IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Civil Suit No. 5 of 2008

Reserved on: 26.5.2025

Date of decision: 23.6.2025.

Sanatan Dharam Pratinidhi Sabha ...Plaintiff

Versus

State of H.P.& others ...Defendants

Coram:

The Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?[1] Yes.

For the plaintiff : Mr. Bhupender Gupta, & Mr. Anand Sharma, Sr. Advocate with Mr. Janesh Gupta & Karan Sharma, Advocates.

For the defendants : Mr. Gautam Sood, DAG, for defendants No. 1 to 4.

Satyen Vaidya, Judge:

By way of instant suit, the plaintiff has claimed decree to the following effects:

" (i) a decree of Rs. 2.40 crores against defendants 1 to 4 along with interest at the rate of 18%;

(ii) directions against defendant No.5 to hand over the original FDR No. RDW 551515 of PNB, Baijnath, amounting to Rs. 5,00,000/- along with interest.

(iii) To pay interest pendent-lite on the suit amount".

---

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

2. The case as set up by the plaintiff is that the plaintiff Sabha is a society registered under the Societies Registration Act 1860 (hereinafter referred to as 'the Sabha')

3. In 1961, the plaintiff established a degree college named Goswami Ganesh Dutt Sanatan Dharam College at Baijnath, District Kangra, H.P. (hereinafter referred to as 'the College' for brevity). The College was affiliated to the Punjab University.

4. On reorganization in 1966, the area where college was established became part of the State of Himachal Pradesh. Another subsidiary society named Goswami Ganesh Dutt Sanatan Dharam Education Society, Baijnath (hereinafter referred to as 'the Society') was also formed with the main objective to establish, maintain, supervise and control institutions such as colleges and schools in Himachal Pradesh to provide broad based education in the faculties of Arts, Science both theoretical and applied including Medicine, Engineering etc.) and Commerce. The Society was also registered under

Societies Registration Act 1860 at Kangra *vide* registration number 1101/98 on 26.5.1998.

5. As per rules 16 and 20 of the Rules and Regulations of the Society, the Society could not transfer the property without prior approval of the working committee of the Sabha and further in case of functioning of Society coming to an end its properties were liable for vestment in the Sabha.

6. The College was being managed by the Sabha and the Society.

7. At the time of filing the suit Dr. Shiv Kumar Sharma was the president of the Sabha and the Society, hence, the suit was filed through him. Dr. Shiv Kumar Sharma died during the pendency of suit and now he has been substituted by Dr. Desh Bandhu.

8. It is averred in the plaint that the college was being run in the buildings standing constructed on the land comprised in khasra Nos. 942, 944, 936, 937, 938, 950 and 948. In para-4 of the plaint, the details of land and buildings in which the college was being run by the plaintiff has been detailed by making reference to

Jamabandi for the year 2002-03 Mohal Mauza Baijnath, District Kangra. Tabulated version of said information is as under:-

Sr. No.	Khata/Khatauni No.	Khasra No.	Area	Nature of property
1.	418 min/744	942	0-02-38 hectares	Gair Mumkin Library
2.	-do-	944	0-01-07	Gair Mumkin Ahaata
3.	420 min/788	936	0-02-76	Gair Mumkin Laboratory
4.	-do-	937	0-01-60	Gair Mumkin House
5.	-do-	938	0-01-04	Gair Mumkin Laboratory
6.	-do-	950	0-14-52	Gair Mumkin college
7.	-do-	948	0-03-10	Gair Mumkin Ahata

9. The plaintiff claimed to be the owner of all immovable and movable assets of the College including the structures in which the college was being run alongwith the books in the library, furniture, furnishings and laboratory equipment etc. The aforesaid assets are claimed to have been created by investment of huge funds and resources of the Sabha and the Society.

10. Defendant No.1 took over the management of college alongwith its assets and liabilities by issuing a notification dated 4.1.2007.

11. The grievance of the plaintiff is that defendant No.1 has taken over the college along with its assets firstly without the consent of the plaintiff and secondly without paying the plaintiff any compensation for the assets owned by it. The cost of the immovable and movable assets of the college has been assessed at Rs. 2.40 crores tentatively while filing the plaint and accordingly a decree of said amount has been sought as compensation.

12. The plaintiff has also raised a grievance that despite the fact that the college was taken over w.e.f. 4.1.2007, defendant No.5 had not returned the FDR of the plaintiff in the sum of Rs. 5,00,000/-, pledged with the said defendant.

