

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.18865 of 2017

ORDER:

This Writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

‘...to pass an Order, Direction or Writ and more particularly one in the nature of Writ of mandamus declaring the acts of the respondents in making attempts to interfere with the functioning of the petitioner, its activities and works over the property admeasuring Ac.9-37 guntas, forming part of survey Nos.244/ 2 to 244/ 6, 244/ 16 to 244/ 30 and 244/ 103, situated at Pedda Amberpet village, Hayatnagar mandal, Ranga Reddy District, as illegal, high handed, unconstitutional, violative of principles of natural justice, etc., consequently direct the respondents not to interfere with the possession and enjoyment of the petitioner over the said land in the interest of justice and to pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of case.’

2. I have heard the submissions of *Sri Shyam S Agarwal*, learned counsel appearing for the petitioner, and of the learned Government Pleader for Transport appearing for the respondents 1 to 3. I have perused the material record.

3. The writ petition is filed questioning the action of the Regional Transport Officer/ 3rd respondent in making attempts to interfere with the functioning and activities of the writ petitioner-Association in respect of the subject property.

4. From the pleadings including counter, reply affidavit & the documents filed and the submissions made, the following undisputed facts and allied aspects are discernable:

Truck Operators Highway Amenities Society ('TOHAS', for brevity) with its registered office in the Union Territory of Delhi was established for the following among other purposes:

- '(a) To found and establish on or about the National Highways, Parking Complexes, including truck parks, resting places for the truck operators, their drivers, cleaners and other operating staff etc., and provision of such other amenities like lodging, boarding etc., for them as will be conducive to their well being.
- (b) To establish and maintain reading room and a common place for recreation, indoor sports or other activities designed from time to time to develop civic consciousness and reputable conduct and character amongst the truck operators and drivers.
- (c) To promote temperance and community building amongst truck drivers and operators.
- (d) To improve the efficiency of the truck drivers and other staff through inculcation of hygienic ideas and living amongst the truck operators and staff.
- (e) To provide and maintain first aid or medical assistance and/ or other identical reliefs on or around the National Highways in emergencies and accidents.
- (f) To provide facilities for repairs to vehicles in case of breakdowns and emergencies.'

5. To achieve the above objects, TOHAS is permitted to take over appropriate areas of land or land, sites in or around the National Highways from the Central Government and build, construct and maintain resting places, dormitories etcetera with the help of the funds subscribed by the Truck Operators, Government or other public organizations or charities to the extent and in such manner as determined by the TOHAS from time to time including maintenance of such installations and services as may be provided and allow

parking of commercial and other vehicles plying on highways against appropriate fees or charges determined by the TOHAS from time to time and provide boarding and lodging facilities to truck drivers and drivers of other vehicles and staff against appropriate charges and hold and manage all funds, subscriptions and donations for the above purpose and do the other acts needful, namely, open accounts in banks & operate the same, raise funds for carrying out the objects of the TOHAS, invest surplus funds, employ staff, provide facilities - such as, repair shops/mobile work shops/recovery vans/ spare part shops for repairs to the vehicles in case of breakdowns and do all such other acts and things as may be necessary. The rules & regulations in this regard provide for – (i) Apex Governing Body with a representative of Ministry of Shipping & Transport, Transport Wing as Chairman; and (ii) Branch Unit of Society for each State with Transport Commissioner/ Controller as Chairman. The rules and regulations provide for powers and duties of the two Bodies and other related matters.

6. Thus, the Government of India constituted TOHAS by framing rules and regulations by constituting one Apex Governing Body at all India Level and one Branch Unit of the TOHAS for each State. The 4th respondent is the State Unit of TOHAS functioning under the aegis of the Central Government represented by its Secretary and Regional Transport Commissioner as its Chairman. The writ petitioner Association of Motor Transport Operators in the State was registered vide Registration no.456/ 73. The writ petitioner Association is a member of the 4th respondent. At the instance of the Central Government, the State Government transferred land admeasuring Ac.18.12 guntas in Sy.no.244 of Amberpet village, Hayatnagar Mandal, Ranga Reddy District to the 4th respondent for construction of Truck Terminal and providing amenities.

