

PRESIDENT, VIDYA PRASARAK SAMITHI, RAMDURG A

v.

DEPUTY COMMISSIONER, BELGAUM DISTRICT & ORS.

(Civil Appeal No. 11992 of 2016)

DECEMBER 09, 2016 B

[PINAKI CHANDRA GHOSE AND AMITAVA ROY, JJ.]

Government Grant: Government Land – Grant of – Propriety – Rival claims by two educational institutions (appellant and respondent No. 3) – In respect of Government land for use of the same as playground for their respective institutions – Grant of land in favour of the appellant – Confirmed by the appellate authorities and Single Judge of High Court – Division Bench set aside the orders whereby the land was granted – On appeal, held: Division Bench rightly concluded that the land in question had already been sold by the Government to respondent No. 3 and once the ownership of the land vested in it, the same could not have been granted in favour of appellant. C D

Dismissing the appeal, the Court

HELD: The Division Bench of the High Court correctly came to the conclusion that the school was transferred in favour of respondent No. 3 and since the payment of the land in question has already been made by respondent No. 3 and once the ownership of the said land has vested in it, it cannot be granted in favour of any other person or institution. Accordingly, the reasoning given by the High Court cannot be questioned in the given facts. [Para 13] [740-E-F] E F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 11992 of 2016.

From the Judgment and Order dated 29.10.2007 of the High Court of Karnataka at Bangalore in W. A. No. 850 of 2004. G

Basavaprabhu S. Patil, Sr. Adv., C. M. Angadi, Rameshwar Prasad Goyal, Advs. for the Appellant.

V. V. S. Rao, Sr. Adv., S. Udaya Kumar Sagar, Ms. Bina Madhavan, Ms. Akanksha Mehra, Ms. Vijaya Shree Pattnaik, H

A M/s. Lawyer S. Knit & Co., Advs. for the Respondents.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted.

B 2. This appeal is directed against the judgment and order dated 29th October, 2007 passed by the High Court of Karnataka at Bangalore in Writ Appeal No.850 of 2004, whereby the High Court allowed the appeal filed by Respondent No.3 herein. The High Court by the impugned judgment held that the orders passed by the Assistant Commissioner (Respondent No.2 herein) and confirmed by Deputy Commissioner, Belgaum (Respondent No.1 herein), are not legal and valid and set aside the order passed by the learned Single Judge affirming the orders passed by the said respondents.

C 3. The facts of the case are as follows: The appellant Vidya Prasarak Samithi, Ramdurg, a Trust registered under the Bombay Public Trusts Act and Basaveshwar Vidya Vardhak Sangha (“BVVS” for short), respondent No.3 herein, are running educational institutions at Ramdurg. The dispute between them is in respect of the Government land, being CTS No.1674/1, in respect of which there are rival claims by Vidya Prasarak Samithi and BVVS for use as playground for students of their respective institutions. As there was no playground in the college run by the appellant, it appears from the facts that on an application made by the appellant, the Assistant Commissioner, Belgaum, by his order dated 18th February, 1970, granted the land in question in favour of the appellant. This order was challenged by Respondent No.3 by filing an appeal before the Deputy Commissioner, Belgaum. The Deputy Commissioner confirmed the order of the Assistant Commissioner granting land.

F 4. Against the said order passed by the Assistant Commissioner granting land in favour of the appellant herein, an appeal was preferred by BVVS before the Deputy Commissioner, Belgaum. The Deputy Commissioner dismissed the said appeal. Further, an appeal was preferred by BVVS before the Divisional Commissioner, who allowed the appeal, cancelled the grant of land and further directed that both the institutions, instead of litigating, should evolve an arrangement for the common use of the playground for the benefit of their students.

