

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 31ST DAY OF AUGUST 2016/9TH BHADRA, 1938

WP(C).No. 4137 of 2015 (N)

PETITIONER(S) :

N.K.AMBUJAM
W/O.P.K.SANKARAN NAIR, MANAGER MUDAKKALLOOR
A.U.P.SCHOOL, MUDAKKALLOR P.O., KOZHIKODE DISTRICT
AND RESIDNG AT 'KAYLAS', CHEMBRA ROAD, PERAMBRA POST,
MENJANYAM VILLAGE, QUILANDI TALUK, KOZHIKODE,
PIN - 673 525.

BY ADVS.SRI.ABRAHAM MATHEW (VETTOOR)
SMT.BINI ELIZABETH
SRI.SRI.ANIL ABEY JOSE

RESPONDENT(S) /RESPONDENTS:-:

1. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT, GOVERNMENT SECRETARAIT,
THIRUVANANTHAPURAM - 695 001.
2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM - 695 001.
3. THE ASSISTANT EDUCATIONAL OFFICER,
KOYILANDY, KOZHIKODE DISTRICT - 673 327.
4. N.K.VISHANATHAN NAIR,
S/O.K.V.SRIDHARAN NAIR, ARATHI HOUSE, KUNNATHARA P.O.,
(VIA KOYILANDY), KOZHIKODE DISTRICT, PIN - 673 620.
5. N.K.BALAKRISHNAN NAIR,
S/O.K.V.SRIDHARAN NAIR, AZHAKATH HOUSE, ULLIYERI P.O.,
(VIA KOYILANDY), KOZHIKODE DISTRICT, PIN - 673 620.
6. SOMAN NAMBIAR,
S/O.NARAYANAN NAIR, AZHAKATH HOUSE, ULLIYERI P.O.,
(VIA KOYILANDY), KOZHIKODE DISTRICT, PIN - 673 620.
7. DEVAKI AMMA, * DECEASED
D/O.NARAYANAN NAIR, AZHAKATH HOUSE, ULLIYERI P.O.,
(VIA KOYILANDY), KOZHIKODE DISTRICT, PIN - 673 620.
8. RUGMINI AMMA,
D/O.NARAYANAN NAIR, AZHAKATH HOUSE, ULLIYERI P.O.,
(VIA KOYILANDY), KOZHIKODE DISTRICT, PIN - 673 620.
9. MOHANAN NAMBIAR,
S/O.NARAYANAN NAIR, AZHAKATH HOUSE, ULLIYERI P.O.,
(VIA KOYILANDY), KOZHIKODE DISTRICT, PIN - 673 620.
10. VALLI AMMA,
D/O.NARAYANAN NAIR, AZHAKATH HOUSE, ULLIYERI P.O.,
(VIA KOYILANDY), KOZHIKODE DISTRICT, PIN - 673 620.

11. THANKAMANI,
D/O.NARAYANAN NAIR, CHERUVATHUR HOUSE, MODAKALLUR P.O.,
KOZHIKODE DISTRICT, PIN - 673 315.

(RESPONDENTS 6, 8 TO 11 ARE RECORDED AS THE LEGAL HEIRS OF THE
DECEASED 7TH RESPONDENT AS PER ORDER DATED 31.07.2015 IN IA
NO.10891/15)

12. P.K.SIVADASAN,
S/O.DHAKSHAYANI AMMA, PADINHAREKUNI, ULLIYERI P.O.,
KOZHIKODE DISTRICT, PIN - 673 620.

13. VENUGOPALAN NAIR,
S/O.DAMODARAN NAIR, MUTHUVAN VALLI, KAVANNOOR P.O.,
KOYILANDI, PIN - 673 620.

14. RAJAGOPALAN K.V.,
S/O.DAMODARAN NAIR, 'PULARI', ULLIYERI P.O.,
(VIA KOYILANDI), KOZHIKODE DISTRICT, PIN - 673 620.

- Addl. 15. UNNI MADHAVAN NAIR
S/O.LATE N.K.RAMUNNI NAIR, RESIDING AT ELAYEDATH HOUSE,
(PRANAVAM), ULLIYERI AMSOM, KOYILANDY TALUK, KOZHIKODE
DISTRICT - 673620.

- Addl. 16. BALAKRISHNAN NAIR
S/O.LATE N.K.RAMUNNI NAIR, ELAYEDATH HOUSE, (PRANAVAM),
ULLIYERI AMSOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT - 673620.

- Addl. 17. SUSEELAN NAIR
S/O.LATE N.K.RAMUNNI NAIR, ELAYEDATH HOUSE, (PRANAVAM),
ULLIYERI AMSOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT - 673620.

- Addl. 18. RADHAKRISHNAN NAIR
S/O.LATE N.K.RAMUNNI NAIR, ELAYEDATH HOUSE, (PRANAVAM),
ULLIYERI AMSOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT - 673620.

