

(2008) 08 MAD CK 0026

In the Madras High Court

Case No : Writ Petition (MD) No's. 2934 to 2944 and 2989 of 2008 and M.P (MD) No's. 1, 2 and 3 of 2008 in Writ Petition (MD) No's. 2934 to 2944 and 2989 of 2008

A. Mohamed Ali and Others

APPELLANT

Vs

The District Collector and The Executive Officer,
Oddanchathram Town Panchayat, (Special Grade)

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 08 MAD CK 0026

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Devaraj, for the Appellant; Isaac Mohanlal, for S. Siva Thilagar, for R2 and V. Chellammal, Spl. Govt. Pleader for R1, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard both sides and perused the records.

2. In all these writ petitions, the petitioners are all shop owners in the Bus Stand at Oddanchathram. The said bus stand belonged to

Oddanchathram Selection Grade Town Panchayat. The Panchayat constructed four commercial buildings in the bus stand and allotted shops to

various shop keepers.

3. The commercial buildings were constructed under various schemes. The building constructed under the ITSMT Scheme had 37 shops. The

building constructed with IUDP Fund consisted of 34 shops and other buildings had 36 shops. In all together, there were 115 shops. It is claimed

that the petitioners were in occupation of the shops for a number of years.

4. The agreement between the shop keepers and the Town Panchayat was signed with terms and conditions. One of the term of conditions

prescribed in para No. 12 of the agreement was that the shop keepers must agree to return the shop with Special Grade Town Panchayat, even

before the licence period and receive the compensation fixed by the Town Panchayat without taking the issue to any Civil Court. In para:10, it is

stated that if the Town Panchayat cancels the licence, the petitioner shall not claim any right over the shops.

5. When the Town Panchayat wanted to construct a new bus stand, they passed a resolution No. 241 dated 26.12.2007. Under the said

resolution, the Town Panchayat resolved to conduct major repairs over the commercial buildings in the bus stand, as the buildings were in a

dilapidated conditions and in the concrete buildings severe cracks had appeared. Therefore, the 14 shops which are situated in the northern side of

the Passengers Waiting Room, built under the ITSMT Scheme had their licences revoked, even though their licence period was from 01.04.2002

to 31.03.2010. The shop keepers were directed to vacate the shops immediately.

6. Under the circumstances, the petitioners who were aggrieved by the action of the respondents sent various representations. When they wanted

to pay the rental advance for the year 2008-2009, the same was returned by the Executive officer with a covering letter dated 13.03.2008.

7. It was thereafter the petitioners have filed these writ petitions. This Court granted an interim-stay on 28.03.2008 and ordered notice to the

respondents. This Court also appointed M/s. C. Mahadevan and M.M. Srinivasan as Advocate Commissioners to inspect the property and file a

report. The interim-stay granted was subsequently extended from time to time. Pursuant to the direction, the report of the Advocate

Commissioners was filed on 24.05.2008.

8. The report found that the old building is the bus stand was not in a good condition and IUDP Building was not fit for any commercial purpose.

However, the ITSMT Building was in a good condition, not requiring any major civil work. In the additional report dated 24.07.2008, it also

mentioned that the distance between the ITSMT Building and the old bus stand building was 35 feet.

9. Since in all these matters, counter affidavits have been filed, the matters were

taken up for final hearing and a common order is being passed.

The petitioners have also filed a reply affidavit to the counter filed by the respondent Executive Officer.

10. It is stated by the Executive Officer that the Government by G.O.MS. No. 183 MAWS Dept. dated 27.12.2007 had granted permission to

construct a new bus stand with an estimated cost of Rs. 1.5 crores. The Tamil Nadu Urban Development Fund also has sanctioned Rs. 95/-

Lakhs for the construction of the new bus stand.

11. In the four commercial buildings inside the bus stand, two buildings were in a dilapidated condition and they were causing great danger to the

public and shop keepers. In the two dilapidated buildings, there are 58 shops, one hotel and lodge. Out of which, 50 shops, one hotel and one

lodge have already vacated the premises and handed over vacant possession. It is only these eight persons who filed these writ petitions being

W.P. No. 2936, 2939 to 2942, 2989 to 2991 of 2008 and refusing to vacate. Out of the eight, two persons, have agreed to vacate their place,

namely, petitioners in W.P. Nos. 2990 and 2991 of 2008.

12. In view of the proposed construction of a new bus stand the existing bus stand was temporarily shifted near the Sub-registrar's office which is

1.5 kms from the existing place. Out of the other two buildings, in one building, there are 19 shops and they are road facing and there is no

entrance from inside the bus stand. They are not hindrance to the new construction. They have also agreed to vacate their shops at any time. Even

in the fourth building, there are 16 shops, 8 in the ground floor and 8 in the first floor. It is only the 8 shop owners who have refused to vacate.