G 5. Against the said order, Vidya Prasarak Samithi filed a revision petition before the Karnataka Appellate Tribunal. The said Tribunal H dismissed the revision petition and confirmed the arrangement suggested

by the Divisional Commissioner. Hence, Vidya Prasarak Samithi filed a writ petition before the High Court, being Writ Petition No.3314 of 1979. The said writ petition was disposed of by the High Court by its order dated 20th June, 1980 remanding the matter to the Assistant Commissioner, Belgaum, with a direction to make an inquiry as to whether BVVS has since acquired a separate plot for the purpose of playground and whether that land would be sufficient as required by the institution and if the points are found in the affirmative, then the Assistant Commissioner would be well advised to grant the land involved, being CTS No.1674/1, exclusively to Vidya Prasarak Samithi. It is further held by the High Court that if the plot purchased by BVVS is not sufficient for its requirement or if there is no such purchase, then the Assistant Commissioner should work out a satisfactory arrangement to share CTS No.1674/1, for use as playground on alternative dates by the said two institutions. The High Court further held that the Assistant Commissioner should also hold inquiry after affording opportunities to the parties of being heard.

6. Pursuant to and in terms of the order of the High Court, the Assistant Commissioner conducted an inquiry into the matter and after giving opportunities to the parties of being heard, made the following findings:

BVVS acquired 4 acres of land in Ramdurg town under the Land Acquisition Act and its possession was handed over to the BVVS on 19th December, 1979. The BVVS constructed a school building meant for Girls Junior College on this land. The remaining area (120 Mtr. x 40 Mtr.) is available for playground. It has been leveled and developed as playground. The playground developed by BVVS at its newly acquired land is sufficient for its purpose. The plea taken by BVVS that it cannot be used by the students of Girls Junior College and Boys Junior College, cannot be accepted, while both the colleges were run in the same building before acquisition of the said land. Vidya Prasarak Samithi, Ramdurg is not having any land for its playground and in fact the college itself is being run in a rented building.

7. Considering the above facts, the Assistant Commissioner by its order dated 14th October, 1990 granted the land being CTS No.1674/1, of Ramdurg Town, exclusively in favour of Vidya Prasarak Samithi, Ramdurg. An appeal was preferred by Respondent No.3 before the Deputy Commissioner which was dismissed. Respondent No.1 by order

A dated 22nd January, 1994 confirmed the order of the Assistant Commissioner dated 14th October, 1990.

8. Being aggrieved by the order passed by Respondent No.1, Respondent No.3 filed a revision petition before the Karnataka Appellate Tribunal, Bangalore. The said Tribunal by its order dated 31st January, 1996 set aside the orders passed by Respondent Nos.1 & 2 and again remanded the matter to Respondent No.2. Respondent No.2 again conducted fresh inquiry and spot inspection and further confirmed the grant of land in favour of the appellant by his order dated 25th October, 1997. BVVS filed an appeal before Respondent No.1 - The Deputy Commissioner, Belgaum District. Respondent No.1 by his order dated 23 January, 1999 confirmed the order of Respondent No.2 and dismissed the appeal. BVVS (Respondent No.3) filed an appeal being Appeal No.129 of 1999, before the Karnataka Appellate Tribunal. The Appellate Tribunal by its order dated 27th August, 1999, modified the orders passed by the Assistant Commissioner and Deputy Commissioner and ordered the appellant and Respondent No.3 to use the playground bearing CTS No.1674/1 on alternative days. Respondent No.3 was given a preference to make use of it on Sunday and alternative days and the appellant was to use it from Monday and alternative days.

9. In these circumstances, the appellant feeling aggrieved filed a writ petition, being Writ Petition No.2325 of 2003, before the High Court of Karnataka. The learned Single Judge of the High Court by his order dated 24.11.2003 allowed the writ petition filed by the appellant and set aside the order passed by the Karnataka Appellate Tribunal confirming the grant of land in favour of the appellant. The reasonings given by the learned Single Judge of the High Court are:

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- (a) On remand the Assistant Commissioner duly considered the case afresh and after inspection of the property in question, found that certain land measuring 120 Mtr. x 40 Mtr., which is vacant land belonging to BVVS (respondent No.3), is sufficient for it to use it as playground.
- G
- (b) BVVS has not made any application for grant of land before the Revenue Authorities and in the absence of any such application for grant, BVVS has no right to challenge the order of grant.
- H
- (c) The said point was not considered by the Tribunal.

