

(2016) 06 KAR CK 0181

In the Karnataka High Court

Case No : Writ Petition No. 1692 of 2015 (LB-BBMP)

D. Yashaswini

APPELLANT

Vs

Bruhat Bangalore Mahanagara Palike (BBMP), Bangalore

RESPONDENT

Date of Decision : 24-06-2016

Acts Referred:

Karnataka Municipal Corporations Act, 1976 — Section 421

Karnataka Transparency in Public Procurements Act, 1999 — Section 9

Citation : (2016) 6 KantLJ 122

Hon'ble Judges : L. Narayana Swamy, J.

Bench : Single Bench

Advocate : Sri S.R. Krishnakumar, Advocate, for the Petitioner; S.N. Prashantchandra, Advocate, for the Respondents No. 1; Jaykumar S. Patil and Brijesh Patil, Advocates, for the Respondents No. 2; Sri V.V. Shivashankar, Advocate, for the Petitioner; Shivaprabhu S.

Final Decision : Disposed Off

Judgement

L. Narayana Swamy, J.—The two individuals of owners of private property have filed these writ petitions assailing the action of the respondents in shifting putting up of a skywalk from the specified/identified location i.e., near Embassy Golf Link on Domlur Inner Ring Road (Amarjyothi Layout) from corner of Hero Honda Showroom to Corner of TVS Showroom to that in front of Site bearing Nos. 268 and 269, Amarjyothi HBCS Layout, Domlur, Bangalore.

2. It is the case of the petitioners that in order to establish Skywalks (Pedestrian Crossing Bridges) in Bangalore, the respondent 1 obtained feasibility report and identified 15 skywalk locations and item 15 at the above location is the subject-matter of the present writ petitions. The B.B.M.P. obtained feasibility report before identifying the location and thereafter called for tenders. There is no provision in the request for proposal document to shift the skywalk from the specified/identified location to a different location. The tender submitted by the respondent 2 in respect of the aforesaid skywalk was accepted by the first

respondent and letter of acceptance dated 21-6-2013 was issued. The respondent 2 also wrote a letter dated 23-8-2013 acknowledging and accepting the allotment in its favour. The respondent 1 issued work order on 5-12-2013 and simultaneously agreement dated 5-12-2013 was also entered into. By the letter dated 22-5-2014 the respondent 2 informed the respondent 1 that conceptual drawing together with architectural and structural design was already submitted on 21-1-2014 and also undertook to complete the work within 270 days. By the letter dated 9-6-2014 the 2nd respondent informed the first respondent that bhoomi pooja was performed at the specified location.

3. When this is the state of affairs, the petitioners noticed respondent 2 Wing to dig on the footpath in front of the properties of the petitioners. On enquiry, they learnt, instead of constructing a skywalk at the specified location, skywalk is sought to be constructed on the footpath in front of properties of the petitioners. The impugned shifting of the skywalk has directly, materially and substantially affected the proprietary and possessor)" right, title and interest over the properties of the petitioners. Hence the petitioners have filed the present writ petitions.

4. The respondents entered appearance and filed statement of objections. Though separate statement of objections were filed, in substance the averments made therein are one and the same. They have denied the case of the petitioners that shifting of the location would affect their possessory right, title and interest in respect of their properties. It is contended, after further survey and inspection the respondent 2 addressed letter dated 5-12-2013 seeking shifting/changing of location on account of curved portion of the road and it would have made it structurally not feasible/not recommendable for constructing foot over bridge, since large number of people crossover the said bridge and their safety could not have been risked, if not now, but in future. Because of insufficient site distance and clearance for ensuing vehicles approaching the skywalk/junction at the originally proposed location which would endanger the people using the sky walks and or the vehicles on road which if over speeded can lead to accident to the structure resulting in loss of life/property etc. Accordingly, after the inspection based on the report of the Executive Engineer of the first respondent, the Chief Engineer accorded his approval for shifting on 25-9-2014 which was further approved by the Special Commissioner (Project) on 26-9-2014 and finally by the Commissioner on 29-9-2014.

