

SRI BALAJI SOCIETY'S

Balaji Law College's 9th Moot Court Competition February 2014

MOOT PROBLEM

Shiksha Society is a charitable trust registered under Bombay Public Trust Act, located in a village which subsequently merged with Kimpri Municipal Corporation of one of the States. The objective of the trust is to impart undergraduate and Post Graduate educational courses as well as a junior college. All courses are approved and recognized by the competent authorities concerned. The trust exists for nearly one and half decade and has gained repute and recognition in the field of education. The Institutions/Colleges run by the trust fall in the category of 'Private - Unaided'. The trust has not availed any aid/help/support such as allocation of land or any fund or financial assistance from any governmental authorities.

These Institutions were started at different locations at rented accommodation but moved to the village in one piece of 12.5 acres residential plot of land prior to the merger of the village with the Municipal Corporation. Buildings for academic purposes and one hostel to accommodate 300 boys and 300 girls were constructed, in a phased manner - one by one, with due approvals at a cost of 80 crores .The hostel accommodation was provided for one year only and therefore the students were shifting to adjacent flats facing a lot of inconvenience and the parents were concerned about the safety and security of their children – more particularly the girl students. The management of the institution is also very concerned about the problems of students residing away from their parents and hence had constituted a student grievance cell, where any student could report any inconvenience caused to him/her as student.

The student's grievance cell reported a common concern about the lack of 'adequate' residential facility and hence the management took up the grievance seriously and purchased a piece of land adjacent to the campus and decided to construct a hostel in the campus exclusively for the girl students. But, by the time the merger of the village took place and all the developmental activities came to a stand still till finalization of the Development Plan by the Municipality for the said village. Consequent to the merger of the village, the FSI had increased from 1 to 1.5. The Society has also purchased another three acres of land and planned to construct a hostel exclusively for the girl students on the newly acquired land.

But the Society was told by the Municipal authority that they should obtain the completion report from them for the buildings already constructed, prior to the merger of the village to the Municipality; and for that the environment clearance is required. The completion certificate in question was given by the architect being in a village and the management was made to believe it was adequate and hence the buildings are already occupied and are operational. But it was told to the Society that fresh plans are required to be submitted to the Municipality, although development charges were already paid to the Town Planning authority, Municipality also demanded that development fee as applicable in the municipality should be paid to get the plan

approved afresh and then only both the cases of completion report and environment clearance can be processed. The matter is still pending before the Municipal Corporation. The Society's contentions are as under and the same is contested:-

- (a) That the buildings were completed well before the merger of the village with Municipality and hence the completion report furnished by the architect should hold good. At best the completion report should be sought from the Town Planning authority that approved the initial building planning and not the Municipal authority.
- (b) Since the development charges have already been paid to Town Planning Authority in full and buildings have also been constructed and occupied asking for fresh approval by the Municipality, for the same duly completed buildings and developmental charges is arbitrary in nature and bad in law. The merger is not only geographical but also with standing assets thereof. At best property tax and other municipal charges should only be levied.
- (c) Educational buildings, constructed at crowded residential plots, with prior approval of competent and offering simple and traditional educational degree should not attract the provisions of Environment Protection Act. The word 'project' linked to the valuation of 20 crores, mentioned by a notification published by the Ministry of Environment, subsequent to enforcement of the Act, cannot and should not be related to educational buildings constructed in townships as they do not fall under the terminology "Project"

In the meanwhile, the Society is facing one more problem. A major portion of the additional piece of three acres of land bought by them to construct a ladies hostel has been earmarked by Bus Rapid Transport Service (BRTS) in the proposed Draft Development Plan (DPP) meant for the village. The Society is contemplating to challenge the decision of reserving their land for 'public' purpose on the following grounds:-

- (a) That the trust is serving the 'public purpose' and the municipality cannot reserve the land for another 'public purpose.' ie BRTS
- (b) That the municipality has its own free hold land very closer to the road now proposed on their land.

The Society has challenged the decisions, on both the counts firstly on the decision of the Municipal Corporation and the proposed DPP of the village, through a writ petition before the High Court.

On the other hand the respondents contend that the state exercises 'Eminent Domain' over the territory of the state and hence they are authorized to acquire land as and when required for "public purpose" under the provisions of Land Acquisition Act, hence their action is valid.

Argue on behalf of the petitioner and respondent.