- Addl. 19. RUGMANI AMMA
D/O.RAMUNNI NAIR, S/O.LATE N.K.RAMUNNI NAIR,
ELAYEDATH HOUSE, (PRANAVAM), ULLIYERI AMSOM,
KOYILANDY TALUK, KOZHIKODE DISTRICT - 673620.

- Addl. 20. SAROJINI AMMA
W/O.REGHUNATHAN NAIR, ELAYEDATH HOUSE, (PRANAVAM),
ULLIYERI AMSOM, KOYILANDY TALUK,
KOZHIKODE DISTRICT - 673620.

(ADDL. R15 TO ADDL.R20 ARE IMPEADED AS PER ORDER DATED 18.03.2015 IN
IA 3481/2015)

R4-R6 & 8-R14 BY ADV. DR.GEORGE ABRAHAM
RADDL BY ADV. SRI.K.MOHANAKANNAN
RADDL BY ADV. SMT.A.R.PRAVITHA
R BY GOVERNMENT PLEADER, SMT. NISHA BOSE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 31-08-2016, ALONG WITH WPC. 20077/2015, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS

EXHIBIT P1. A TRUE COPY OF THE ORER NO.K.DIS. C 4550/2010 PASSED BY THE 3RD RESPONDENT DATED 10.03.2011.

EXHIBIT P2. A TRUE COPY OF THE LETTER OF AUTHORIZATION GIVEN BY 91 SHARES IN FAVOR OF THE 4TH RESPONDENT DATED 23.11.1993.

EXHIBIT P3. A TRUE COPY OF THE AFFIDAVIT FILED BY THE 4TH RESPONDENT IN I.A.NO.49/1992 IN O.S.NO.101 OF 1979 BEFORE THE SUB COURT, QUILANDY DATED 22.01.1994.

EXHIBIT P4. A TRUE COPY OF HTE AFFIDAVIT FILED BY THE 4TH RESPONDENT BEFORE THE 3RD RESPONDENT BEFORE THE SUB COURT, QUILANDI, 11.03.1994.

EXHIBIT P5. A TRUE COPY OF THE APPLICATION MADE BY THE 4TH RESPONDENT BEFORE TEH 3RD RESPONDENT DATED 12.12.1994.

EXHIBIT P6. A TRUE COPY OF HTE ORDER NO.K.DIS.11085/94 PASSED BY THE 3RD RESPONDENT DATED 23.12.1994.

EXHIBIT P7. A TRUE COPY OF THE REQUEST MADE TO THE 2ND RESPONDENT INFORMING THE DECISIONS OF THE GENERAL BODY OF THE SHARE HOLDERS DATED 23.12.2011.

EXHIBIT P8. A TRUE COPY OF HTE ORDER PASSED BY THE 3RD RESPONDENT DATED 09.04.2002.

EXHIBIT P9. A TRUE COPY OF THE ORDER NO.G.O. (RT)NO.3981/02/G.EDN., PASSED BY THE ADDITIONAL GOVERNMENT SECRETARY DATED 14.11.2002.

EXHIBIT P10. A TREU COPY OF THE BYE-LAW OF MODAKALLUR A.U.P. SCHOOL MANAGEMENT COMMITTEE ALONG WITH CERTIFICATE OF REGISTRATION OF SOCIETIES DATED 27.11.2002.

EXHIBIT P11. A TREU COPY OF THE ORDER NO.C.26/02 DATED 31.03.2003.

EXHIBIT P12. A TRUE COPY OF THE ORDER PASSED BY THE DEPUTY DIRECTOR OF EDUCATION DATED 02.04.2003.

EXHIBIT P13. A TRUE COPY OF FINAL ORDER PASSED BY THE ASSISTANT EDUCATION OFFICER DATED 12.06.2003.

EXHIBIT P14. A TRUE COPY OF THE ORDER NO.G3-36893/03/DPI/K.DIS. DATED 17.01.2004.

EXHIBIT P15. A TRUE COPY OF THE ORDER NO.G.O. (RT)NO.3331/04 GI.EDN PASSED BY THE GOVERNMENT DATED 02.08.2004.

EXHIBIT P16. A TRUE COPY OF THE JUDGMENT PASSED IN W.P. (C) NO.25380/2004 DATED 19.12.2006.

EXHIBIT P17. A TRUE COPY OF THE JUDGMENT PASSED IN W.A.NO.591/2007 DATED 06.03.2007.

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EXHIBIT P18. A TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT APPROVING THE APPOINTMENT OF SRI.P.MADHAVAN NAIR AS MANAGER OF THE SCHOOL DATED 14.05.2007.

EXHIBIT P19. A TRUE COPY OF THE DECISION OF THE MANAGEMENT COMMITTEE OF THE MODAKKALLOR A.U.P. SCHOOL DATED 31.12.2008.

EXHIBIT P20. A TRUE COPY OF THE ORDER AND PASSED BY THE 2ND RESPONDENT DATED 17.03.2012.

EXHIBIT P21. A TRUE COPY OF THE ORDER PASSED BY THE 3RD RESPONDENT DATED 23.03.2012.