13. Defendants No. 1 to 4 have filed their written statement. It has been averred that *vide* notification dated 2.9.2006 defendant No.1 had constituted a committee for recommending the taking over of the college and to work out the necessary modalities. The committee had

submitted its report on 19.12.2006. Accordingly, the college was taken over by issuance of notification dated 4.1.2007.

14. It has been admitted by the defendants No. 1 to 4 that the college was started by Pandit Amar Nath Sharma in the year 1961 in the memory of Brahamleen Tyagmurthi Goswami Ganesh Dutt Ji with Humanities Group only. In the year 1974 commerce faculty was introduced and later in 1980, classes in Bachelor of Sciences were also added.

15. As per defendants No. 1 to 4 the management of the college was superseded by an Administrator in the year 1997. The management was restored to the plaintiff on 9.11.1999. The managing committee of the college had resigned *enmasse* on 4.10.2002 and again Additional District Magistrate was appointed as Administrator. Later, the Sub Divisional Magistrate, Baijnath was substituted as an Administrator and he was in control of the management of the college from 10.11.2003 till the college was taken over. The college was taken over after obtaining the necessary affidavits from the Administrator and staff of the college.

16. Defendants No. 1 to 4 claim to have taken over the college in terms of notification dated 25.8.1994. It has further been stated that the assets and liabilities of the college were taken over by the Government after assessing the value of the land and property.

17. On the pleadings of the parties, the following issues have been framed:-

> *"1. Whether the notification dated 4.1.2007 taking over the suit property, issued by defendants is illegal, void and not binding on the interests of the plaintiff? OP Parties.*
>
> *2. Whether the notification dated 4.1.2007 is unconstitutional as it deprives the plaintiffs of their property without due process law? OP Parties.*
>
> *3. Whether the plaintiffs are entitled to the recovery of the suit amount as prayed for, if so to what extent? OPP.*
>
> *4. Whether the plaintiffs are entitled to any interest, as prayed for? OPP.*
>
> *5. Whether the suit is not maintainable as pleaded by the defendants as in their written statement? OPD.*
>
> *6. Relief."*

18. In order to prove its case, the plaintiff has examined seven witnesses. Material amongst the witnesses

are PW-1 Sh. Balbir Singh Lagwal, Tehsildar Baijnath, who has proved copy of *Misal Haqiyat Bandobast Jadid* as PW-1/A and copy of jamabandi for the year 2002-03 as Ext. PW-1/B; PW-3 Sh. Shamsher Singh, Tehsildar, Baijnath proved jamabandies Ext. PW-3/C and PW-3/D, copies of *Misal Haqiyat* as Ext. PW-3/E. In addition, the plaintiff examined PW-6 Sh. Narpat Singh, Naib Sadar Kanungo, Kangra who proved jamabandies for the years 1950-51 to 1967-68 as PW-6/A to Ext. PW-6/E, *Misal Hakiyat* for the year 1972 Ext. PW-6/F, *Aks Sharja* Ext. PW-6/G and extract of average price of land Ext. PW-6/H.

19. Dr. Shiv Kumar Sharma, the president of plaintiff society has been examined as CW-1 (examined on commission). He produced registration certificate of the plaintiff society as Mark-'A', original certificate of registration of Goswami Ganesh Dutt, Sanatan Dharam Education Society, Baijnath, District Kangra, H.P. as Ext. CW-1/A, resolution of Goswami Ganesh Dutt, Sanatan Dharam Education Society, Baijnath, District Kangra, H.P., authorizing him to file the suit Ext. CW-1/B and a copy of notification dated 4.1.2007 as Ext. CW-1/C. He also

proved communication Ext. CW-1/G, whereby he had allowed Sh. Shashi Kumar Sharma Architect to evaluate the property. In addition, the issuance of notices under Section 80 of the CPC Ext. CW-1/H and postal receipt Ext. CW-1/H-1 to CW-1/H-3 evidencing the dispatch of notices to the defendants through registered post has also been proved on record. This witness also made deposition reiterating the facts stated in the plaint.

20. Plaintiff then examined PW-2 Shashi Kumar Sharma to prove the valuation report Ext. PW-2/A, estimate Ext. PW-2/B, photographs Ext. PW-2/C (colly.) and site plan Ext. PW-2/D.

21. To corroborate the version of CW-1, the plaintiff has also examined PW-7 Sh. Udho Ram Cheema, Secretary of the Society, who also stated about the facts that form basis for the claim of the plaintiff in the suit.

