A.A. Padmanbhan vs The State Of Kerala on 16 February, 2018

Equivalent citations: AIR 2018 SUPREME COURT 2982, 2018 (129) ALR SOC 36 (SC), 2018 (187) AIC (SOC) 11 (SC), 2018 (2) KLT SN 11 (SC), 2018 (4) KCCR SN 454 (SC), 2018 (7) ADJ 11 NOC

Author: Ashok Bhushan

Bench: Ashok Bhushan, A.K. Sikri

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2206 OF 2018
(arising out of SLP (C) No. 24386 of 2017)

A.A. PADMANBHAN …APPELLANT

VERSUS

THE STATE OF KERALA & ORS. …RESPONDENTS

WITH

CIVIL APPEAL NO.2207 OF 2018
(arising out of SLP (C) No. 24565 of 2017)

AND

CIVIL APPEAL NO.2208 OF 2018
(arising out of SLP (C) No. 24722 of 2017)

J U D G M E N T

ASHOK BHUSHAN, J.

2. These three appeals have been filed by Ex-Managers of three private aided institutions questioning the common judgment of Kerala High Court dated 01.08.2017 by which judgment, the Division Bench of Kerala High Court while dismissing the writ appeals filed by the appellants have confirmed the judgment of learned Single Judge wherein the appellants have questioned the Notification issued by State of Kerala taking over the aided schools, which were managed by the appellants.

3. The facts and issues raised in these appeals being similar, reference of facts and pleadings in Civil Appeal arising out of Special Leave Petition (C) No. 24386 of 2017 shall suffice for deciding all these appeals.

4. The appellant had been running P.M.L.P. School, Kiralur, District of Thrissur in the State of Kerala, which was also an aided institution. The appellant with intention to close down the school gave a notice as required by Section 7(6) of the Kerala Education Act, 1958 (hereinafter referred to as "the Act"). The Education Authorities did not permit the appellant to close the institution, which led to filing of writ petition by the appellant being W.P. (C) No. 12873 of 2015. W. P. (C) No. 12205 of 2015 was filed by the Headmistress incharge of the Aided P.M.L.P. School and the President of the Parent Teachers Association as also the President of the School Samrakshanasamiti of the said school impugning the steps taken by the manager of the aided school to close the aided school. A direction was also prayed to the State Government to take over the school. The Writ Petition was allowed by learned Single Judge holding that appellant was entitled to close down the school in accordance with the provisions of the Act and Kerala Education Rules, 1959 (hereinafter referred to as "the Rules"). Writ Appeals against the said judgment were dismissed by the Division Bench on 22.07.2015, however, in Writ Appeal filed by the Headmistress & others, a direction was issued by the Division Bench directing the respondents to consider their representations by which it was prayed that school be taken over and run by the State Government. The above order was questioned by the State of Kerala by filing Special Leave Petition Nos. 27822-27827 of 2015. The Special Leave Petitions were dismissed on 05.10.2015 by following order:-

> "The special leave petition is dismissed.
>
> However, in the interest of the children in the respondent-school, Mr. V. Giri, learned senior counsel appearing for the respondent has fairly stated that the respondent-school will continue with them till the end of this academic year.
>
> We make it clear that it would be the responsibility of the State to shift these children to another school from the next academic year."

5. The State Authorities did not take necessary steps to close the institutions, hence the appellant filed a contempt application being Contempt Case (C) No. 1045 of 2015, in which contempt application, learned Government Pleader made submission that the procedural formalities in connection with the closing of the school have been complied with. Taking note of which statement,

the contempt case was closed down on 16.06.2016.

6. Before the aforesaid date, the Chief Minister of the State took a decision on 07.06.2016 to take over the institution of the appellant alongwith other three institutions in exercise of power under Section 15 of the Act. The decision of the Chief Minister taken on 07.06.2016 was endorsed by the Council of the Ministers on 29.06.2016. Kerala Legislative Assembly, unanimously passed the resolution dated 18.07.2016 to take over the four schools under sub-section (1) of Section 15 of the Act. A Notification dated 27.07.2016 was issued as contemplated under Section 15(1). A further Notification dated 03.08.2016 was issued modifying the earlier Notification dated 27.07.2016 to the extent that the schools shall vest in Government absolutely from the date of fixation of compensation. The appellant aggrieved by Notification dated 27.07.2016 filed a writ petition being Writ Petition (C) No. 25790 of 2016 questioning the Notification dated 27.07.2016 as well as the Notification dated 03.08.2016. Prayer for striking down Section 15 of the Act as well as declaring Rules 6, 7 and 8 of the Rules, 1959 as repugnant was also made. However, the prayer for challenging the provision of the Act and the Rules does not appear to have been pressed. In the writ petition, counter affidavit was filed where it was stated that a decision was taken on 07.06.2016 to take over the institution by the State Government, which was before the actual closure of the institution. A resolution has been passed by Kerala Legislative Assembly approving the proposal; Notification has rightly been issued. Other three writ petitions were heard alongwith connected writ petitions, which were filed by other appellants in this group of appeals. All the writ petitions were dismissed by learned Single Judge vide its judgment and order dated 23.11.2016. Aggrieved against the judgment dated 23.11.2016, appellant filed Writ Appeal No. 2360 of 2016, wherein it was contended that although the submission of the appellant was made that on the date when the State Government took over the schools under Section 15 of the Act, the closure of the schools had already been effected but the said submission has not been correctly understood by the learned Single Judge. The Division Bench dismissed all the appeals on 09.12.2016 giving liberty to the appellants to apply for review of the judgment of learned Single Judge. Against the judgment dated 09.12.2016, Special Leave Petition was also filed by the appellant in this Court, which Special Leave Petition was withdrawn by the appellant. Appellant filed a Review Petition before learned Single Judge for review of judgment dated 23.11.2016, which Review Petition has been dismissed by judgment and order dated 20.12.2016 of learned Single Judge. Challenging the order dated 23.11.2016 as well as the order dated 20.12.2016 passed on the review petition, writ appeals have been filed before the Division Bench. The writ appeals have been dismissed by the Division Bench vide its judgment dated 01.08.2017, which judgment has been questioned before us in these appeals.

