutions (Classification, Regulation and Prescription of Curricula etc) Rules, 1995 as amended vide notification dated 08.03.2018, in a pedantic way like a village priest ritualistically murmuring the hymn without knowing its inner meaning; the constitutional guarantee of free-primary-education will not fructify in the absence of enough number of schools and therefore, the State action should be facilitative & complimentary to the establishment of private schools; the authorities need to be told that there exists a certain difference between a

requisition for the grant of permission for founding a school and an application for the grant of excise license for opening a wine shop, they being poles asunder; the impugned orders lack elements of reason & justice; the process by which they have been made falls short of "fair standards" which a Welfare State should profess & practice.

In the above circumstances, these Writ Petitions succeed; a Writ of Certiorari issues invalidating the impugned orders; the matter is remitted back to the 2nd respondent-DDPI for consideration afresh, in accordance with law and after providing an opportunity of hearing to all the stakeholders.

Time for compliance is eight weeks from the date a copy of this order is produced, subject to the rider that delay if brooked shall entail the concerned official personally with a cost of Rs.10,000/- per week payable to the petitioner-Trust; the time taken by the petitioner-Trust for production of documents or the like, shall be excluded while computing the said period of eight weeks.

All other contentions of the parties are kept open, the costs having been reluctantly made easy for the present.

**Sd/-
JUDGE**

cbc

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