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C.A.No. 4244 OF 2001
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Item No.105 COURT No. 2 SEC.XVII

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

C.A. No. 4244/2001@@
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MNGG.Co.of Peoples Academy
Public School & Anr.

Appellant (s)

VERSUS

State of Jharkhand & Ors.

Respondent(s)

Date : 18.09.2002 This appeal was called on for hearing today.@@
AA

CORAM :

HON'BLE MR. JUSTICE G.B. PATTANAIK
HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE H.K. SEMA

For Appellant (s) Mr. Ranjan Mukherjee,Adv.

For Respondent (s) RR-Ex-parte

RR 1-6 M/s. Ashok Mathur and Mr.Rajesh Pathak,Adv.

UPON hearing counsel, the Court made the following

O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J.
.SP2

Heard the learned counsel for the parties for twenty minutes.

The appeal is dismissed in terms of the signed order.

.SP1

(Y.P.Dhamija) (Suneet Bala Sharma)@@
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Court Master Asstt. Registrar@@

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Signed order is placed on the file.

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4244/2001@@
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MNGG.Co.of Peoples Academy Appellant(s)
Public School & Anr.

Vs.

State of Jharkhand & Ors. Respondent(s)

O R D E R@@
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Heard Mr. Ranjan Mukherjee for the appellants and Mr. Ashok Mathur for the respondents. The dispute in this appeal really centres round the question whether the property of the institution stood vested in the State Government or merely the control and management of the institution had vested. The claim of the appellant was that prior to enactment of Bihar Non-Government Secondary School (Taking over Control and Management) Act, 1981, managing committee by a resolution had passed on the control and management of the secondary sections of the school to the State Government, having retained the management and control of the primary sections of the school. it is the further contention of the appellant is that the property of the school remained with the managing committee and never passed on to the State Government, and that being the position, the State Government could not have prohibited the continuance of the primary sections of the school in the same building, particularly when it caters to the needs of the public, and does not make any hindrance on the continuance of

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the secondary sections of the school. The High Court, however, on examining the materials before it, came to the conclusion that in view of section 4 (1) of the Act, the property stood vested in the State Government. It, further came to the conclusion that the institution cannot be held to be a minority institution inasmuch as the materials produced before it, are not sufficient to come to the said conclusion. Having come to the aforesaid conclusion and having dismissed the Writ Petition, the managing committee is in appeal before us. Mr. Mukherjee appearing for the appellants strenuously contended that the provisions of section 4 (1) of the Act has no application to the institution in question where the management and control alone had vested with the State Government pursuant to a resolution. He further contended that though in terms of section 4 (1) of the Act does not provide for any Notification to be issued in Official Gazette for enforcing the provisions, but such a requirement being there in sub-section (2) of Section 4, the said requirement must be read into sub-section (1) of section 4 also, and in the absence of such Notification, the property cannot be said

to have vested with the State Government under section 4 (1) of the Act. On examining the provisions of the Act, more particularly both sub-sections (1) and (2) thereof, we, however, do not find any substance in the arguments advanced by Mr. Mukherjee appearing for the appellant. Sub-section (1) deals with all types of institutions other than minority

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institutions, and so far as those institutions are concerned by very application of law, all the institutions by legislative enactment must be deemed to have been taken over by the State Government with effect from the 2nd October, 1980. So far as the minority institutions are concerned, however, the provisions contained in sub-section (2) require a Notification to be made in the Official Gazette, and then all other pre-conditions mentioned therein are required to be fulfilled. This requirement of a Notification in the Official Gazette possibly was necessary to deal with the minority institutions, but it was not necessary for all other institutions, which the Legislature wanted that the institutions should be taken over with effect from a particular date, which has been permitted as 2nd October, 1980. In our opinion, the question of specifying a date by Notification does not arise for application of sub-section (1) of section 4 of the Act. Consequently, the conclusion of the High Court that by operation of law, the institutions together with all properties vest in the State Government under sub-section (1) of section 4 of the Act remains unassailable.

It is true that the institution was catering to the needs of the people by holding both the primary sections as well as the secondary sections in the same building, but that is only by mutual adjustment. It would not be open for the Court to issue a Mandamus to the State authorities, where the property had already vested in the State to permit the primary

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sections management of which vest in the managing committee to be run in that building. Mr. Mukherjee, however, submitted that the institution is an old one, and therefore the State Government should be directed to atleast earmark a piece of land where the primary sections of institution can run. This is a matter between the Managing Committee and the State Government where the Court has no concern. If managing committee makes any request to the State Government, the State Government may consider the same appropriately. We need not express any opinion on the same. In the aforesaid circumstances, we do not find any merit in this appeal.

The appeal stands dismissed accordingly.

.SP1

.....J.
(G.B.PATTANAİK)

.....J.@@
AA
(Y.K. SABHARWAL)@@
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NEW DELHI,
September 18, 2002

.....J.
(H.K. SEMA)