7. Learned Counsel appearing for the appellant in support of the appeal has raised the following submissions:

> (a) The State Government could not have exercised power under Section 15 of the Kerala Education Act, 1958 to take over the school which has already been closed down.

The Notification under Section 15 has been admittedly issued on 27.07.2016 whereas according to the own case of the respondent the school was closed on 08.06.2016. The power under Section 15

can be exercised with regard to a school which is in existence. The closed down school cannot be taken over by the State Government.

(b) The school and its properties could have been acquired by the State only after resorting to Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereinafter shall be referred to as "2013, Act"), after making payment of compensation, determined in accordance with the above-mentioned 2013, Act.

(c) Section 15 of the Kerala Education Act, 1958 made by the Legislature of the State falling under Entry 20 List III of the Concurrent List is in conflict and repugnant to the provisions of the 2013, Act, made by the Parliament under Entry 42 List III of the Concurrent List, is void in view of the Article 254 of the Constitution of India. The State Government has dispossessed the petitioner under the guise of applying provision of law that is not applicable to the subject matter and the procedure of dispossessing the petitioner is in violation of Article 300A of the Constitution of India.

(d) The closure of the school had attained finality by decision of dismissal of SLP (c) No. 27827 of 2015, when this Court passed order on 05.10.2015.

8. Refuting the above submission learned Senior Counsel appearing for the State of Kerala submits that the State Government has validly exercised its power under Section 15 of the Kerala Education Act, 1958. The decision was taken by the Chief Minister to take over the school on 07.06.2016 on which date the school was not actually closed down. Hence, there is no substance in the contention of the appellant that school had already been closed down and could not have been taken over by the State Government. It is submitted that decision of the Chief Minister dated 07.06.2016 was ratified by the Council of Ministers vide decision dated 29.06.2016. The issuance of notification is a step in consequence of decision to take over the school and there is no illegality in the issuance of Notification dated 27.07.2016. It is submitted that the provision of Section 15 of the Kerala Education Act, 1958 operates in a different field to that of the provisions of the 2013, Act. Neither there is a conflict nor Section 15 is in any manner repugnant to 2013, Act. Both the Acts operate in their own fields. The action of taking over of the schools by State is for running the school in compliance of its obligation to provide education to the primary school students. Section 15 itself, contemplates the payment of compensation at market rate and the Collector has already determined the market value of the schools, details of which has already been brought on record by means of the counter affidavit. One of the schools which were taken over accepted the compensation. One of the institutions which had filed the Writ Petition (C) No. 25622 of 2016 has not challenged the judgment of the learned Single Judge and had accepted the same.

9. We have considered the submissions of the learned counsel for the parties and perused the record.

RELEVANT STATUTORY PROVISIONS

10. The Kerala Education Act, 1958 was enacted for the better organisation and development of the educational institutions in the State after obtaining the assent of the President. Section 2

sub-section (1) defines the "Aided Schools" and the "School" is defined in Section 2 sub-section (9) in the following manner:

> "2.(1). "aided school" means a private school which is recognised by and is receiving aid from the Government, but shall not include educational institutions entitled to receive grants under Article 337 of the Constitution of India, except in so far as they are receiving aid in excess of the grants to which they are so entitled;
>
> 2.(9). "School" includes the land, buildings, play-grounds and hostels of the school and the movable properties such as furniture, books, apparatus, maps and equipments pertaining to the school:"

11. Section 7 of the Kerala Education Act, 1958, which deals with the "Managers of Schools", contains the provision under Section 7 sub-section (6) prohibiting the Manager from closing down school unless one year's notice is given. Section 7 sub-section (6) is quoted as below:

> "7.(6) No manager shall close down any school unless one year's notice, expiring with the 31 st May of any year, of his intention so to do, has been given to the officer authorised by the Government in this behalf." Further Rule 24 of the Kerala Education Rules, 1959 provides for closure of private schools which is to the following effect:
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> "24. Closure of private schools: - (1) No private school shall be closed down without giving the Director one year's notice expiring with the 31st May of any year of the intention to do so.
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> [(2) The Director may, after considering all aspects of the question, grant permission for the closure of the school and recognition of such school shall lapse. No application for withdrawal of the notice after the issue of permission shall be entertained unless adequate reasons are adduced to the satisfaction of the Director. The order of the Director in the matter shall be final.]"

