

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Present

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon.

C.P. No.D-678 of 2017

Haji Dhani BuxPetitioner

Vs.

Province of Sindh & othersRespondents

Date of Hearing: 21.01.2019

Mr. Irfan Ahmed Qureshi, advocate for the petitioner.

Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh

J U D G M E N T

ADNAN-UL-KARIM MEMON-J: - Through the instant Petition, the Petitioner is seeking up-gradation of Government Girls Primary School (GGP) Bhallo Jamali to Middle School in Shaheed Benazir Division, with further assertion that the said school be constructed on the same location where the building of Government Primary School already exists.

2. Brief facts of the case as per pleadings of the parties are that elder brother of the Petitioner had donated a piece of land/plot ad-measuring 1000 sq. feet to the Education Department, Government of Sindh for construction of GGP School building in the village Bhallo Jamali, Taluka Sakrand, District Shaheed Benazir Abad in the year 1992. Petitioner has submitted that village Bhallo Jamali, consists of sufficient population and there is dire need of a Middle School as a number of students are getting education in the aforesaid primary school, which needs up gradation in status i.e. from Primary School to Middle School; that Education Department, Government of Sindh has invited tenders on 08.02.2017

for the aforesaid purpose and has initiated the process of construction for upgrading the Primary School into Middle School on the same location where the Primary School is available, but all of sudden, the Education Department has changed its mind due to political intervention and altered the location of the Middle school to some other place i.e. GBPS Allahdad Jamali , Taluka Sakrand, which is a little bit away from the actual location. Petitioner has submitted that he protested on the aforesaid action of the Respondents but to no avail. Petitioner being aggrieved by and dissatisfied with the impugned action of Respondents has filed the instant petition on 10.03.2017.

3. Mr. Irfan Ahmed Qureshi Learned counsel for petitioner has contended that the action of the Respondents is in gross violation of fundamental rights of the villagers of village Bhallo Jamali as provided under the Constitution of the Islamic Republic of Pakistan, 1973; that the action on the part of the Respondent- Education Department is arbitrary and based on political wishes, which negates the principle of natural justice and provisions of the Constitution, thus a nullity in the eyes of law; that Petitioner is being victimized by the officials of Respondent- Education Department on political basis; that the petitioner is fighting for the cause of education and only seeks direction to the Respondents not to change the actual location of the (GGPS) Bhallo Jamali to (GBPS) Allahdad Jamali. He lastly prayed for allowing the instant petition.

4. We queried from the learned counsel for the petitioner as to how this petition is maintainable against a policy decision of Government of Sindh to upgrade the Primary School to Middle School at any location as per availability of students. He in reply of query has submitted that the up-gradation of Primary School to Middle School is being made at a distance of 02 furlongs within the village Bhallo Jamali, whereas the building/space is already available at Primary School and there is no need of alteration of the actual location/site. Be that as it may we intend to decide the issue involved in the present proceedings on merits.

5. On the other hand, Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh has argued that the administrative approval from the Government of Sindh has been sought for upgrading the Primary School building to Middle School for Girls and the villagers of the area have agreed to provide sufficient land out of their survey No.243/1 Deh Sutiyaro UC Kumb Leema Taluka Sakrand adjacent to village, connected with Paca Road; that the construction work order was approved by the Education Works Division and lay-out plan was made and petitioner without any cogent reason threatened the Contractor as well as to the employees of the Education Works Division to stop the construction work; that the NIT issued by the Education Works Division Shaheed Benazir Abad was in accordance with rules and regulations; that there was no any kind of political pressure upon the Education Officers; that it is a matter of routine the Education Department receive agreement from the villagers and forward it to the Education Works Division for raising the construction work over the plot as per site plan; that the petitioner was not the owner of piece of land near to the Girls Primary School, which is the sole property of the village, hence the claim of the petitioner merits no consideration; that the petitioner is leveling baseless and false allegations against the responsible officers although he was not the owner of plot of land as agitated by him and provided for the construction of either Girls Primary School or proposed Girls Middle School; that the claim of the petitioner is unjustified. He lastly prayed for dismissal of instant petition.

6. We have heard the learned counsel for parties and perused the available record.

7. Perusal of comments filed by District Education Officer Shaheed Benazir Abad explicitly shows that the respondent-education department entered into an agreement for institution of Government Middle School, Bhallo Jamali and in this regard villagers have sworn affidavit to grant a piece of land in favour of the

Government of Sindh Education department, without any compensation as well as without any pressure or coercion, which was reduced into writing on 11.08.2017 thereafter, the respondents have started constructing the building on Agricultural land for the purpose of establishment of Middle School.

8. The controversy involved in the present proceedings is as to whether the Primary School of the petitioner can be up-graded when the respondent/Education Department has already entered into agreement with the villagers for up-gradation of Primary School to Middle School at survey No.243/1 Deh SutYRO UC Kumb Leema Taluka Sakrand?

9. To appreciate and elaborate on the issue, we have noticed that the instant petition has been filed to divert the construction of aforesaid Middle School from the location as per site plan attached with the comments to the location where Primary School (Girls) of the petitioner exists. Record reflects that the entire claim of the petitioner is based on his donated plot. The Hon'ble Supreme Court of Pakistan has already settled the principle regarding Plot Donation Policy in the case of Hameedullah and 9 others. vs. Headmistress, Government Girls School, Chokara District Karak and 5 others [1997 SCMR 855]. In view of the judgment rendered by the Honorable Supreme Court as discussed supra, the petitioner cannot dictate his terms on the basis of plot donation policy. Learned counsel for petitioner when confronted with the position of the case that the Primary School of the petitioner cannot be upgraded as a matter of right, which is a policy decision of Government of Sindh, he tried to convince this Court that the commitment made by the respondents to up-grade the Primary School into Middle School is to be enforced as the respondents have retained a piece of land of the petitioner on the same premise. This assertion of the petitioner is wholly misconceived, which is discarded.

10. We have carefully considered the facts of present case. Prima facie the reasons assigned by the respondents in the comments are justified that do not call for further action on the captioned petition.

11. We are also cognizant of the facts that principally the Courts cannot interfere with the policy matter of the educational institutions, if a policy decision is in violation of the fundamental rights guaranteed under the Constitution, or in violation of other provisions of the Constitution, the courts may intervene. This principle of law has already been enunciated by the Hon'ble Supreme Court of Pakistan in the case of Government College University, Lahore through Vice Chancellor and others versus Syeda Fiza Abbas and another (2015 SCMR 445) and Ghulam Rasool vs. Government of Pakistan & others (PLD 2015 SC 6).

12. The plea taken by the petitioner is that the Education Department has already established a Primary School which is required to be upgraded but the respondents are upgrading the same to another location which is far-away from the present location where Primary School is situated. We are not convinced with the claim of the learned counsel for petitioner for the simple reason that there is no fundamental right of the petitioner to be enforced through constitutional jurisdiction of this Court; and more so the proposed Middle School is just at distance of 200 feet from Primary School as such no encumbrance is likely to be caused to the girls students of the said village.

13. We have noted that for the purpose of maintaining the constitutional petition it is the duty and obligation of petitioner to point out that action of respondents was in violation of rules and regulations which the petitioner has failed to point out.

14. In the light of above facts and circumstances of the case, we have reached to the conclusion that the petitioner has failed to make out his case for up-gradation of his Primary School (Girls) Bhallo Jamali, consequently, instant petition is dismissed along with listed application(s).

15. There are the reasons of our short order dated 21.01.2019, whereby we have dismissed the captioned petition.

JUDGE

JUDGE

Irfan Ali