22. On the other hand, the defendants examined six witnesses. DW-1 Sh. Vasu Dev Vashist proved resolution dated 9.9.2006 as Ext. DW-1/A and affidavit dated 10.8.2006 as Ext. DW-1/B. DW-2 Sh. Hardev Singh, Deputy Secretary Education has also been examined to

prove notification dated 2.9.2006 as Ext. DW-2/A, report of the committee Ext. DW-2/B and notification dated 4.1.2007 Ext. DW-2/C. DW-3 is a formal witness who simply tendered the record. DW-4 Ajay Lakhanpal was examined to prove a document i.e. resolution dated 28.9.2002. DW-5 and DW-6 were examined as they had remained Administrators of the College.

23. My findings on Issues are as under:-

Issue No.1	No
Issue No. 2	No
Issue No. 3	Yes, the plaintiff is held entitled to a sum of Rs. 1,76,95,000/-.
Issue No. 4	Yes, interest @ 6% PA
Issue No. 5	No
Relief	The suit is partly decreed as per operative part of this judgment.

<u>Reasons for findings</u>:

<u>Issues No. 1 and 2:</u>

24. Both these issues are related and hence are taken up for discussion together.

25. The plaintiff has sought a decree of Rs. 2.40 crores only on account of compensation for the immoveable and movable assets of the college taken over by defendant No.1. The plaintiff has neither sought reversion of the property to itself nor a declaration has been sought declaring the notification dated 4.1.2007 Ext. CW-1/C as illegal, void or unconstitutional.

26. Defendants No. 1 to 4 have asserted its authority to take over the college on the basis of notification dated 25.8.1994. A copy of said notification though has not been exhibited; however, a copy thereof has been annexed with the written statement of the defendants. By way of said notification the State has empowered itself to take over privately managed colleges subject to terms and conditions contained therein. The plaintiffs have also not laid any challenge to the Notification dated 25.8.1994. Thus, it cannot be said that the action of defendant No.1 in taking over the college is *per-se* illegal, void or unconstitutional. Issues No. 1 and 2 are decided accordingly. The notification dated 25.8.1994 does not authorize the defendants to take over assets of

privately managed educational institutions without payment of compensation.

Issues No. 3

27. The next question arises, if defendant No.1 had authority to issue notification dated 4.1.2007 Ext. CW-1/C and the said notification has not been declared as illegal, whether the plaintiff is entitled to recover the suit amount?

28. Though not explicitly averred in the written statement, the defendants have tried to establish that in the year 2002 the managing committee of the college had resigned *enmasse* and had passed a resolution dated 28.9.2002 authorizing the State to take over the college. However, only a photocopy of the alleged resolution could be produced on record. The defendants 1 to 4 had sought leave of this court to prove the fact by leading secondary evidence but the order passed in that behalf was set aside by Hon'ble Division Bench of this court in appeal. In such circumstances, the fact of any such resolution having been passed by the managing committee of the college has not been proved.

29. Even otherwise from the plain reading of photocopy of said resolution it cannot be inferred that the State had been authorized to take over the college without payment of compensation.

30. The defendants also sought the validation of their action by proving issuance of notification dated 2.9.2006 Ext. DW-2/A whereby a committee was constituted, by the Principal Secretary (Higher Education) to the Government of Himachal Pradesh, to work out the modalities of taking over the college. Similarly, reliance has been placed on the report Ext. DW-2/B of the said committee, however, such self-serving acts of the defendants may have relevance for validating their decision to take over the college but these cannot be held to vest the defendants with any authority to take over the assets belonging to plaintiff without compensation.

31. Further, the defendants have tried to take benefit of the fact that the management and staff of the college had given their no objection for taking over of the college. Admittedly, the Administrator of the college, at the time of taking over, was DW-5, an official of the State

Government posted as ADM Kangra at the relevant time. He has not shown any authority from plaintiff whereby he was authorized to surrender the assets of the college to defendants without payment of compensation. As regards the no objection given by the staff of the college, obviously their action was to serve their vested interest of being absorbed in Government services. Even otherwise the defendants cannot thrive on the alleged no-objection of the staff of the college to deny the legitimate right of plaintiff.

32. As regard the relief with respect to FDR in the sum of Rs. 5,00,000/- against defendant No.5, learned counsel for the plaintiff has fairly admitted that the said relief does not survive due to the intervening circumstances. In fact, the said relief has been rendered infructuous in light of the orders passed by this Court during the pendency of the suit, whereby defendant No.5 has returned the FDR to the plaintiff.