12. Section 15 of the Act contains a heading "Power to acquire any category of schools". Section 15 which is relevant for the present case is as follows:

> "15. Power to acquire any category of schools -
>
> (1) If the Government are satisfied that for standardising general education in the State or for improving the level of literacy in any area or for more effectively managing the aided educational institutions in any area or for bringing education of any category under their direct control in the public interest it is necessary to do so, they may, by notification in the Gazette, take over with effect from any day specified therein any category of aided schools in any specified area or areas; and such schools shall vest in the Government absolutely with effect from the day specified in such

notification;

Provided that no notification under this sub-section shall be issued unless the proposal for the taking over is supported by the resolution of the Legislative Assembly.

(2) Where any school has vested in the Government under sub-section (1), compensation shall be paid to the persons entitled thereto on the basis of the market value thereof as on the date of the notification:

> Provided that where any property, movable or immovable has been acquired, constructed or improved for the purpose of the school with the aid or grant given by the Government for such acquisition, construction or improvement, compensation payable shall be fixed after deducting from the market value the amounts of such aids or grants:
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> Provided further that in the case of movable properties the compensation payable shall be the market value thereof on the date of the notification or the actual cost thereof less the depreciation, whichever is lower.
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> (3) In determining the amount of compensation and its apportionment among the persons entitled thereto the Collector shall follow such procedure as may be prescribed.
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> (4) Any person aggrieved by an order of the Collector may, in the prescribed manner, appeal to the District Court within whose jurisdiction the school is situated within sixty days of the date of such award and the decision of the Judge shall be final.
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> (5) Nothing in this section shall apply to minority schools."

13. One of the principle submissions, which has been raised by counsel for the appellant, is that on the date when notification under Section 15 was issued, i.e. on 27.07.2016, the school having been already closed, the power under Section 15 of the Act could not have been exercised. Learned counsel submits that after the writ petition filed by the management was allowed by High Court permitting closure of the school, which was affirmed by the Division Bench as well as by this Court on 05.10.2015, school stood closed, which disabled the State Government to exercise the power under Section 15. We have already noticed the factum of filing of writ petition by the management for closure of the school, which stood allowed on 08.06.2015. Writ appeals were filed against the judgment of learned Single Judge, which were decided by the Division Bench on 22.07.2015. It is to be noticed that aggrieved by the judgment of learned Single Judge, writ appeals were also filed by the Headmistress of the institution as well as Parent-Teachers Association praying for the relief directing the State Government to take over the institutions. In this context, it will be useful to refer to Para 27 of the judgment of the Division Bench by which while affirming the judgment of the learned Single Judge, the Division Bench also directed the State Government to decide the representations, which were submitted seeking directions to take over the schools by the

Government. Para 27 is as follows:-

> "..... However, it essentially is a matter to be decided by the Government and therefore, though we cannot issue any binding direction to the Government, but can only clarify that the authorities before whom Exts.P17 and P18 representations in W.P.(C) 12205/15 are pending will bestow their attention to this claim and will take appropriate decision on the representations."

> 14. As noticed above, against the writ appeals, Special Leave Petition was filed by the State of Kerala, which was dismissed on 05.10.2015. However while dismissing the petition, a direction was given that children of the schools shall be allowed to continue till the end of the academic year and thereafter they may be shifted to another school. The management filed Contempt Petition alleging that orders of the Court regarding closure of schools are not being given effect to by the State, which contempt was closed on 16.06.2016 noticing the statement of Government pleader that all formalities regarding closure of the school have been complied with. In the writ petition filed by the manager, learned Single Judge in its judgment dated 23.11.2016 has returned the findings regarding the actual date of closure of the school.

In Para 9 of the judgment, following was held:-

> ".....The closure of the schools was effected on 10.06.2016 in the case of W.P.(C) No. 25292/2016, on 09.06.2016 in the case of W.P.(C) No.25619/2016, on 08.06.2016 in the case of W.P. (C) No. 25622/2016, on 07.06.2016 in the case of W.P.(C) No. 25695/2016 and on 10.06.2016 in the case of W.P.(C) No. 25790/2016. The affidavits filed on behalf of the State Government in the Contempt cases indicate that the handing over of all records and other procedural formalities for effecting a closure of the schools was completed shortly thereafter. The contempt of court cases, that were filed by the petitioners herein, were all disposed after recording the fact of closure of the schools, based on the affidavit filed on behalf of the State Government. It deserves mention here that, in the affidavit filed on behalf of the State, it was clearly stated that the State Government had already taken a decision to acquire the schools in public interest by invoking the powers under Section 15 of the KE Act."

