

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2017

CORAM

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH

and

THE HONOURABLE Mr. JUSTICE M.SUNDAR

W.P.No.37743 of 2016

G.Saravanan

... Petitioner

Vs.

1.The Assistant Divisional Engineer Highways,
Construction and Maintenance,
City Road Sub Division I,
Chennai - 600 015.

2.The Chief Executive Officer,
O/o the Cantonment Board,
St. Thomas Mount,
Chennai - 600 016.

3.The Metropolitan Transport Corporation (Chennai) Limited,
rep. by its General Manager,
Pallavan Salai, Chennai - 2. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Mandamus directing the first respondent to restore the AC bus shelters and hoardings in Asharkana bus stop in GST road heading to Tambaram, St. Thomas Mount post office side (GST road).

For Petitioner : Mr.V.Lakshminarayanan

For Respondents : Mr.R.Vijayakumar
Addl. Government Pleader for R1

Mr.C.Mohan
for M/s.King & Patridge for R2

Mr.Chidambaram for R3

O R D E R

(Order of the Court was made by M.SUNDAR, J.)

This writ petition pertains to a bus shelter, which is described as air-conditioned bus shelter at Asharkana bus stop in GST Road heading to Tambaram, St. Thomas Mount Post Office side (GST Road) (hereinafter referred to as "said bus shelter" for brevity)

2. This writ petition has been heard for some time over several hearings by this Court.

3. To be noted, owing to submissions made by all the counsel, this writ petition proceeded thus far on the basis that the land on which said bus shelter is situate belongs to the Cantonment Board i.e., St. Thomas Mount, which is respondent No.2 before us. This has been recorded by this Court in its order dated 11.04.2017, wherein, this Court passed the following order:

"It is now settled that the land in question belongs to Cantonment and the final decision is to be taken by the respondent No.1. The only issue is the structural stability of the bus stand. Respondent No.1 has called for certain documents in this regard. The second respondent undertakes to furnish the said requisite documents within a week to the first respondent. A decision shall be taken within a week thereafter by the first respondent."

4. After 11.4.2017 order, to narrow down the issue and for the purpose of focus, this Court passed an order dated 02.06.2017. We deem it appropriate to extract the contents of the order dated 02.06.2017, which reads as follows:

"Mr.V.Raghavachari, learned counsel for the petitioner, Ms.Vasudha Thiagarajan, learned Additional Government Pleader for the first respondent, Mr.C.Mohan for M/s.King & Partridge, learned counsel for the second respondent and Mr.M.Chidambaram, learned counsel for the third respondent, are present.

2. The matter was heard for some time.

3. Read this proceedings in conjunction with our earlier proceedings, dated 11.4.2017.

4. It is not in dispute that pursuant to our earlier proceedings dated 11.4.2017, the second respondent Cantonment has submitted some papers to the first respondent State Highways

Department.

5. However, the State Highways Department has returned the papers for some clarification and for some certification. Second respondent says that it has resubmitted the papers.

6. Besides Ms.Vasudha Thiagarajan, learned Additional Government Pleader, Mr.M.K.Subramaniam, learned Government Pleader has also volunteered to represent the first respondent and to assist the court in this matter.

7. With regard to the papers submitted by the second respondent pertaining to the structural stability and electrical component aspects of the air-conditioned bus stand, it is open to the first respondent to have the same examined by their own technical experts.

8. The learned Government Pleader, considering the larger public interest, undertakes to do so and report to the Court by next hearing.

9. The first respondent, namely, Assistant Divisional Engineer Highways, Construction and Maintenance, City Road Sub Division-1, Chennai-600 015, shall also be, personally, present in Court in the next hearing date.

Post the matter on 08.06.2017."

5. When the matter was last taken up on 27.10.2017, Mr.R.Vijayakumar, learned Additional Government appearing for respondent No.1, which is the State Highways Department, raised an issue that the land on which the said bus shelter is situate does not belong to the second respondent / Cantonment Board and that it belongs to the State Highways Department and is part of a Highway i.e., what is now known as Grand Southern Trunk Road (GST Road). Further to get instructions, the learned Additional Government Pleader sought time and the prayer was acceded to.

6. Today (30.10.2017), when the matter was taken up, learned Additional Government Pleader placed before us photocopies of the extract of revenue records and photographs.