10. Furthermore, the learned Single Judge of the High Court held that the Government at the instance of respondent No.3 has acquired 4 acres of land for the purpose of playground. Therefore, it was the duty of Respondent No.3 to reserve sufficient extent of land for use as playground and rest of the land would have been utilized for construction of the school. On the other hand, the appellant has no land of its own for use as playground and BVVS did not ever question the said plea of the appellant. In these circumstances, the learned Single Judge of the Karnataka High Court allowed the writ petition and quashed the order passed by the Karnataka Appellate Tribunal. It appears that the Division Bench of the High Court without considering such facts and without taking into consideration the land grant rules, quashed the order of grant of land.

11. Being aggrieved, BVVS filed an appeal before the Division Bench of the High Court. The Division Bench noted that by a Government Order dated 23rd July, 1966, the management of the Government School was transferred in favour of BVVS with certain conditions. One of the important conditions enumerated therein was that the ownership of the immovable property in question will vest with the Government. Subsequent thereto the Government passed another order dated 26.1.1967, wherein it was stated that consequent on the transfer of administration of the State High School, Ramdurg to the control and management of BVVS, vide Government order dated 23.7.1966, on a permanent basis, the Government has carefully considered the question of transfer of its properties after proper valuation and directed that the properties including buildings and playground, should be transferred to the management of the School at the prevailing market rate to be fixed by the competent valuer of the Public Works Department. Accordingly, the Public Works Department fixed the market value of the property in question at Rs.51,600/- vide valuation letter, which was duly paid by BVVS in favour of the Public Works Department by challan vide document produced at Annexure R-3 in the office of Bagalkot Treasury on 8.11.1982 which was brought to the notice of the Public Works Department. Thereafter, a trust deed was registered by BVVS (Respondent No.3) wherefrom it would be evident that the property in question though belonged to the Education Department, since the administration and management of the High School run by the Education Department was transferred to BVVS, its property, namely, playground was also transferred in favour of BVVS for its market value. The Division Bench of the High Court further held

- A that there is clinching documentary evidence in favour of BVVS to justify its claim of ownership in respect of the property in question and, therefore, the land in question was not available for grant as was observed by the learned Single Judge. It was further held that the land could have been granted if the land was available in the list of available lands for the purpose of grant in favour of either the appellant or any eligible person for educational purposes. The High Court further held that the land was not available at the time of granting the same in favour of the appellant Vidya Prasarak Samithi. The Division Bench also held that the undisputed fact was that the said playground was being used by the Government High School and the said property was one of its properties, and the same had been transferred to BVVS after fixing the market value by the Public Works Department and that therefore, Respondent Nos.1 and 2 have committed illegality in law in granting the land in question in favour of Vidya Prasarak Samithi, the appellant herein.

- D 12. Accordingly, the High Court held that the order passed by the second respondent and confirmed by the first respondent are not legal and valid. Hence, the said orders and the order of the learned Single Judge of the High Court were set aside by the Division Bench.

- E 13. It appears to us, after hearing the parties and after going through the facts of this case, that the High Court correctly came to the conclusion that the school was transferred in favour of the Respondent No.3 - BVVS and since the payment of the land in question has already been made by BVVS, and once the ownership of the said land has vested in it, it cannot be granted in favour of any other person or institution. Accordingly, we find that the reasoning given by the High Court cannot be questioned in the given facts. We accept the reasoning given by the High Court and uphold the order passed by the Division Bench of the High Court setting aside the order passed by the learned Single Judge as also the orders passed by the second respondent and first respondent. Accordingly, this appeal fails and is hereby dismissed.

- G Kalpana K. Tripathy

Appeal dismissed.