> 15. Learned Single Judge as well as the Division Bench has also noticed that the Chief Minister has already taken a decision on 07.06.2016 after consultation with the Finance Minister regarding exercise of power under Section 15 to close the schools. Section 15(1) of the Act used the words "If the Government are satisfied ..... they may, by notification in the Gazette, take over with effect from any day specified therein ..... provided that no notification under this sub-section shall be issued unless the proposal for the taking over is supported by the resolution of the Legislative Assembly." The above statutory scheme indicates that there are three steps in exercise of power under Section 15, they are:

> (a) satisfaction of the Government that in the public interest it is necessary to take control of any category of institution; (b) resolution of the Legislative Assembly approving the proposal for taking over the schools; and (c) issuance of notification in the Gazette to take over with effect from any day specified therein any category of aided schools.

16. The satisfaction of the Government in sub-section (1) of Section 15 is the first phase of initiating the proceeding for taking over of the institutions. The satisfaction is required of "the Government". The Government refers to in the provision is the "State Government". The State Government as defined in Section 3(60) of the General Clauses Act, 1897 means the Governor in a State. The Governor, being head of a State in whom all the executive power is vested under Article 154, exercises the power either directly or through officers subordinate to him in accordance with the Constitution of India. Under Article 166(1), any action taken in the exercise of executive power is taken by the State Government in the name of the Governor. Under Article 166 sub-clause (3), the Governor is to make rules for the more convenient transaction of the business of the Government of the State, and for the allocation amongst the Ministers of the said business in so far as it is not business with respect to which the Governor is by or under the Constitution required to act in his discretion. Except the discretionary functions of the Governor, he does not exercise any executive functions individually or personally. When a Minister takes an action according to the Rules of Business, it is both in substance and in form the action of the Governor. The Constitution Bench of this Court in Samsher Singh Vs. State of Punjab & Anr., (1974) 2 SCC 831 while considering the constitutional provisions regarding function of the President of India and Governor of the State laid down following in Paragraphs 30 and 31:-

> "30. In all cases in which the President or the Governor exercises his functions conferred on him by or under the Constitution with the aid and advice of his Council of Ministers he does so by making rules for convenient transaction of the business of the Government of India or the Government of the State respectively or by allocation among his Ministers of the said business, in accordance with Articles 77(3) and 166(3) respectively. Wherever the Constitution requires the satisfaction of the President or the Governor for the exercise of any power or function by the President or the Governor, as the case may be, as for example in Articles 123, 213, 311(2) proviso (c), 317, 352(1), 356 and 360 the satisfaction required by the Constitution is not the personal satisfaction of the President or of the Governor but is the satisfaction of the President or of the Governor in the constitutional sense under the Cabinet system of Government. The reasons are these. It is the satisfaction of the Council of Ministers on whose aid and advice the President or the Governor generally exercises all his powers and functions. Neither Article 77(3) nor Article 166(3) provides for any delegation of power.

Both Articles 77(3) and 166(3) provide that the President under Article 77(3) and the Governor under Article 166(3) shall make rules for the more convenient transaction of the business of the Government and the allocation of business among the Ministers of the said business. The Rules of Business and the allocation among the Ministers of the said business all indicate that the decision of

any Minister or officer under the Rules of Business made under these two articles viz. Article 77(3) in the case of the President and Article 166(3) in the case of the Governor of the State is the decision of the President or the Governor respectively.

31. Further the Rules of Business and allocation of business among the Ministers are relatable to the provisions contained in Article 53 in the case of the President and Article 154 in the case of the Governor, that the executive power shall be exercised by the President or the Governor directly or through the officers subordinate. The provisions contained in Article 74 in the case of the President and Article 163 in the case of the Governor that there shall be a Council of Ministers to aid and advise the President or the Governor, as the case may be, are sources of the Rules of Business. These provisions are for the discharge of the executive powers and functions of the Government in the name of the President or the Governor. Where functions entrusted to a Minister are performed by an official employed in the Minister's department there is in law no delegation because constitutionally the act or decision of the official is that of the Minister. The official is merely the machinery for the discharge of the functions entrusted to a Minister (see Halsbury's Laws of England 4th Ed., Vol. I, paragraph 748 at p. 170 and Carltona Ltd. v. Works Commissioners)."