7. We have perused the photocopies of the extract of the revenue records and the photographs. Copies were also given to the learned counsel appearing for the Cantonment Board (respondent No.2) as well as the learned counsel for the writ petitioner, who is the contractor.

8. On a perusal of the same, it came to light that the said bus shelter is situate between compound wall of a property and foot path, protruding partly into the foot path. However, Mr.C.Mohan, learned counsel for M/s.King & Patridge, appearing for the second respondent / Cantonment Board stated that the land in question, in which the said bus shelter is situate, does not belong to the State Highways Department.

9. It was also pointed out before us that the said bus shelter has been in existence for two decades. It is also brought to our notice that the income generated by the writ petitioner/contractor from advertisements in the said bus shelter will be utilised for payment of electricity charges and for maintenance of the public convenience. This statement is recorded.

10. We are informed that permission to run the said bus shelter has been given for a period of five years starting from 14.4.2015.

11. We were also taken through a letter issued by the State Highways Department being letter No.347/2016/JDO-1/, dated 13.6.2017 annexed to a status report dated 15.6.2017 filed earlier in this Court. A perusal of the aforesaid letter dated 13.6.2017 would show that the State Highways Department has granted permission under Section 26(2) of the Highways Act. This presupposes that the land on which the said bus shelter is situate belongs to the State Highways Department.

12. Be that as it may, a perusal of our earlier order/proceedings dated 02.6.2017, which has been extracted supra, would reveal that the issues have been narrowed down only to two aspects viz., (i) structural stability of the said bus shelter and (ii) safety of the electrical circuit of the said bus shelter. Now the State Highways Department represents that inspection has been done and that they are satisfied on both these aspects i.e., structural stability and electrical circuit..

13. Another issue that was brought up before us is that the land in which said bus shelter is situate is a hoarding free zone. To this, learned counsel appearing for the petitioner Mr.V.Lakshminarayanan and Mr.C.Mohan, learned counsel for M/s.King Patridge, appearing for the Cantonment Board submit that no hoardings will be erected and it will only be advertisements and that too for generating income for the purpose, which we have set out supra in this order. They also assure that all advertisements will be after obtaining necessary permissions and clearances from authorities concerned.

14. We, therefore, give the following directions:

(a) Air Conditioned bus shelter at Asharkana bus stop in GST road heading to Tambaram, St. Thomas Mount Post Office side (GST road) already erected (which has been in existence for more than 20 years) shall be made operational at the earliest and in any event, within a period of one month from the date of receipt of a copy of this order.

(b) No hoardings shall be erected and only permissible advertisements, after obtaining requisite approvals/permissions from authorities concerned, shall be in the said bus shelter.

(c) Question of whether the land on which the said bus shelter is situate belongs to the second respondent / Cantonment Board or the State Highways is left open. This issue if brought up before authorities having jurisdiction or before a civil court, shall be decided by such authorities and/or civil courts uninfluenced by/without being swayed by this order.

15. We have given the aforesaid directions in larger public interest, as we are informed that a bus shelter has been in existence for 20 years at the site and said bus shelter is only an air conditioned/reformed version of the same.

16. In the light of the preceding directions, this arrangement shall be in vogue only upto the contractual period, and for convenience it is fixed as upto 30.04.2020. Continuation of the said bus shelter thereafter shall be subject to the dispute regarding ownership of the land being resolved or any amicable settlement/arrangement being arrived at between the State Highways Department and the second respondent / Cantonment Board.

17. With the above observations and directions, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Assistant Divisional Engineer Highways,
Construction and Maintenance,
City Road Sub Division I,
Chennai - 600 015.
- 2.The Chief Executive Officer,
O/o the Cantonment Board,
St. Thomas Mount,
Chennai - 600 016.
- 3.The General Manager,
Metropolitan Transport Corporation (Chennai) Limited,
Pallavan Salai,
Chennai - 2.

+lcc to Mr.V.RAGHAVACHARI Advocate, S.R.No. 76330
+lcc to Mr.King & Partridge Advocate, S.R.No. 76590
+lcc to Mr.Chidambaram Advocate, S.R.No. 76476

W.P.No.37743 of 2016

PSV (CO)
TR (24/11/2017)

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