7. In this backdrop, the case of the petitioner Association is this: 'The respondent no.4 raised construction over the land with the help of Roads &

Building Department for providing amenities to the Truck Operators. Some property out of the above property was affected in the Outer Ring Road Project and hence, land admeasuring Ac.9.37 guntas remained and reverted back to the 4th respondent. The 4th respondent leased out to the petitioner Association the above said property under registered lease deed, dated 06.10.2016, for the purpose of providing wayside amenities to the truck operators. The said lease deed was executed in pursuance of resolutions passed by the Governing Body comprising of the 2nd respondent, who is the Chairman. As per the terms of the lease deed, the writ petitioner Association secured electricity service connection, raised constructions and made arrangements for development of the property. On 02.06.2017, the Regional Transport Authority, Ibrahimpattanam, with some men stating to be the officials of the office of the said authority barged into the property and asked the representatives and workmen of the petitioner Association to leave the property and that if they do not leave, they will be got arrested. One of the office bearers rushed to the spot and asked them to show proceedings, if any, in that regard. But, the said persons refused to show any papers. Hence, the writ petition is filed.'

8. Per contra, the case of the respondents as per the submissions made and as stated in the counter affidavit of the 2nd respondent/ Commissioner of State Transport Authority, in brief, is as follows:

The petitioner Association has no *locus standi* to question the functioning of the respondents and their activities over the land admeasuring Ac.9.37 guntas in Sy.no.244. The 4th respondent is a Society of Truck Operators represented by the 2nd respondent as its Chairman. The Executive Body of State Unit consists of – (i) Transport Commissioner (Chairman); (ii) Representative of Roads Wing of Union Ministry of Transport; (iii) Representative of the Transport Wing of Union Ministry of Transport; (iv) Chief Engineer of State (PWD)/ His Nominee; (v) ALG/ SP Traffic of State; (vi)

Representative of AIMTC; (vii) Representative of IFTC; (viii) President of State Level Truck Union/ Association (Member Secretary); and, (ix) A representative member of Truck Unions from each region in the State Elected Body composed of the President or their nominees of each District. The Truck Operators Highway Amenities Society consists of governing body of – (i) Representative of Ministry of Shipping & Transport, Transport Wing (Chairman); (ii) Representative of Ministry of Shipping & Transport, Roads Wing; (iii) Transport Commissioner/ Controller of the State wherein amenities are provided. Roads Wing of Union Ministry of Transport; (iv) Chief Engineer of State (PWD) wherein amenities are provided; (v) DLG Traffic of State wherein amenities are provided; (vi) Secretary General of All India Motor Transport Congress; and, (vii) President of State Level Association of Truck Operators wherein amenities are provided. There shall be a Branch Unit of Society for each State. The State Body comprises of an Executive Body with Transport Commissioner/ Controller as Chairman. The Apex Body as per its powers & duties has to determine all questions of general policy of the Society and it has power to add, alter or amend rules or regulations and to control and coordinate the working of State Units by issuing suitable instructions from time to time and to review the working and financial performance of the State units. The State unit, as per its powers and duties, may take over appropriate areas of land sites in or around the National Highways from the Central Government and build, construct and maintain resting places, dormitories etcetera with the help of the funds subscribed by the Truck Operators, Government or other public organizations or charities to the extent and in such manner as determined by the TOHAS from time to time including maintenance of such installations and services as may be provided and allow parking of commercial and other vehicles plying on highways against appropriate fees or charges determined by the Society from time to time and provide boarding and lodging

facilities to truck drivers and drivers of other vehicles and staff against appropriate charges and hold and manage all funds, subscriptions and donations for the above purpose and do the other acts needful, namely, open accounts in banks & operate the same, raise funds for carrying out the objects of the TOHAS, invest surplus funds, employ staff, provide facilities - such as, repair shops/ mobile work shops/ recovery vans/ spare part shops for repairs to the vehicles in case of breakdowns and do all such other acts and things as may be necessary and provide for the Apex Governing Body, its balance sheet duly audited by a Chartered Accountant within three months of the closure of each financial year. The Governing Body of the State Unit shall meet at least three times in a year and shall have Annual General meeting. The Governing Body determines all questions of general policy of the TOHAS. The Apex Governing Body will control and coordinate the working of the State units and issue suitable instructions from time to time. The State Body will review the working and financial performance of the State Units. The object of allotment of the land was to use the land for the purpose of the objects and the purpose and objects cannot be deviated. The TOHAS has to establish National Highway Parking Complexes including Truck parks, Resting places for Truck Operators & their Drivers, Cleaners and other staff, provide dormitories and facilities like Lodging & Boarding for their well being. The land allotted cannot be diverted to any third party society. The alleged resolution by the Governing Body of the State Unit to lease out the land to any third party and Truck Union is not permissible. Mohd. Khan has no authority to execute the lease deed in favour of the petitioner Association being represented by his own Son, Mohd. Imran Khan, as its General Secretary. The TOHAS unit has not empowered Mohd. Khan to part with the property in favour of third party without the knowledge and concurrence of the 2nd respondent, who is the Chairman. The petitioner Association is the brainchild of Mohd. Khan. The said Association is being