17. An earlier Constitution Bench judgment, i.e., A.Sanjeevi Naidu, Etc. Vs. State of Madras & Anr., (1970) 1 SCC 443, considered Section 68(C) of the Motor Vehicles Act, 1939, which Section provided as follows:-

> ".....Where any State transport undertaking is of opinion that for the purpose, of providing an efficient, adequate, economical and properly co-ordinated road transport service, it is necessary in the public interest that road transport services in general or any particular class of such service in relation to any area or route or portion thereof should be run and operated by the State transport undertaking, whether to the exclusion, complete or partial of other persons or otherwise, the State transport undertaking may prepare a scheme giving particulars of the nature of the services proposed to be rendered, the area or route proposed to be covered and such other particulars respecting thereto as may be prescribed, and shall cause every such scheme to be published in the Official Gazette and also in such other manner as the State Government may direct."

18. A perusal of Section 68 sub-clause(C) indicates that the words used in the provision "where any State transport undertaking is of opinion ....., the State transport undertaking may prepare a scheme ....., and shall cause every such scheme to be published in the Official Gazette". In the Rules of Business pertaining to Rule 23(A) of the Madras Government Business Rules, powers and functions which State Transport Undertaking may exercise under Section 68(C) were to be discharged on behalf of the State Government by the Secretary to the Government of Madras in the Industries, Labour and Housing Department. The Constitution Bench held that decision of the Secretary to the Government was the decision of the Governor as per Business Rules. In Para Nos. 10, 11 and 12, following was stated:-

> "10. The cabinet is responsible to the Legislature for every action taken in any of the Ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Council of Ministers to discharge all or any of the Governmental functions. Similarly an individual Minister is responsible to the Legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. Even the most hard working Minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day-to-day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settles the major policies and programmes of the Government. When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it on behalf of the Government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of Government business either generally or as regards any specific case. Subject to that over all power, the officers designated by the "Rules" or the standing orders, can take decisions on behalf of the Government. These officers are the limbs of the Government and not its delegates.
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> 11. In Emperor v. Sibnath Banerji1 construing Section 59(3) of the Government of India Act, 1935, a provision similar to Article 166(3), the Judicial Committee held that it was within the competence of the Governor to empower a civil servant to transact any particular business of the Government by making appropriate rules. In that case their Lordships further observed that the Ministers like civil servants are subordinates to the Governor. In Kalyan Singh v.

State of U.P.2 this Court repelling the contention that the opinion formed by an official of the Government does not fulfil the requirements of Section 68(C) observed:

> "The opinion must necessarily be formed by somebody to whom, under the rules of business, the conduct of the business is entrusted and that opinion, in law, will be the opinion of the State Government. It is stated in the counter-affidavit that all the concerned officials in the Department of Transport considered the draft scheme and the said scheme was finally approved by the Secretary of the Transport Department before the notification was issued. It is not denied that the Secretary of the said Department has power under the rules of business to act for the State Government in that behalf. We, therefore, hold that in the present case the opinion was formed by the State transport undertaking within the meaning of Section 68(C) of the Act, and that, there was nothing illegal in the manner of initiation of the said Scheme."

> 12. In Ishwarlal Girdharlal Joshi, etc. v. State of Gujarat3 this Court rejected the contention that the opinion formed by the Deputy Secretary under Section 17(1) of the Land Acquisition Act cannot be considered as the opinion of the State Government. After referring to the rules of business regulating the Government business, this Court observed at p. 282:
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> "In our case the Secretaries concerned were given the jurisdiction to take action on behalf of Government and satisfy themselves about the need for acquisition under Section 6, the urgency of the matter and the existence of waste and arable lands for the application of sub-sections (1) and (4) of Section 17. In view of the Rules of business and the instructions their determination became the determination of Government and no exception could be taken."

19. The decision to take over four Schools was taken by the Chief Minister with the consultation of the Finance Minister on 07.06.2016. It was not challenged before the High Court or before this Court that Chief Minister was not competent to take the decision under the Rules of Business of the State regarding take over of the schools. What is being contended is that the school was to continue to exist till the date the notification under Section 15 is issued for taking over of the school and in event the school is closed, any date prior to the date of notification, the power under Section 15 cannot be exercised. The management of the institution has also filed a Review Petition after judgment of learned Single Judge emphasising above issue. The learned Single Judge has elaborately dealt the issue and held that satisfaction as contemplated by Section 15 was arrived on at 07.06.2016 when Chief Minister took the decision. Learned Single Judge (Justice A.K.Jayasankaran Nambiar) extensively considered the issue and expressed following opinion:-

> "..... The exercise of the power is made conditional only on the State Government being satisfied that one or all of the factors indicated therein exist, rendering it necessary for the State Government to act in public interest. In my view, it is at this stage alone that an aided school must exist, as the subject matter, in relation to which the power of the State Government is exercised. The procedure to be complied with in connection with the take over, such as the framing of a proposal and placing it before the Legislative Assembly of the State for its approval, before issuing a formal notification, only ensures a valid implementation, or execution, of the decision that is taken in exercise of the power conferred under the Section. It follows, therefore, that once an aided school is identified as the subject matter of a proposed take over, its closure during the stage of implementation of the decision of the State Government is of no consequence, and will not affect a valid exercise of power by the State Government. As regards the exercise of power by the State Government it needs to be noted that the Cabinet decision on 29.06.2016 had the effect of ratifying the decision of the Chief Minister taken on 07.06.2016 and therefore the decision of the State Government effectively relates back to 07.06.2016....."

