



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P (MD) Nos.17462 to 17465 of 2021

and

W.M.P. (MD) .Nos.14322 to 14329 of 2021

WEB COPY

W.P. (MD) .No.17462 of 2021

M/s.Prakash Arts Private Ltd.,
Represented by its Regional Head,
Mr.M.Yogan

... Petitioner

Vs.

1.The Commissioner,
Madurai Municipal Corporation,
Arignar Anna Maligai,
Thallakulam,
Madurai - 625 002.

2.The Assistant Commissioner,
Madurai Municipal Corporation,
Arignar Anna Maligai,
Thallakulam,
Madurai - 625 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned demand notice in Ma.Va.1/08595/2020 dated 15.06.2021 in connection with SRV-I Package passed by the second respondent and to quash the same and forbearing the respondents or their men or agents or their sub-ordinates from removing the advertisement made by the petitioner in the 13 Bus Shelters of Package SRV-I constructed by the petitioner.

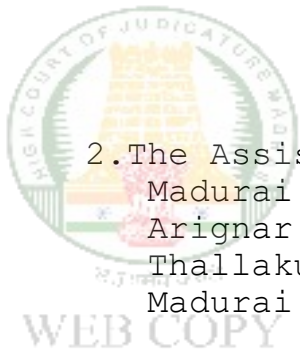
W.P. (MD) .No.17463 of 2021

M/s.Prakash Arts Private Ltd.,
Represented by its Regional Head,
Mr.M.Yogan

... Petitioner

Vs.

1.The Commissioner,
Madurai Municipal Corporation,
Arignar Anna Maligai,
Thallakulam,
Madurai - 625 002.



2.The Assistant Commissioner,
Madurai Municipal Corporation,
Arignar Anna Maligai,
Thallakulam,
Madurai - 625 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned demand notice in Ma.Va.1/08595/2020 dated 15.06.2021 in connection with NRV-V Package passed by the second respondent and to quash the same and forbearing the respondents or their men or agents or their sub-ordinates from removing the advertisement made by the petitioner in the 22 Bus Shelters of Package NRV-V constructed by the petitioner.

W.P. (MD) .No.17464 of 2021

M/s.Prakash Arts Private Ltd.,
Represented by its Regional Head,
Mr.M.Yogan

... Petitioner

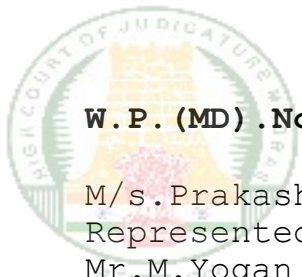
Vs.

1.The Commissioner,
Madurai Municipal Corporation,
Arignar Anna Maligai,
Thallakulam, Madurai - 625 002.

2.The Assistant Commissioner,
Madurai Municipal Corporation,
Arignar Anna Maligai,
Thallakulam,
Madurai - 625 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned demand notice in Ma.Va.1/08595/2020 dated 15.06.2021 in connection with NRV-II Package passed by the second respondent and to quash the same and forbearing the respondents or their men or agents or their sub-ordinates from removing the advertisement made by the petitioner in the 12 Bus Shelters of Package NRV-II constructed by the petitioner.



W.P. (MD) .No.17465 of 2021

M/s.Prakash Arts Private Ltd.,
Represented by its Regional Head,
Mr.M.Yogan

... Petitioner

WEB COPY

Vs.

1.The Commissioner,
Madurai Municipal Corporation,
Arignar Anna Maligai,
Thallakulam,
Madurai - 625 002.

2.The Assistant Commissioner,
Madurai Municipal Corporation,
Arignar Anna Maligai,
Thallakulam,
Madurai - 625 002.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned demand notice in Ma.Va.1/08595/2020 dated 15.06.2021 in connection with SRV-IV Package passed by the second respondent and to quash the same and forbearing the respondents or their men or agents or their subordinates from removing the advertisement made by the petitioner in the 6 Bus Shelters of Package SRV-IV constructed by the petitioner.

For Petitioner	: Mr.V.S.Kumaraguru For M/s.Gnanadesikan Law Associate
For Respondents	: Mr.P.Athimoolapandian Standing Counsel. (In all Writ Petitions)

COMMON ORDER

In these four Writ Petitions, the petitioner assails separate demand notices of the Corporation of Madurai in relation to contracts awarded on Build Operate and Transfer (BOT) basis in relation to the removal and construction of bus shelters. The concession period under these contracts is fifteen (15) years commencing from the Commercial Operation Date (COD). According to the petitioner, the Corporation of Madurai allotted packages for construction of bus shelters to third parties at a low concession fee and that the award of such contracts has adversely affected its business.

2.The impugned demand notices are challenged primarily on the basis that such demand notices are in respect of a larger number of shelters than those constructed by the petitioner. The present Writ



Petitions are filed in these facts and circumstances.

3.Mr.P.Athimoola Pandian, learned Standing Counsel for the Madurai Corporation, accepts notice on behalf of both the respondents. He submits that the present Writ Petitions are not maintainable because the dispute is contractual and should be resolved in accordance with the contractual dispute resolution mechanism.

4.Upon perusal of the four concession agreements, it is evident that each concession agreement contains a dispute resolution clause under Section 19 thereof. Such dispute resolution clause provides for the amicable settlement of disputes in the first instance. If such amicable settlement fails, the parties are required to resolve such disputes through arbitration.

5.In judicial review, ordinarily, the Court does not interfere with contractual disputes. Indeed, in the case at hand, the dispute arises out of a long term concession agreement. As such, the likelihood of disputed questions of fact is far higher in the context of a BOT contract of this nature. As indicated above, the contract contains an elaborate dispute resolution mechanism. Consequently, the petitioner cannot be permitted to depart from the dispute resolution mechanism prescribed in the contract. In this context, it is pertinent to indicate that the Arbitration and Conciliation Act, 1996 enables an aggrieved person to seek interim protection from the jurisdictional court under Section 9 thereof. In the alternative, the aggrieved person may also apply to the Arbitral Tribunal, upon its constitution, for interim protection under Section 17 thereof.

6.For reasons set out above, the petitioner has completely failed to make out a case to interfere with the impugned demand notices in exercise of jurisdiction under Article 226 of the Constitution. Therefore, W.P.(MD)Nos.17462, 17463, 17464 & 17465 of 2021 are dismissed without any order as to costs by leaving it open to the petitioner to avail of contractual remedies in accordance with law. Consequently, W.M.P.(MD).Nos.14322 to 14329 of 2021 stand closed.

Sd/-

Assistant Registrar (AS)

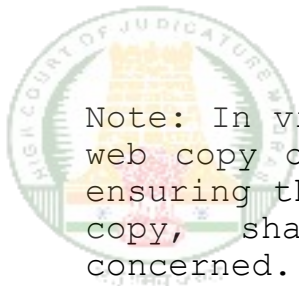
// True Copy //

/ /2021

Sub Assistant Registrar(CS)

tsg/nsr

<https://hcservices.ecourts.gov.in/hcservices/>



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

WEB COPY

+4 CC to M/s.GNANADESIKAN LAW ASSOCIATE, Advocate (SR-30604[F] dated 29/09/2021)

**W.P(MD)Nos.17462, 17463,
17464 & 17465 of 2021
29.09.2021**

ES(CO)/RS (08.10.2021) 5P 5C