A GANAPATHI NATIONAL MIDDLE SCHOOL

v.

M. DURAI KANNAN (DEAD) BY LRS. AND ORS.

AUGUST 7, 1996

B [K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Land Acquisition Act, 1894 :

Ss.4(1), 5A—Acquisition of premises for 'educational institution—Mid-
C *dle school receiving grant-in-aid, functioning in rented premises—Landlord got decree of eviction—Acquisition of premises under the Act—Landlord's objection that since the School was run by an individual and not by a recognised society, acquisition of premises was not in public interest but in interest of a private individual—Held, educational institution receiving aid is an instrumentality or education agency of the State imparting education on*
D *behalf of the State—Entire expenditure for acquisition is being met from public funds—Need for continuance of educational institution in the premises was well recognised—Action to acquire the premises at the expense of State was taken to provide education to middle school going children—It is clearly a case of public purpose.*

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Tamil Nadu Recognised Private Schools (Regulation) Act, 1973 :

S.3(b)—Educational agency—Middle School established in 1929 by a private individual and receiving grant-in-aid—Held, since the school is not an educational institution established under the Act as it was established in 1929,
F *it does not require recognition under the Act—But it is an "educational agency" defined under s.3(b), and therefore, it is a deemed school established under the Act by operation of s.3(b).*

Constitution of India, 1950 :

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Articles 12, 29(2) and 45—School receiving grant-in-aid—Held, is an instrumentality or education agency of State imparting education on behalf of the State which is a fundamental right of the citizens.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2995 of
H 1986.

From the Judgment and Order dated 11.8.86 of the Madras High Court in W.A. No. 761 of 1986. A

K. Parasaran, A.T.M. Sampath and P.N. Ramalingam for the Appellants.

B. Parthasarthy for the Respondents. B

The following Order of the Court was delivered :

This appeal by special leave arises from the Judgment and order of the Division Bench of the Madras High Court dated August 11, 1986 made in Writ Appeal No. 761/1986. The undisputed facts are that the appellant-middle school imparting education upto the 8th standard was established way back in 1929 upto the 8th standard. It is an aided institution. The landlord filed an application for eviction of the school and decree of eviction came to be passed. The appellant had moved the Government for acquiring the land and building for continuing the institution in the same premises. Consequently, notification under Section 4(1) of the Land Acquisition Act 1 of 1894 (for short, the 'Act') came to be published in the State-Gazette on July 7, 1982. After conducting an enquiry under Section 5A and rejection of the objections, the declaration under Section 6(1) came to be published on June 29, 1983. The respondents challenged the validity of the notification under Section 4(1) and the declaration under Section 6 in Writ Petition No. 6337/1983. The learned Single Judge by his Judgment dated July 4, 1986 allowed the writ petition and quashed the notification under Section 4(1). On appeal, the Division Bench confirmed the same *in limine*. Thus, this appeal by special leave. C D E

The only question which arises for consideration is : whether the acquisition is for a public purpose? The High Court has taken the view that since the appellant-institution is being run by an individual which is not a registered society under the Societies Registration Act it is neither a company nor a society and, therefore, acquisition does not serve any public purpose but only private interest. As a consequence, the acquisition is bad in law. The question, therefore, is : whether the view taken by the High Court is sustainable in law? Article 45 of the Constitution enjoins the State to provide free and compulsory education to all children upto age of 14 years. It is constitutional mandate of the State to provide compulsory education. It is now settled law of this Court that right of education is a fundamental right to every every child. The State cannot impart education by itself. Therefore, the agency through which it organises imparting educa- F G H

A tion is recognised private institutions according to its procedure. As regards the State of Tamil Nadu, it is governed by the provisions of the Tamil Nadu Recognised Private Schools (Regulation) Act 1973, Act 29 of 1974 (for short, the 'Education Act'). Section 3 defines "educational agency" in relation to any other private school to mean any person or body of persons permitted or deemed to be permitted under this Act to establish
B and maintain such other private institution. Section 5(1) of the Act envisages that the educational agency of every private school proposed to be established on or after the date of the commencement Act shall make an application to the competent authority for permission to establish such school. The prescribed procedure in that behalf has been enumerated in sub-section (2) of Section 5. Since the appellant-School is not an educa-
C tional institution established under the Act as it was established in 1929, it does not require recognition under the Act.

But it is an educational agency defined under Section 3(b) of the Act and, therefore, it is a deemed school established under the Act by opera-
D tion of Section 3 (b). Accordingly the appellant-School has been receiving grant-in-aid under the Act. Under Art. 29(2) of the Constitution "No citizen shall be 'denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them". Thereby the educational institution receiving aid is an instrumentality or education agency of the
E State imparting education on behalf of the State which is a fundamental right of the citizens. It is not in dispute that the entire expenditure for the acquisition is being met from the public funds, as accepted by the High Court. Under those circumstances, it is clearly a case of public purpose. It could be seen that when the order of eviction was sought to be enforced, this Court while upholding the decree of eviction had imposed a condition
F that the undertaking shall not be enforced when the land is sought to be acquired. This Court had recognised the need for the continuance of the educational institution in the said place and that the State had taken action to acquire the land at the expense of the State to provide the education to the middle school going children. Under those circumstances, the High Court was wholly wrong in its conclusion that public purpose is not served
G in acquiring the land but benefits the private individuals.

The appeal is accordingly allowed but in the circumstances without costs. The writ petition stands dismissed.

R.P. Appeal allowed.