20. Looking to the statutory scheme under Section 15(1), we are of the opinion that satisfaction of the Government as contemplated by Section 15 is the satisfaction of the competent authority, who

can under the Rules of Business take a decision. We have noticed above the findings of learned Single Judge regarding the date of actual closure of the school, which finding has been specially affirmed by the Division Bench in writ appeal that closure of school took place on 07.06.2015 or thereafter and on the date when the Chief Minister took the decision, actual closure of the school was not taken place. The fact that contempt petition was filed by the management, which was closed on 16.06.2015 noticing that all formalities regarding closure had been taken and in the contempt, the statement on behalf of the State was also noted that the State has decided to take over the institutions. Thus, on the date when the Chief Minister took the decision, the existence of school cannot be denied.

21. The other two steps as noticed above, i.e. approval of Legislative Assembly and issuance of notification in the Gazette are further steps regarding completion of the process and on the date when Government was satisfied that it is in the public interest to take over the school, the school was in existence, the said decision cannot be said to lose its efficacy, even if the school was actually closed before issuance of notification under Section 15. When the decision taken on 07.06.2016 was valid to close the school, it was valid exercise of power and no infirmity can crept in the said decision even if as per the appellant, the school was closed before Legislative Assembly passed the resolution or notification was issued on 27.07.2016. It could have been open to the Legislative Assembly not to approve the proposal on account of any reason including any subsequent valid reason, but Legislative Assembly having approved, no capital can be gained by the appellant on the strength of the above submission.

22. We fully endorse the view taken by the learned Single Judge that on the date when the Government took the decision, i.e., the Chief Minister took a decision on 07.06.2016 to take over the schools; the schools were not actually closed.

23. There is one more reason due to which the decision taken by the State Government as approved by the Legislative Assembly and notified in the Gazette needs no interference. The reason is that all the institutions, which have been taken over were the institutions providing primary education. Under Article 21(A) of the Constitution of India as well as under

> the Right of Children to Free and Compulsory Education Act, 2009, the State has to take all steps for fulfilling the objective to provide education to children upto 14 years of age seeking Primary (Upper Primary and Lower Primary) education. The State decision to run the Primary schools which were decided to be closed by their respective management was in public interest and in the interest of the education.
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> The High Court has rightly refused to interfere with the decision of the State Government taking over the schools to run the same directly by the Government.

24. Another limb of argument of the appellant forcefully put is that acquisition of properties of the schools, if at all, was to be undertaken by the State, the State ought to have taken recourse of the provisions of the Act, 2013. It is contended that owners of the schools are being deprived of their right of property. They are clearly entitled for compensation in accordance with the provisions of

Act, 2013. Learned counsel submits that Act, 2013 being a Parliamentary Act shall override the provision pertaining to acquisition of properties of schools as contained in Section 15 of Act, 1958.

25. The Kerala Education Act, 1958 is a State enactment referable to education. The Entry of Education prior to its substitution in List III was contained in List II Entry 11, by the Constitution (Forty-Second Amendment) Act, 1976. Entry 11 List II was omitted and the subject was transferred to be comprised in Entry 25 of List III, which is as follows:

> "25. Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I;
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> vocational and technical training of labour."
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> 26. Acquisition of property is covered by Entry 42 List III. Entry 42 List III is as follows:
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> "42. Acquisition and requisitioning of property."
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> 27. As noted above, the present is a case where school is being taken over by the State in accordance with Section 15 which is a part of the Scheme under the Kerala Education Act, 1958. The State is entitled to take over a school for the purpose and object as contained in Section
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> 15. The Government is entitled to take over the school for any of the following purposes that:
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> i) for standardising general education in the State, or
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> ii) for improving the level of literacy in any area, or
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> iii) for more effectively managing the aided educational institutions in any area, or
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> iv) for bringing education of any category under their direct control in the public interest.

28. In the present case the State Government has taken over the school in the public interest in the interest of education. The power under Section 15 given to the State is distinct and separate from the power which is possessed by the State under the provisions of the Act, 2013.

29. It is contended that Section 15 being repugnant to Act, 2013 which being a Parliamentary enactment, it shall override the Act, 1958 in view of Article 254 sub-clause (1) of the Constitution of India.