33. Thus, the only surviving claim of the plaintiff is with respect to compensation for immovable and movable assets of the college. Though, the authority of defendant No.1 in taking over the college *vide* notification dated

4.1.2007 Ext. CW-1/C has been upheld, the right of the plaintiff to seek compensation cannot be denied. The right to property is recognized under Article 300A of the Constitution of India. The right to property in India is now a constitutional right, but no longer a fundamental right. Specifically, Article 300A of the Indian Constitution states that no person shall be deprived of their property "save by authority of law". This means the government can acquire property, but only through a valid legal process, not by executive decree.

34. The college was taken over w.e.f. 4.1.2007. The Jamabandi for the year 2002-03 Ext. PW-1/B and Ext. PW-3/C clearly reflect the possession of the college on the land detailed in para 8 *supra*. The ownership of the land in Khasra Nos. 936, 937, 938, 950 and 948 is of the State Government, but the exclusive possession is shown to be that of the plaintiff and the nature of the plots of land detailed therein also evidences the existence of infrastructure of the college on said land.

35. The land in Khasra Nos. 942 and 944 has been shown in ownership of “Mandir Kedarnath” and others and

on this land also the exclusive possession is that of plaintiff.

36. The defendants have also not disputed the identity of the land on which the buildings of the college existed.

37. The plaintiff has made a specific claim that the aforesaid infrastructure was created by it. Its specific case is that the college was established in the year 1961 and thereafter, the infrastructure was developed from time to time from the resources generated by the plaintiff. CW-1 Dr. Shiv Kumar and PW-7 Sh. Udho Ram Cheema have categorically deposed the aforesaid facts on oath while appearing as witnesses. The defendants have not specifically denied the claim of the plaintiff to this effect. It is not the case of defendants that the buildings and other immoveable assets of the college were created by them. Though, while cross-examining CW-1 and PW-7, it has been tried to be established that some part of the immoveable assets, of the college, were created with the UGC grant. The defendants have placed reliance on a document Ext. DW-2/B which is a copy of report of assets

and liabilities of the college prepared by the committee constituted by the State Government to explore modalities for taking over of the college. As per this report the college had received Rs. 1,59,000/- in 8th Five Year Plan; Rs. 16,00,000/- in 9th Five Year Plan and Rs. 5,64,590/- in 10th Five Year Plan as grant from UGC, out of which an amount of Rs. 3,20,472/- has been reflected as unutilized. However, no portion of above said grant except a sum of Rs. 4,00,000/- was given to the college for creation of immovable assets. The sum of Rs. 4,00,000/- has also been shown to have been given to the college for renovation during 9th Five Year Plan.

38. It is not in dispute that the college started receiving 95% grant under the Grant-in-Aid scheme of the State Government w.e.f.1984 and such grant was meant towards the salary component of the staff of the college.

39. Thus, it can be safely held that the plaintiff has been able to establish its claim of having created the immovable assets of the college from its own resources.

40. Further, mere existence of fact that the land underneath belonged to State Government will also not be

an impediment in the way of the plaintiff in seeking compensation. It is nowhere the case of the defendants that the plaintiff had encroached upon the Government land or the possession of plaintiff was unauthorized. Rather, the only inference that can be drawn from the evidence on record is that the possession of the plaintiff was permissive and plaintiff had created the immoveable assets of college with the implied consent of defendants No. 1 to 4.

41. Plaintiff has also claimed compensation for taken over movable assets of the college *viz* books, furniture, furnishing and laboratory equipment etc. In the case of movable assets of the college also the defendants have neither claimed nor proved any contribution.

42. In order to prove the value of immoveable and movable assets of the college that were taken over by defendant No.1, the plaintiff has examined PW-2 Sh. Shashi Kumar Sharma, who had been allowed access to college premises for preparation of inventory under the orders of this Court passed on 8.8.2008 in OMP No. 21 of 2008. The valuation report prepared by PW-2 was ordered

to be taken on record *vide* order dated 12.12.2008 passed in OMP No. 573 of 2008.

43. PW-2 Shashi Kumar Sharma deposed that he was a qualified Architect and had experience in the field. He has proved the valuation report Ext. PW-2/A. As per the said report, he has valued the price of immoveable assets of the plaintiff on land comprised in Khasra No. 950, measuring 0-14-52 hectares at Rs. 1,16,50,000/-. The cost of water supply and sanitation services has been assessed at Rs. 40,000/-. In addition, he has valued the land underneath Khasra No. 950 at Rs. 1,13,40,000/-. Noticeably, no other evidence has been led by plaintiff to establish the value of other immovable assets of the college as reflected in Jamabandi Ext. PW-1/B.

