

(1994) 07 MAD CK 0014

In the Madras High Court

Case No : Writ Petition No. 11977 of 1994

General Advertising Agencies

APPELLANT

Vs

The District Collector, Madras District and The Authorised
Officer, (Hoardings) Collector's Office

RESPONDENT

Date of Decision : 25-07-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 07 MAD CK 0014

Hon'ble Judges : Abdul Hudi, J

Bench : Single Bench

Advocate : R. Gandhi for R.G. Naraendiran, M. Baskar and K.K. Sentilvelan, for the Appellant;

Final Decision : Dismissed

Judgement

Abdul Hudi, J.—This Writ Petition is by an advertising agency and it is directed against the District Collector of Madras and the Authorised

officer (Hoardings), Madras under Tamil Nadu Acquisitions of Hoardings Act, 1985.

2. The Writ Petition, as per its amended prayer, seeks a mandamus to direct the Respondents to consider the request of the Petitioner to provide

alternate site"" at three places in Madras specified in the petition"" instead of the hoardings which were removed from R.S. No. 4, Mylapore Village

and R.S. No. 4597/1, ""Mylapore Gemini Studio compound wall, Anna Salai, Madras. Originally the prayer was to provide the abovesaid

alternate sites"" for the above said hoardings removed. The present prayer is that the Respondent should consider the request of the Petitioners to

provide the said alternate site for the abovesaid hoardings removed.

3. According to the affidavit in support of the writ petition, the abovesaid

hoardings in the abovesaid two sites (S. Nos. 4 and 4597/1) near Gemini

Studio compound wall erected in 1968 were removed by the Corporation of Madras at the instructions of the Highways Department when the

said department proposed to construct a flyover bridge in Mound Road at the Gemini Junction. Though the affidavit does not specifically say in

which year actually the abovesaid hoardings were removed, Learned Counsel for the Petitioner states that it was in about 1971 when the

abovesaid flyover was constructed.

4. The other material allegations in the affidavit are as follows:

It is respectfully submitted that the first Respondent by proceedings dated 25.1.91 informing the Petitioner that their lease may be accorded

beyond 31.1.1971 except for the sites near the Gemini studio compound wall since construction of Gemini Flyover was to be undertaken. At that

juncture there was a clear and unequivocal promise made by the 1st Respondent that alternate site will be provided in respect of such sites which

were removed by the 1st Respondent for the construction of Gemini Flyover or for any other purpose. This promise is further fortified by the

proceedings of the 1st Respondent dated 26.2.1973 wherein the Petitioner were called upon to pay revised lease rent for other hoardings including

the sites which were removed adjoining the Gemini studio compound wall. The said demand was also paid by the Petitioner. Thus the 1st

Respondent having recognised the Petitioner's right in respect of the said hoardings even after removing them for construction of the Flyover and

having received the lease rent for the said hoardings for the subsequent years, and further the said sites having formed part of the list of hoardings

as mentioned in W.P. No. 9367/85, which was filed challenging the Acquisition Act, 1985, the Respondents are estopped from refusing to allot

alternative site to the Petitioner.

5. The main contention of Learned Counsel for the Petitioner is that the above referred to promise, which was no doubt oral, must be respected by

the Respondents and they must be directed to consider to provide alternate sites as prayed for. I am unable to agree with this contention. Sitting

under Article 226 of the Constitution of India, I cannot go into the question as to whether any such oral promise was made and that too in or about

1971, more than two decades ago, and no mandamus, as prayed for, could be

sought for at this distance of time, based on some alleged promise made, and that too, orally, more than two decades ago. On this very ground, the writ petition is totally devoid of any merit.