30. The principles for ascertaining the inconsistency/ repugnancy between two statutes were laid down by this Court in Deep Chand Vs. State of U.P and others, AIR 1959 SC 648. K. Subba Rao, J. speaking for the Court stated following in paragraph 29:

> "29……Repugnancy between two statutes may thus be ascertained on the basis of the following three principles:
>
> (1) Whether there is direct conflict between the two provisions;
>
> (2) Whether Parliament intended to lay down an exhaustive code in respect of the subject-matter replacing the Act of the State Legislature and (3) Whether the law made by Parliament and the law made by the State Legislature occupy the same field."

31. This Court in State of Kerala and others Vs. Mar Appraem Kuri Company Limited and another, (2012) 7 SCC 106, in paragraph 47 held that:

> "47. The question of repugnancy between parliamentary legislation and State legislation arises in two ways. First, where the legislations, though enacted with respect to matters in their allotted spheres, overlap and conflict. Second, where the two legislations are with respect to matters in the Concurrent List and there is a conflict. In both the situations, the Parliamentary legislation will predominate, in the first, by virtue of non obstante clause in Article 246(1); in the second, by reason of Article 254(1)".

There cannot be any dispute to the proposition laid down by this Court to the State of Kerala case (supra).

32. This Court has time and again emphasised that in the event any overlapping is found in two Entries of Seventh Schedule or two legislations, it is the duty of the Court to find out its true intent and purpose and to examine the particular legislation in its pith and substance. In Kartar Singh Vs. State of Punjab, (1994) 3 SCC 569, in paragraphs 59 and 60 following has been held:

> "59….But before we do so we may briefly indicate the principles that are applied for construing the entries in the legislative lists. It has been laid down that the entries must not be construed in a narrow and pedantic sense and that widest amplitude must be given to the language of these entries. Sometimes the entries in different lists or the same list may be found to overlap or to be in direct conflict with each other. In that event it is the duty of the court to find out its true intent and purpose and to examine the particular legislation in its 'pith and substance' to determine whether it fits in one or other of the lists. [See : Synthetics and Chemicals Ltd. v. State of U.P.; India Cement Ltd. v. State of T.N.]

60. This doctrine of 'pith and substance' is applied when the legislative competence of a legislature with regard to a particular enactment is challenged with reference to the entries in the various lists i.e. a law dealing with the subject in one list is also touching on a subject in another list. In such a case, what has to be ascertained is the pith and substance of the enactment. On a scrutiny of the Act in question, if found, that the legislation is in substance one on a matter assigned to the legislature enacting that statute, then that Act as a whole must be held to be valid notwithstanding any incidental trenching upon matters beyond its competence i.e. on a matter included in the list belonging to the other legislature. To say differently, incidental encroachment is not altogether forbidden."

33. In A.S. Krishna and others Vs. State of Madras, AIR 1957 SC 297 this Court laid down following in paragraph 10:

"10. This point arose directly for decision before the Privy Council in Prafulla Kumar Mukherjee v. The Bank of Commerce, Ltd. [1946 74 I.A. 23 There, the question was whether the Bengal Money-Lenders Act, 1940, which limited the amount recoverable by a money-lender for principal and interest on his loans, was valid in so far as it related to promissory notes. Money-lending is within the exclusive competence of the Provincial Legislature under Item 27 of List II, but promissory note is a topic reserved for the center, vide List I, Item 28. It was held by the Privy Council that the pith and substance of the impugned legislation begin money-lending, it was valid notwithstanding that it incidentally encroached on a field of legislation reserve for the center under Enter 28. After quoting its approval the observations of Sir Maurice Gwyer C.J. in Subrahmanyan Chettiar v. Muttuswami Goundan, (supra) above quoted, Lord Porter observed :

"Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to Indian as well as to Dominion legislation.

No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provision should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a hierarchy of jurisdictions. Subjects must still overlap, and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, must beneficent legislation would be satisfied at birth, and many of the subjects entrusted to Provincial legislation could never effectively be dealt with."..."

34. Further in Union of India and others Vs. Shah Goverdhan L. Kabra Teachers' College, (2002) 8 SCC 228 in paragraph 7 following was laid down:

"7. It is further a well-settled principle that entries in the different lists should be read together without giving a narrow meaning to any of them. Power of Parliament as well as the State Legislature are expressed in precise and definite terms. While an entry is to be given its widest meaning but it cannot be so interpreted as to override another entry or make another entry meaningless and in case of an apparent conflict between different entries, it is the duty of the court to reconcile them. When it appears to the court that there is apparent overlapping between the two entries the doctrine of "pith and substance" has to be applied to find out the true nature of a legislation and the entry within which it would fall. In case of conflict between entries in List I and List II, the same has to be decided by application of the principle of "pith and substance". The doctrine of "pith and substance" means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the legislature which enacted it, it cannot be held to be invalid, merely because it incidentally encroaches on matters assigned to another legislature. When a law is impugned as being ultra vires of the legislative competence, what is required to be ascertained is the true character of the legislation. If on such an examination it is found that the legislation is in substance one on a matter assigned to the legislature then it must be held to be valid in its entirety even though it might incidentally trench on matters which are beyond its competence. In order to examine the true character of the enactment, the entire Act, its object, scope and effect, is required to be gone into. The question of invasion into the territory of another legislation is to be determined not by degree but by substance. The doctrine of "pith and substance" has to be applied not only in cases of conflict between the powers of two legislatures but in any case where the question arises whether a legislation is covered by particular legislative power in exercise of which it is purported to be made."

