S.No. 178
Supp. List

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP(C) No. 772/2024
CM No. 2010/2024

Ahmadiyya Public School
Reshinagar ...Petitioner/Appellant(s)

Through: Mr. Tasaduk Hussain Reshi, Advocate

V/s

UT of JK & Ors. ...Respondent(s)

Through:

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
15.04.2024

1. In the instant petition filed under Article 226 of the Constitution, petitioner has thrown challenge to SO 177 dated 15.04.2022 having been issued by the respondents in exercise of powers conferred by Section 29 of the J&K School Education Act, 2002 (for short the Act of 2002).
2. The case set up in the petition is that the petitioner school came to be established on kahcharai land without any objection whatsoever from the concerned Government department and upon its establishment, necessary recognition thereto also came to be accorded by the Education Department in terms of Government Order No. 1640-Edu of 1994 dated 03.11.1994 followed by an extensions granted thereto though subject to various terms and conditions in terms of Government Order No. 1002-Edu of 2000 dated 01.09.2000,

Government Order No. 1523-Eud of 2003 dated 08.10.2003, Government Order No. 453-DSEK of 2007 dated 26.03.2007, Order No. 283 DSEK of 2010 dated 22.02.2010, Government Order No. 125/DSEK of 2015 dated 29.04.2015 and thereafter in terms of Order No. 952-DSEK of 2018 dated 21.07.2018.

3. It is the further case of the petitioner that the school came to be initially established from Nursery to 5th Class and thereafter came to be up graded upto 8th class.
4. It is the further case of the petitioner that after issuance of the SO 177 supra, the petitioner applied to the respondents for extension of recognition whereafter it came to be verified that the land use certificate being a requisite certificate could not be issued in favour of the petitioner on account of the nature of land being kahcharai land, as a consequence whereof the respondents did not extend the requisite recognition to the school under and in terms of the provisions of the J&K School Education Act, 2002, read with SO 177.
5. The petitioner has impugned the SO 177 supra on the premise that the students of the petitioner school on account of non-extension of recognition in terms of the Act of, 2002 cannot appear in the examination conducted by the respondents or avail the facilities made available by the respondents, to the students on a recognized school and, as such, the rights of the students of the petitioner school get infringed as the fall out of non-extension of recognition would ultimately result in the closing down of the petitioner school.

Heard learned counsel for the petitioner and perused the record.

6. Before proceedings to advert to the case set up in the instant petition by the petitioner, it would be pertinent to note here that the Apex Court in case titled as ***Jagpal Singh & Ors. Vs. State of Punjab & Ors*** while dealing with the case of common land (Gram Sabha/ Gram Panchayat/ Poramboke/Shamlat) occupied unauthorizedly provided at para 22 as under:-

> *"Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Promboke/ Shamlat land and these must be restored to the Gram Sabha/ Gram Panchayat for the common use of villages of the village. For this purpose the Chief Secretaries of all State Governments/ Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Casts/ Scheduled*

Tribes, or where there is already a school, dispensary or other public utility on the land".

7. Perusal of the record of the petition reveals that the official respondents consequent to the passing of the aforesaid judgment by the Apex Court, issued Government Order No. Rev/Lit/218 of 2011 dated 28.11.2011 framing a scheme for eviction of encroachment of common land styled as "the Jammu and Kashmir Eviction of Unauthorized Occupants (from common land) scheme 2011" providing therein identification of the encroached land, preparation of lists thereof and a process for eviction to be under taken thereon, further providing therein the scheme that before initiating proceedings under the scheme, the unauthorized occupant is to be given a show cause notice of 15 days to show cause as to why the proceedings of eviction under scheme may not be initiated against him also requiring him to produce on oath (affidavit) documentary evidence in support of his claim, if any, and also providing for a hearing before passing of an eviction order against an unauthorized occupant and thereafter to pass an order of eviction.

8. Admittedly the petitioner school has been established on the kahcharai land being a common land covered by the judgment of the Apex Court *supra*. Though the judgment supra provide for regularization of the occupation of the common land in exceptional cases including in cases where lease has been granted under some government notification to landless labourers or members of scheduled cast/scheduled tribes or where there is already a school, dispensary or other public utility on the land, yet it has nowhere being stated by the petitioner that regularisation of the land in the

question has been sought by it and therefore, in absence of the regularization of the land in question, provided if the said regularization/provision is applicable to the case of the petitioner, the petitioner cannot be said to have any locus to maintain the instant petition on any grounds whatsoever, as the petitioner cannot be said to have any right enforceable in law qua the land in question unless the same is regularized in its favour in accordance with the law and if permissible.

9. The petition accordingly is held to be without any merit, and, as such, is **dismissed**.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR
15.04.2024
"S.Nuzhat"