EXHIBIT P22. A TRUE COPY OF THE APPEAL AGAINST EXT.P20 ORDER FILED BY THE 4TH RESPONDENT DATED 06.12.2012.

EXHIBIT P23. A TRUE COPY OF THE ORDER NO.GO(RT)1445/13 G.EDN PASSED BY THE 1ST RESPONDENT DATED 26.03.2013.

EXHIBIT P24. A TRUE COPY OF THE JUDGMENT PASSED IN WPC NO.10548 OF 2013 DATED 23.07.2014.

EXHIBIT P25. A TRUE COPY OF THE ORDER NO.GO(RT)459/15 G.EDN DATED 02.02.2015.

RESPONDENT(S) ' EXHIBITS

EXT.R4(a) TRUE COPY OF THE PETITION SUBMITTED BY THE 4TH RESPONDENT DATED 12.12.1994

EXT.R4(b) TRUE COPY OF THE ORDER OF THE ASSISTANT EDUCATION OFFICER, KOYILANDI DATED 23.12.1994

EXT.R4(c) TRUE COPY OF GO(RT) 3331/04/G.EDN DATED 02.08.2004

EXT.R4(d) TRUE COPY OF THE BYELAW OF THE EDUCATIONAL AGENCY

EXT.R4(e) TRUE COPY OF THE ORDER OF APPROVAL OF SHRI.P.MADHAVAN NAIR AS THE MANAGER OF THE SCHOOL

EXT.R4(f) TRUE COPY OF THE TAX RECEIPT FOR THE YEAR 2011-12

EXT.R4(g) TRUE COPY OF THE ORDER OF THE ASSISTANT EDUCATIONAL OFFICER, KOYILANDY.

EXT.R4(h) TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 31.12.2008.

EXT.R4(i) TRUE COPY OF THE ORDER OF THE ASSISTANT EDUCATIONAL OFFICER, KOYILANDI DATED 23.03.2012

EXT.R4(j) TRUE COPY OF THE ORDER OF THE DIRECTOR OF PUBLIC INSTRUCTION DATED 17.03.2012.

EXT.R4(k) TRUE COPY OF THE APPEAL SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT

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EXT.R4 (1) TRUE COPY OF THE NOTE SUBMITTED BY THE PETITIONER BEFORE
THE GOVERNMENT

EXT.R4 (m) TRUE COPY OF THE ORDER ON 26.03.2013.

EXT.R17 (a) TRUE COPY OF THE judgement IN OS 101/79 DATED 29.01.1983

EXT.R17 (b) TRUE COPY OF THE judgement IN OS 147/1983 DATED
18.10.1990

// True copy //

PA to Judge

das

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C). Nos. 4137 & 20077 of 2015

Dated this the 31st day of August, 2016

JUDGMENT

It is submitted by the learned counsel for the parties that the issue involved in these writ petitions has been settled between the persons, who are signatories to the memorandum of settlement before the Mediation Centre. Accordingly, taking note of the settlement entered into between the parties who have signed in the agreement before the Mediation Centre, these writ petitions are disposed recording the terms of settlement which are as follows:

Memorandum of Agreement under Section 89 of the Code
of Civil Procedure Read with Rules 24 & 25 of the Kerala
Civil Procedure (Mediation) Rules, 2008

The petitioner and the respondents have agreed to settle the subject matter of the writ petitions as follows:

1. The petitioner in W.P.(C) No.4137/2015 has purchased the shares of Respondents 4 to 6 and respondents 8 to 12 as per registered deed No.1518/2016 dated 15.07.2016 and deed No.1713/2016 dated 13.07.2016 of SRO, Chemanchery. Hence these respondents have no further interest in the property on the school.
2. The respondent no.7 died during the pendency of the proceedings. Her legal representatives have been recorded as respondents nos.6, 8, 9, 10 and 11, who have also transferred the entire rights as per above transfer deeds.
3. The share of respondents 13 and 14 are unascertainable and negligible. Hence they are not raising any claim with respect to the same.

W.P.(C). No. of

4. The respondents 4 to 6 and respondents 8 to 12 has already authorized respondent No.4 to execute the settlement before the Hon'ble High Court of Kerala, in view of the transfer of share effected by the party respondents in favour of petitioner in W.P.(C) No.4137/2015. The other party respondents are not necessary parties and the 4th respondent is competent to represent the others.
5. In view of the purchase of the share of the respondents the petitioner become the sole owner of the immovable property in which the school is situated and the school itself.
6. The educational agency in now culminated into single individual namely the writ petitioner in W.P.(C) 4137/2015 and hence the order passed by the DPI No.G3/73247/11/DPI/K.Dis dated 17.03.2012 may be restored in supersession the subsequent order in that regard.
7. The writ petition no.20077/2015 is not pressed in view of the above facts and the same may be permitted to withdrawn in view of the transfer of shares of the respondents.

Sd/-
A.K.JAYASANKARAN NAMBIAR
JUDGE

das /31.08.2016