
**METHODIST TRUST ASSOCIATION
VS.
MINISTER OF HINDU RESOURCES AND OTHERS**

COURT OF APPEAL
SRISKANDARAJAH. J,
CA 2250/03,
AUGUST 29, 2006.

Writ of Certiorari - Associated Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960-To divest premises vested under Associated Schools Training Colleges (Supplementary Provisions) Act No.8 of 1961-section 4, section 10 (1), section 10 (1) (a) – Vested school destroyed - Premises required for another school-Permissibility?

The petitioner was the owner of the premises in which C/Maradana (Methodist Mission) Tamil Maha Vidyalaya, Colombo was conducted. The said school premises were vested in the Crown in 1963, under section 4 of the Associated Schools and Training Colleges (Supplementary Provisions) Act. During the communal riots of 1983, the school building was burnt down. Subsequently the school ceased to function. The petitioner contended that as the specified purpose for which the said land was vested in 1961, ceased to exist, the premises should be divested, in terms of section 10 (1). The respondents contended that, although the school building was burnt down, the said property is proposed to be given to expand the school facilities of Ashoka Junior School situated in the adjoining land.

HELD:

- (1) Section 10 (1) states, "if such property ceased to be used or is not needed for the purpose of a school conducted and maintained by the Director for on behalf of the Crown.... " The Section provides for 'a' school and not 'the' school.

'a' is used in legislative drafting as the indefinite article, often it is used as part of the statement of the universal description, the word 'the' is used in the definite article.

- (2) As the premises is needed for a school and it is proposed to be given to Ashoka Junior School - the 1st respondent has no duty to divest the premises and the petitioner has no corresponding right to seek a divesting order.

APPLICATION for a Writ of Certiorari.

Case referred to :-

A. C. M. Raashid vs. Rajitha Senaratne, Minister of Lands and Two Others - SC 25/2003, CA 1032/2001 - SCM 20.01.2004

W. A. Sumanthiran for petitioner
Anusha Navaratne DSG for respondent.

Cur.adv.vult.

November 20, 2006.

SRISKANDARAJAH, J.

The Petitioner, The Methodist Trust Association of Ceylon is a body corporate and incorporated by the Methodist Trust Association of Ceylon Ordinance No. 54 of 1935 as amended. In furtherance of its objects the Petitioner has acquired purchased, taken and held *inter alia* several immovable properties in Sri Lanka for and on behalf of the Methodist Church of Sri Lanka. Properties of the Methodist Church of Sri Lanka, then known as the Wesleyan Methodist Missionary Trust Association were subsequently transferred to the Petitioner, to be held in trust for the Methodist Church of Sri Lanka after the incorporation of the Petitioner. The Petitioner was the owner of the premises, in which C/ Maradana (Methodist Mission) Tamil Mixed School, Stafford Place, Colombo 10 was conducted and maintained as at 21st July 1960 and contained in extent of about 12 perches. The said premises was vested in the crown with effect from 1st May 1963, by vesting order No.2498, contained in Page 709 of the Ceylon Government Gazette bearing No.13594 dated 6th April 1963. The said Vesting Order was made by the Minister of Education of the time, under Section 4 of the Assisted Schools and Training Colleges (Supplementary Provisions) Act No.08 of 1961(P2). In the communal riots of 1983, the school building was burnt down.

Subsequently the student ship of the said school drastically reduced, and the said Tamil Mixed School ceased to function, with the remaining students being transferred to other schools in the area.

The Petitioner contended that in the aforesaid circumstances, the specific purpose for which the said land was vested in the State under Section 4 of the Assisted Schools and Training Colleges (Supplementary Provisions) Act No.08 of 1961 ceased to exist. Hence the President of the Methodist Church of Sri Lanka, for which institution the Petitioner held the said premises in trust prior and up to its vesting by Vesting Order marked P2, wrote to the 2nd Respondent Secretary, Ministry of Education with copy to the Regional Director of Education, Colombo South and brought to his notice that the said property is not being made use of now for the purpose for which it was vested and therefore requested him to have this property divested and restored to the Methodist Church in terms of Section 10(1) (a) of the said Act. This section provides as follows :-

Section 10(1). Notwithstanding that any property used for the purpose of any school to which this Act applies has vested in the Crown by virtue of a Vesting Order, the Minister, by subsequent Order published in the Gazette (in this Act referred to as a "Divesting Order")

(a) *shall, if such property ceased to be used, or not needed for the purpose of a school conducted and maintained by the Director for and on behalf of the Crown, revoke that Vesting Order in so far as it relates to such property with effect from the date on which such property so ceased to be used or was not so needed ; or*

(b)...