5. Accordingly, respondent 2 has once again submitted fresh foundational and structural drawings, thereby reducing the area from approximately 42 mtrs. to 12 mtrs. It is only thereafter the work for construction of skywalk was started with the excavation of the ground for building the lift when initially W.P. No. 55758 of 2014 was filed and thereafter, another writ petition was filed. It is stated, the construction does not in any way affect the utilisation of the properties by" the petitioners. The structural viability/feasibility is also kept in mind while according change of location. The location as identified and permitted

for the erection of lifts for the usage of the pedestrians has been inspected by the concerned Engineers of the BBMP, local ML,A and also the Mayor of the City and only after considering all the possible places/locations the shifting is allowed. As a matter of fact the nearby commercial establishments, information technology companies etc., have requested the Commissioner, BBMP to immediately take steps to erect skywalk for the convenience of the employees who are working. The construction of skywalk is in public interest and the private interest must yield to the public interest. If all the property owners object for the construction of skywalk in front of their property, the BBMP will not being position to provide the same anywhere in Bengaluru City in future. Ultimately the public at large would be the sufferers at the cost of the few private interest individuals.

6. I have heard the learned Counsel for the parties and perused the writ petition papers.

7. The learned Counsel for the petitioners submits that there appears to have been collusion between the respondents in shifting the location. The request letter to shift the location dated 5-12-2013 is obviously mala fide, manipulated, fraudulent, fabricated and antedated in collusion with main fide intentions and ulterior motives. On the very date, the work order and agreement were issued in favour of respondent 2, coupled with anterior and subsequent conduct of both respondents in directing construction of the skywalk at the original specified location is sufficient to establish the falsity and illegality of the letter and direction for shifting the skywalk. Impugned orders dated 6-9-2014 by the Chief Engineer and 29-9-2014 by the Special Commissioner (Project) are without jurisdiction or authority of law.

8. It is further contended that clause 6.1 of R.F.P. Document does not provide for shifting of the location but it only enables change the design and structure of skywalk depending upon the space availability in the location. Even assuming it permits shifting of location, the same ought to have been permitted after following the mandatory requirements contained therein and the procedure prescribed therein including obtaining a fresh technical feasibility report and failure to do so vitiates the impugned orders. The impugned orders are hit by principles of estoppel and acquiescence as the respondents have not only accepted the actual specified location, but also made substantial progress with the same. The impugned action is contrary to law and provisions of Karnataka Municipal Corporations Act, 1976 and the Karnataka Transparency in Public Procurements Act, 1999.

9. On the contrary, the learned Counsel for the respondents contend that clause 6.1 of R.F.P. Document enables to change the location, distance of shifting from the original place is only 20 meters, before shifting the place, spot inspection is carried out by the Engineers of the BBMP, based upon which the Executive Engineer submitted report and the Chief Engineer has approved the same and thereafter the Special Commissioner (Project) has also approved and as such the

detailed procedure is not required as sought to be contended by the petitioners. It is further submitted that construction of skywalk is in the public interest and the private interest must yield to the public interest. In this regard, the learned Counsel has placed reliance on *Avishek Goenka v. Union of India and Another*, (2012) 5 SCC 321. It is the further submission that in matters of tender, it is a contract, especially when it is an ongoing work and in the absence of any mala fides or arbitrariness, interference is not conducive to public interest which can be served only if the scheme is completed as expeditiously as possible. In this regard, reliance is placed on *Tejas Constructions and Infrastructure Private Limited v. Municipal Council, Sendhwa and Another*, (2012) 6 SCC 464.

10. I have given my anxious consideration to the submissions made by both the sides. It is not in dispute that when there is involvement of public interest as well as private interest, public interest must win the race. In the instant case, without keeping in mind for a while that the action in question is under challenge by the petitioners, it is to be seen whether the impugned shifting of skywalk is fair, proper and not hit by principles of estoppel and acquiescence. It needs no mention that all actions of the authorities must be fair, proper and in accordance with law.