35. Even if it is assumed that, in working of two legislations which pertain to different subject matters, there is an incidental encroachment in respect of small area of operation of two legislations, it cannot be held that one legislation overrides the other. When we look into the pith and substance of both the legislations, i.e., Act, 1958 and Act, 2013, it is clear that they operate in different fields and it cannot be said that Act, 1958 is repugnant to Act, 2013. It is also relevant to note that under Section 15(2) it is provided that where any school has vested in the Government under sub-section (1), compensation shall be paid to the persons entitled thereto on the basis of the market value thereof as on the date of the notification.

36. In the counter-affidavit in the present case, the State has clearly mentioned that compensation has been determined by the Collector. In paragraph 12 of the counter-affidavit following has been stated:

"12.Out of the 4 schools that have been taken over by Government, compensations have been sanctioned to the erstwhile Managers of the following 3 schools as per market value.

(i) A.U.P. School, Malaparamba Rs.5,85,86,710/- as per G.O.(Rt) No.181/2017(GEdn dated 25.01.2017.

(ii)A.U.P. School, Palat, Kozhikode -

Rs.56,09,947/- as per G.O.(Rt)No. 2289/2017/Gedn dated 11.07.2017 & G.O.(Rt)No.6047/2017/Fin dated 31.07.2017.

(iii)P.M.L.P. School, Kiraloor, Thrissur Rs.79,54,550/- as per G.O.(Rt)No. 2289/2017/Gedn dated 11.07.2017 & G.O. (Rt) No. 6047/2017/Fin dated 31.07.2017.

37. It is also relevant to note that under Section 15 sub-section (4), any person aggrieved by an order of the Collector has a right to appeal to the District Court.

38. Applying the ratio as laid down by this Court in the above noted cases, we conclude that Act, 1958 and Act, 2013 operate in different fields and Section 15 of the Act, 1958 in no manner is overridden or repugnant to Act, 2013. There was no invalidity in the exercise of the power of the State Government under Section 15 to take over the schools. The owners being entitled to compensation at the market rate on the date of notification, the procedure for taking over the property is in full compliance of requirement of Article 300A of the Constitution of India. We, thus, do not find any merit in this submission of learned counsel for the appellant.

39. Learned counsel for the appellant has placed reliance on the judgment of this Court in Bhusawal Municipal Council Vs. Nivrutti Ramchandra Phalak and others, (2015) 14 SCC 327. Bhusawal Municipal Council had filed the appeal against the interlocutory order passed by the Bombay High Court by which interim relief was granted to the appellant to the extent of payment of 50% of the enhanced amount of compensation as awarded by the Reference Court in the land acquisition proceedings. The Council challenged the said order and contended that the land was acquired for the public purpose, the Council-appellant does not have sufficient funds to pay the enhanced compensation, this Court may grant stay of payment of the enhanced amount of compensation awarded by the Reference Court. In the above context following observation was made by this Court in paragraph 8:

> "8. We see no justification to accept the submissions so advanced on behalf of the appellant Council. Undoubtedly, the appellant might be willing to meet its constitutional or legal obligation to open a primary school for imparting education to children below 14 years of age but the question does arise as to whether the appellant Council has a right to meet a public purpose or a constitutional obligation at the cost of individual citizens by depriving them of their constitutional rights under Article 300-A of the Constitution?"
>
> 40. This Court dismissed the appeal filed by the Council and had made the observation that right to property is not only a constitutional or a statutory right but also a human right. Therefore, in case the person aggrieved is deprived of the land

without making the payment of compensation, it would be tantamount to forcing the said uprooted persons to become vagabond. There cannot be any dispute to the proposition laid down by this Court as above. For the land acquired under the Land Acquisition Act compensation determined under the provisions of the Land Acquisition Act, 1894 is required to be paid to the land owner. The order granting interim relief to the appellant was held to be just order in which this Court refused to interfere.

41. In the above case no such proposition has been laid down by this Court which may help the appellant. The present is not a case of acquisition under the Land Acquisition Act. As noted above, under Section 15 sub-section (4) of Act, 1958, the payment of compensation has to be made in accordance with the market value on the date of notification under Section 15.

42. In view of the foregoing discussion, we do not find any ground to interfere with the judgments of the learned Single Judge as well as Division Bench of the Kerala High Court dismissing the writ petition and writ appeal of the appellant.

43. In the result, all the appeals are dismissed.

.....J. (A.K. SIKRI) .....J. (ASHOK BHUSHAN) NEW DELHI, FEBRUARY 16, 2018.