44. The total moveable assets of the college have been valued by PW-2 as under:-

(i)	Cost of furniture	Rs. 13,05,200/-
(ii)	Cost of laboratory material	Rs. 40,00,000/-

45. The testimony of the aforesaid witness has not been challenged genuinely in the cross-examination. Rather, the witness has affirmed that he was a registered

valuer and had prepared more than one hundred valuation reports. The only suggestion put to PW-2 was that he had prepared the report as per directions of plaintiff, which was categorically denied. It was volunteered that the report had been prepared as per the direction of the court.

46. Another piece of evidence relied upon by the plaintiff is document Ext. PW-2/B. By way of document Ext. PW-2/B it has been tried to be shown that the value of the constructed area was Rs. 1,50,00,000/-; laboratory equipment was Rs. 50,00,000/-; furniture and furnishing was Rs. 20,00,000/- and value of library books was also Rs. 20,00,000/- However, the document Ext. PW-2/A does not inspire confidence. PW-2 has deposed that he had given tentative estimate Ext. PW-2/A to the college, but the document does not bear any mark or signature of PW-2. The said document has been prepared on the letter head of the college under the signatures of CW-1 Dr. Shiv Kumar. Noticeably, CW-1 Dr. Shiv Kumar has stated nothing regarding Ext. PW-2/A. Thus, the said document carries no value.

47. The defendants on the other hand have made no attempt to give their own valuation of the taken over assets of the college. Though DW-2 Hardev Singh made a statement that the five-year average value of the property was assessed at Rs. 44,15,500/- but no document has been placed or proved on record to prove the contention. It appears that DW-2 had gathered the impression from the averment made in para 16 of the written statement, wherein the value of land was stated to be Rs. 44,15,500/- in the year 2006 as reported by the committee constituted by the State Government to explore modalities of takeover of the college. Except as above there is no evidence of defendants on the value of taken over assets of the college. DW-5 Sh. Sandeep, who remained as an Administrator of the college at the time of taking over has categorically admitted in cross-examination that he did not get the valuation of immoveable assets of the college done.

48. Thus, the defendants have impliedly accepted the version of PW-2. In such circumstances, the valuation made by PW-2 Sh. Shashi Kumar Sharma cannot be ignored except for the land underneath for the reason that

plaintiff will not be entitled to compensation for the value of land. Admittedly, the plaintiff was not the owner of the land on which, the infrastructure was created and as such, the plaintiff cannot claim any compensation for the said land. The land either belonged to the State of Himachal Pradesh or "Mandir Kedarnath".

49. Thus, the plaintiff can be held entitled to compensation as under:

Cost of Building on Khasra No. 950 measuring 0-14-52 hectares	Rs. 1,16,50,000/-
Cost of services	Rs. 40,000/-
Cost of furniture	Rs. 13,05,000/-
Cost of laboratory material	Rs. 47,00,000/-
Total	**Rs. 1,76,95,000/-**

Issue No.4

50. The plaintiff had invested the amount for creation of infrastructure and was also entitled to be compensated but the defendants did not show any inclination to redress the grievance of the plaintiff. A notice under section 80 of the Code of Civil Procedure was also issued to the defendants before filing of suit but the same also remained unattended. Thus, the plaintiff cannot be

denied the benefit of interest on the aforesaid amount of Rs. 1,76,95,000/-. Accordingly, the plaintiff is held entitled to interest at the rate of 6% simple per annum from the date of filing of the suit, till the date of payment of decretal amount by the defendants No. 1.

Issues No. 5:

51. The defendants have led no evidence to discharge the burden. It has not been shown as to how the suit is not maintainable. The plaintiff has filed the suit after issuance of prior notices under Section 80 of the CPC. The defendants have not denied the factum of receipt of such notices.

52. The status of the 'Sabha' or the Society as societies under Societies Registration Act has never been disputed by the defendants. The entitlement and capacity of Dr. Shiv Kumar and as substituted by Dr Desh Bandhu to represent the Sabha and Society in the suit has also not been disputed.

Relief:

53. The suit is decreed. Defendants No. 1 is held liable to pay a sum of Rs. 1,76,95,000/- along with

interest at the rate of 6% to the plaintiff from the date of filing of the suit till the date of payment of decretal amount. No orders as to cost. Decree sheet be prepared accordingly.

54. Pending applications, if any, also stand disposed of.

(Satyen Vaidya)
Judge

23rd June, 2025
(kck)