(c)...

The Petitioner further contended that the said premises constituting the subject matter of this application is required for its welfare activities, and that the refusal, failure and/or neglect of the 1st Respondent to

divest the said premises has caused serious harm, difficulty, hindrance and prejudice to the Petitioner and the Methodist Church of Sri Lanka.

The 4th Respondent the Urban Development Authority is not claiming any legal right on the said premises. The 1st, 2nd and the 3rd Respondents contended that the property which is the subject matter of this application was initially used for the purpose of a school and was vested for the purpose of being used for a school. Even after the building of the said school was burnt down in 1983, the State held on to the property to be used for the purpose of a school. The said property is proposed to be given over to expand the school facilities of Ashoka Junior School which is situated in the adjoining land to the said Property. The delay in making use of the said Land is due to a claim by the 4th Respondent and now the 4th Respondent on advice is not claiming the said land.

The said land is vested under the Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 8 of 1961 and the Petitioner is also claiming a divesting order under the same Act. The preamble of the said Act states "An Act to provide for vesting in the Crown, without compensation, the property of Assisted schools of which the Director of Education is or becomes the Manager under the Assisted Schools and Training Colleges (Special Provisions) Act, No.5 of 1960." It is an admitted fact that the said property by a vesting order under the said Act vested with the State as the Director of Education became the Manager of C/Maradana (Methodist Mission) Tamil Mixed School situated in the said premises. It is also admitted that the said School building was burned down in the communal riots of 1983 and the said Tamil Mixed School ceased to function. The 1st to 3rd Respondent submitted that the said land is proposed to be given for the Asoka Junior School which is coming under the administration of the Director of Education.

The question that has to be determined is when the property which is vested by a Vesting Order under the said Act ceased to be used, or not needed for the purpose of the school which was in existence at the time of vesting should it be divested under Section 10(1) of the

said Act irrespective of whether it is needed for another school or not ?

Section 10(1) (a) provides "Shall, if such property ceased to be used, or is not needed for the purpose of a school conducted and maintained by the Director for and on behalf of the Crown..." This Section provides for "a" school and not "the" school. Legislative Drafting by V. C. R. A. C. Crabbe at page 37 states : that "a" is used in legislative drafting as the indefinite article. Often it is used as part of the statement of the universal description. The "the" is used as the definite article. The use of "the" in legislative drafting means that "a" person or "a" thing has been already identified or referred to or mentioned. The reference in Section 10(1)(a) "property ceased to be used, or is not needed for the purpose of a school" is that the property is not needed for the school that was destroyed but it was not needed for any school conducted and maintained by the Director for and on behalf of the Crown. But in the instant case the 1st to 3rd Respondent has specifically stated that the said premises is needed for a school and it is proposed to be given to Ashoka Junior School but it was delayed due to certain claims made by the 4th Respondent. In these circumstances the 1st Respondent has no duty to divest the said property and the petitioner has no corresponding right to seek a divesting order. The Counsel of the Petitioner in support of this Application submitted the judgment of the Supreme Court delivered in *A. C. M. Raashid v Rajitha Senaratne Minister of Land and two others*⁽¹⁾ granting a mandamus directing the Respondent to divest the land in issue under and in terms of Section 39A of the Land Acquisition Act but the present Application is under Section 10(1) of the Assisted Schools and Training Colleges (Supplementary Provisions) Act, No.08 of 1961. The requirements in Section 39A and Section 10(1) of the relevant Acts are not similar. Therefore the said case is not applicable to this Application and for the reasons stated above I dismiss this application without costs.

Application dismissed.