6. No doubt, Learned Counsel for the Petitioner points out that the said promise was fortified by the proceedings of the 1st Respondent dated

26.2.1973 and accordingly the Petitioner was paying the revised lease rent all these years even with reference to the above referred to hoardings,

despite their removal in about 1971 itself. Here again, I find that the above referred to proceedings of the 1st Respondent dated 26.2.1973, Inter

alia only states that with reference to 19 hoardings of the Petitioner including the above referred to two hoardings, lease rent has been revised from

22.7.1969 to 30.1.1971. Thus the said proceedings demanded only the lease rent due for the above referred to 19 hoardings upto 30.1.1971

only. Thus, in all a sum of Rs. 21,941.55 was demanded in respect of the abovesaid 19 hoardings. Even assuming that the Petitioner had paid that

amount due up to the period 30.1.1971, on that ground alone, the Petitioner cannot request for the above referred to alternate sites in lieu of the

abovesaid two hoardings removed. Though the above extracted passage of the affidavit avers that the lease rent for the said hoardings ""for the

subsequent years"" were received from the Petitioner, no prima facie proof even has been produced by the Petitioner to show that such payments

were made with reference to the hoardings, which were removed even after 30.1.1971 till today. This allegation cannot also be believed.

7. That apart, the reference to W.P. No. 9367 of 1985 is totally irrelevant. Even according to the supporting affidavit, that W.P. only challenged

the validity of the abovesaid Act and while the said writ petition was pending, interim order that was passed on 17.10.1985 only stated that the

Petitioner and other similarly placed persons were permitted to retain certain other hoardings (which were not removed but which were in

existence at the time when the abovesaid Act came into force) (By the said Act, those hoardings are said to have vested with the State

Government). Therefore, the abovesaid interim order or the abovesaid writ petition has no relevance at all to the present writ petition. Presumably

only to confuse the question at issue in this writ petition, those averments have been made.

8. Likewise, another averment also has been made in paragraph 11 of the supporting affidavit wrongly, presumably to mislead the Court, that related to another hoarding near V.G.P. Building at Anna Salai, which is said to have been removed by the Respondents. The following allegation in the said paragraph 11, "the Petitioners were constrained to approach this Hon'ble Court by way of Writ Petition" is totally false. The said writ petition was filed not by the present Petitioner, but by the Life Insurance Corporation of India against the Commissioner of Corporation of Madras, Collector of Madras and also the present Petitioner. The present Petitioner, thus, was only 3rd Respondent in the said writ petition. Since Petitioners' hoardings near the V.G.P. Building was just in front of the office of the abovesaid Life Insurance Corporation of India, it took objections to it and filed the abovesaid writ petition, viz., W.P. No. 1887 of 1987. The said writ petition was allowed this Court, granting mandamus for the removal of the abovesaid hoardings of the Petitioner. Aggrieved by the said order, the Petitioner herein preferred W.A. No. 328 of 1988. (General Advertising Agencies, Madras-17. v. 1. Life Insurance Corporation of India represented by its Zonal Manager, Southern Zone, Madras-2 and 2 Ors). The said Writ Appeal number alone is referred in paragraph 11 of the supporting affidavit. In the said writ appeal, order was pronounced on 1.11.1988 with the following observations: ...after the coming into force of the Tamil Nadu Acquisition of Hoardings Act, 1985 in the City of Madras, the question regarding the site for hoarding is to be considered by the Authorised Officer Under that Act and that since the Appellant would be applying for grant of alternative site for the hoarding to the Authorised Officer, the grant of Writ Petition No. 1887 of 1987 would stand in his way. We wish to therefore clarify in the interest of justice and to do substantial justice between the parties that, should any application be filed by the Appellant herein for grant of alternative site to the Authorised Officer under the Tamil Nadu Acquisition of Hoardings Act, 1985 that application shall be decided uninfluenced by the Order of the learned single Judge in Writ Petition No. 1887 of 1987. It is clear that the abovesaid observation, in the context of the abovesaid facts in the said case will have no application to the present case. Only to confuse the question involved here, the writ Petitioner has

brought in the above referred to order dated 1.11.1988, in W.A. No. 328 of 1988 and that too in a distorted way. It pains me very much that the writ jurisdiction is abused in this way by the Petitioner.

9. Incidentally, I may point out the following allegation in paragraph 8 in the supporting affidavit of this writ petition:

Since the 2nd Respondent did not refuse to provide alternative sites, the Petitioner is left with not other option....

If really the 2nd Respondent did not refuse to provide the required alternative sites, I do not know why the Petitioner should seek the mandamus prayed for.

10. For all the above reasons, the writ petition is dismissed in limine.