11. The tender notification was issued in 2012. In response, the respondent 2 submitted his tender, which was accepted on 21-6-2013. The respondent 2 acknowledged and accepted the allotment of tender in its favour by its letter dated 23-8-2013. On 5-12-2013 work order was issued and agreement was also entered relating to the tender contract. On 21-1-2014 drawings were submitted by the respondent 1 to the respondent 2 for the purpose of putting up skywalk at the specified/identified location. On 22-5-2014 respondent 2 wrote letter to respondent 1 requesting for necessary approvals for the purpose of putting up skywalk at the agreed and specified/identified location. On 9-6-2014 the respondent 2 writes to respondent 1 that Bhoomi Pooja has been performed at the agreed and specified/identified location.

12. However, in August 2014 the 2nd respondent attempted to put up skywalk at a different place. It is not the case of the respondents that while identifying or specifying the earlier place for locating skywalk, inspection was not done, feasibility report was not obtained and its suitability was not assessed. It is their definite case that even while identifying the original specified/identified place, inspection was done, feasibility report by the technical experts was obtained and only thereafter tender notification was issued. When such is the definite case, what made the respondent-authorities to turn round and say that the identified/specified place for location of skywalk was not suitable is not clear.

13. As already stated above, tender contract in favour of the 2nd respondent was offered, accepted, acknowledged and concluded with issuance of work order and entering into tender agreement. Thereafter, the respondent 2 has also performed Bhoomi Pooja at the identified place for establishing skywalk as per the say in writing by the respondent 2 itself. In that view of the matter, it is not open for

the respondents to turn round and say that identified place not suitable and that shifting of the place is necessary, for so many reasons, which could be said only an afterthought, rendering the action arbitrary and not free from mala fides.

14. It is the case of the respondents that the 2nd respondent wrote letter dated 5-12-2013 seeking change of place in the location and thereafter following the procedure change of place is accorded. But on the same day, the work order in respect of the identified/specified place was issued and agreement was entered into. Looking to anterior and subsequent acts to 5-12-2013 by the respondents, the letter dated 5-12-2013 said to have been submitted by the respondent 2 must have been inserted or antedated as contended by the petitioners.

15. It is the contention of the respondents that clause 6.1 of Request for Proposal Document permits to change the place of location. In order to appreciate the same, it is necessary to extract clause 6.1 of R.F.P. Document, which reads as follows:

"6.1 Objective.-

The primary objective of construction of skywalks is to provide pedestrian crossing facility at the busy intersections of the road and at mid blocks of major roads for safe and convenient crossing. The skywalk should serve as feeder/dispersal from either side of the road corridors. The structures should cater to basic features for pedestrian movement. The structure should also provide mechanised/automatic movement features for ascending/descending by way of lift and with or without escalators (as per requirement) so as to increase the potential usage of structures. The structures shall also be protected from the environment factors like sun, light/dust/heat/rains etc.

Preference will be given to such designs incorporating the above features in innovative manner using steel/pre-engineered/composite structures adding aesthetics to the scheme. The operator shall construct structurally sound and aesthetically appealing facilities as per plans approved by BBMP. However, in areas where deviations are necessitated due to space or location constraints, BBMP shall consider permitting such variations with prior approval in consultation with designated technical experts. The requisite services as may be essential from the users" points of view would be provided by the operator."

By perusal of the above contents of the clause, this Court is of the view that clause 6.1 relates to structural designs of the skywalk due to space or location constraints and operator is also required to provide requisite services as may be essential from the users" points of view. Therefore, the contention of the respondents that clause 6.1 of R.F.P. Document enables them to change the place in the location cannot be accepted.

16. In the circumstances and for the reasons aforesaid, I am of the view that the impugned shifting of the place for putting up skywalk is not sustainable and the orders approving the same are liable to be quashed.

17. In the result, W.P. No. 1692 of 2015 is allowed. Impugned orders dated 6-9-2014 and 29-9-2014 passed by the respondent 1 therein are hereby quashed. W.P. No. 55758 of 2014 is accordingly disposed of. The respondents are directed to go on with the construction of skywalk at the specified/identified place as expeditiously as possible and complete the construction as per the terms of the tender contract agreed upon or to be agreed upon with modification of certain clauses in the agreement relating to time stipulation and such other consequential changes in pursuance of this order.