13. Even though the Town Panchayat is not going to demolish the 16 shops in that building including the petitioner shops, the shops are required by

the Panchayat for the following reasons as found in the counter affidavit:

(i) The new building is situated very close to the 2 old dilapidated buildings (only 9 feet).

(ii) At the time of demolition it would certainly cause damage new building and it may endanger the life of the public who visits the shop.

(iii) If the public and shops were allowed inside the bus stand at the time of new construction, it would cause several problems including safety and

other problems.

(iv) It would also cause nuisance to the contract.

(v) In these shop building certain renovative work is to be done since the new building is constructed taking into the modern demands.

(vi) If the work is not finished within the stipulated time the construction cost would increase and it would spoil the entire project.

14. The Town Panchayat had also averred in the counter affidavit in paragraph No. 20 and it is as follows:

20. The old bus stand building is definitely causing endanger to human living and if any untoward incident occurred, then this respondent is

answerable to all concerned. Therefore, the decision taken is in the interest of the general public which cannot be found fault with. Further, in

I.D.S.M.T. Shop building (shown as "C" in proposed plan) also some renovative work is to be done. This respondent has no intention to demolish

this building. The license for 2008-2009 was refused only on the ground that if license is in force the petitioner as well as other shopkeepers will

run the shop and passengers and consumers would come and purchase, which would affect the new construction and endanger the public.

15. In support of the stand of the Town Panchayat, the field map of the bus stand was produced. It shows the shops occupied by the petitioners

were having entrance inside the bus stand and it has close proximity to the old building, which are sought to be demolished and reconstructed as

the new bus stand.

16. Though the petitioners have in their reply questioned the bona fides of the stand taken by the Town Panchayat by placing reliance upon the

Advocate Commissioner's Report, this Court is unable to agree with the stand of the petitioners. The field map shows that it will be an hindrance

to carry out the new construction work in the old building and will definitely a danger to the public at large as well as the petitioner's shopkeepers"

themselves.

17. In the light of the above, the petitioners vacate the shops occupied by them and hand over vacant possession. They must also clear all the

rental arrears if they want any further relief in this writ petition.

18. On behalf the Executive Officer, it was argued that the terms of allotment provides power to the Panchayat to cancel the licences and the shop

keepers had also agreed not to challenge such cancellation. Reliance was placed

upon the judgment of the Supreme Court in National Highway

Authority of India Vs. Ganga Enterprises and Another, . Emphasis was placed on para. 6 of the judgment, which is usefully extracted below:

6. ...It is settled law that disputes relating to contracts cannot be agitated under Article 226 of the Constitution of India. It has been so held in the

cases of State Bank of India and Another Vs. Mula Sahakari Sakhar Karkhana Ltd., , State of U.P. and others Vs. Bridge and Roof Co. (India)

Ltd., and Bareilly Development Authority and Another Vs. Ajay Pal Singh and Others, This is settled law. The dispute in this case was regarding

the terms of offer. They were thus contractual disputes in respect of which a writ court was not the proper forum. Mr. Dave, however, relied upon

the cases of Verigamto Naveen Vs. Government of Andhra Pradesh and Others, and Harminder Singh Arora Vs. Union of India (UOI) and

Others, These, however, are cases where the writ court was enforcing a statutory right or duty. These cases do not lay down that a writ court can

interfere in a matter of contract only. Thus on the ground of maintainability the petition should have been dismissed.

19. However, in the present case, the following distinguishing factors will have to be noted, before any decision is rendered.

(a) It is an admitted case by both sides that the building in which the petitioner's shop were located are not going to be demolished.

(b) In the same building, shops in the first floor facing the road side are in occupation and their leases have not been cancelled.

(c) The petitioners are having permission by the Town Panchayat upto the year 2010.

(d) The present order asking them to vacate the shop is only to facilitate the smooth construction of the new building.

20. These factors will show that the petitioners cannot be simply sent out without guarantee for reinduction to their own shops, after the

construction of the new building is completed.

21. The petitioners are directed to vacate their shops occupied by them within two weeks from the date of receipt of a copy of this order.

However, the second respondent Town Panchayat is bound to restore possession of those shops to the respective shopkeepers, after the

construction of the New Bus Stand work is completed. In case the shopkeepers

are restored to their possession, their possession will continue till

2010 and thereafter, it is for the Town Panchayat to decide the lease/rental agreement depending upon the legal requirement at that relevant time.

22. In the light of the above, all these writ petitions are dismissed with the above observations. There will be no orders as to Costs. Consequently,

connected Miscellaneous Petitions are also closed.