represented by no other than the Son of the said Mohd. Khan. The alleged lease deed has not seen the light of the day. The property was leased out for 30 years on annual rental basis is denied. It is not disputed that the subject land has been utilized by the TOHAS for providing services to its members. With the funds provided by the Government of India, TOHAS constructed the building with the help of R&B Department for providing amenities to the Truck Operators. Since part of the land was affected in the Outer Ring Road project, the State Government, which has taken the entire land initially, has re-delivered possession of the subject land of Ac.9.37 guntas to TOHAS. TOHAS represented by 2nd respondent as its Chairman is in physical and actual possession of the said land. The 2nd respondent being the Chairman can take care of the property. The allegations that the officials of the 3rd respondent and others barged into the property and stated as alleged in the writ petition is false. The alleged interference is denied. The alleged possession of the petitioner Association over the property is denied. Since 2nd respondent has to take care of the property day and night, he and his subordinates are maintaining the property and taking care of it. Hence, the writ petition may be dismissed.

9. The reiterated case and the further case of the petitioner Association is as follows: 'In the year 2007, a meeting of the Executive Body of the TOHAS was held, on 07.04.2007, and it was resolved and recorded in the minutes of the meeting that three of its properties at Pedda Amberpet, Pet Basheerabad, and Timmapur have been let out for petrol/diesel outlets and that detailed note on Kakinada site was deferred and that it was proposed to let out sites of the 4th respondent to Lorry Operators' Associations concerned on maximum lease period and on nominal lease amount to provide wayside amenities to the operators in accordance with bye-laws for establishment of petrol/diesel outlets and providing other amenities by concerned Lorry Operators

Associations and that the said minutes were signed by the then Transport Commissioner, who is the Chairman of the 4th respondent and hence, the contentions of the official respondents are false and stand disproved. The proceedings of the HMDA related to allotment and panchanama and delivery of possession thereof are addressed to the Secretary of the 4th respondent. The Chairman of the 4th respondent has been authorizing the Secretary from time to time to execute necessary documents, more particularly, lease agreements in favour of the lessees. In view of the authorization and resolution the contentions of the official respondents are false. The lease in favour of the petitioner Association is valid and binding on all the respondents. The 4th respondent let out different properties in the State to different tenants is undisputed. The 2nd respondent has not released even a single pie for the development of the property. The petitioner Association filed photographs showing the development involving several lakhs of rupees. The 2nd respondent resorted to perjury in making statements to the contrary. The petitioner Association is having voluminous records in that regard, which cannot be disputed. Properties of Kakinada are also let out in the year 1992 and were developed by the Lorry Owners Association by making huge investments and the same are being operated without reference to the 4th respondent. The lands in Pedda Amberpet and Pet Basheerabad were leased out in the years 2003 and 2004 and the land in Timmapur of Karimnagar District was let out in the year 2005 and the land at Singarayakonda of Prakasam District was let out in the year 2007. The petitioner Association was established in the year 1973 and is a member of the 4th respondent and is working since then for the welfare of Truck Operators. The official respondents and the 4th respondent cannot take the law into their hands and cause harm to the petitioner Association, which has already invested huge amount of public money for the development of the subject property on the basis of subject lease deed executed as per law.'

10. I have given earnest consideration to the facts & submissions. I have perused the material record.

11. Though the pleadings and the submissions made in line with the pleadings are lengthy, this matter may not detain this Court for long.

12. One Mohd. Khan is the Secretary of the 4th respondent. The 2nd respondent is its Chairman. Metropolitan Commissioner, HMDA, in his proceedings no.B5/214/2016, dated 23.07.2016, noted that it is agreed to return the vacant land of an extent of Ac.09.37 guntas in Sy.no.244 of Pedda Amberpet village to the 4th respondent and, therefore, directed [Project Director] PD & Special Collector, ORRP and CGM, HGCL to take necessary action for handing over possession of the said land to the Secretary, TOHAS under a cover of panchanama and report compliance. The copy of the same is marked to the Secretary of the 4th respondent as well as the Commissioner of Transport, Khairatabad. The property was delivered to the Secretary of the 4th respondent is undisputed. Further, the copy of the minutes of the meeting, dated 07.04.2007, held in the Conference Hall of the Transport Commissioner's office, Transport Bhavan, Transport Complex, Somajiguda, reflect the following aspects: 'The then Chairman-Ajay Misra, the Secretary, TOHAS, Mohd. Khan, and the General Secretary, State Motor Transport Operators' Association were present at the meeting along with the Joint Transport Commissioner (P) and others. In that meeting it was resolved and accordingly it was recorded in the minutes of the meeting to let out TOHAS sites to Lorry Operators Association on maximum lease period of thirty years on a nominal lease amount as the basic purpose of TOHAS is to provide wayside amenities to the operators in accordance with bye-laws for establishing petrol/diesel outlets and other amenities by the concerned Lorry Operators Associations.' The copy of the order in R.no.25/TOHAS/03 of the Transport Commissioner & Chairman, TOHAS, issued to the Mohemmad Khan, Secretary, TOHAS, Hyderabad, on a

perusal discloses that the said authority authorised Mohd. Khan, the Secretary to sign the lease agreement with the State Motor Transport Operators Association, Telangana, Hyderabad, on behalf of TOHAS for leasing out TOHAS Truck parking site at Pedda Amberpet. The copy of the said order is also marked to the said Association. The copies of the said resolution and the said order were filed along with the reply affidavit of the petitioner after serving notice on the learned Government Pleader's office is not in dispute. No further reply is filed by the official respondents denying the same. Even though arguments were advanced based on such documents, no affidavit of the then Chairman, TOHAS (Sri Ajay Misra, I.A.S., or that of the then Joint Transport Commissioner (Sri C.L.N.Gandhi) are filed disputing the correctness of the said documents. The copies of the said resolution and order clinch the issue in favour of the petitioner Association. Pursuant to the said resolution and the order of authorization, Mohemmad Khan, the Secretary of TOHAS, executed the registered lease deed, dated 06.10.2016, in favour of the petitioner Association, is undisputed. In that view of the matter, the relationship between Secretary of the petitioner Association and the Secretary of the 4th respondent makes no difference to the merits of the matter. The copy of the said registered lease deed filed with the material papers also refers to the resolution aforestated. Since the registered lease deed was executed as per the resolutions in the minutes, dated 07.04.2007, to which the then Chairman, TOHAS, Sri Ajay Misra, and all others are parties and as per the subsequent orders, dated 03.10.2016, of the said Chairman authorising the Secretary of the 4th respondent, Mohammed Khan, to sign the lease agreement with the writ petitioner Association and for leasing out the subject site on behalf of TOHAS, the contentions of the 2nd respondent contrary to the contents of the said official documents are untenable and need no countenance. Be it noted that the terms of the registered lease deed executed in October, 2016, amply

support the case of the petitioner Association and belie the contentions in the counter affidavit. Subsequent to the lease deed, electricity service connection was obtained and the property was and is being developed by making huge investment by the petitioner Association, according to its contentions. Though it is stated in the counter affidavit that with the funds provided by the Government of India, the 4th respondent constructed the building, no documentary proof is produced by the official respondents. The specific case of the petitioner Association is that after the delivery of property under the registered lease deed, an arrangement was made for development of the property and that the land was levelled and the property is being developed by incurring huge expenditure and that a compound wall was constructed and a gate was erected and that the development of the property is in the process. The photographs filed along with the writ petition evidences the said facts.

13. On the above analysis and in the light of the resolution and the authorization order, this Court finds that the contentions in the counter affidavit are untenable and that the registered lease deed executed by the Secretary of the 4th respondent in favour of the petitioner Association pursuant to not only the resolution but also the order of authorization, is valid and binding. Therefore, the contentions in the writ petition merit consideration and the writ petition deserves to be allowed.

14. In the result, the Writ Petition is allowed. However, it is made clear that this order shall not preclude the Chairman and Secretary of the 4th respondent in performing their ordained duties in accordance with the rules & regulations.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M. SEETHARAMA MURTI, J

18.01.2018

Note:- Issue CC by 22.01.2018
(B/ o) RAR

