

(2001) 08 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No's. 14960, 15035 and 15733 of 1992

Sellmore Advertising (P) Ltd. and etc.

APPELLANT

Vs

Defence Estate Officer

RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2002 Mad 250

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : K. Thirumuraganandam, for the Appellant; C. Krishnan, Sr. Central Govt. Standing Counsel, for the Respondent

Judgement

E. Padmanabhan, J.—In W. P. No. 15733 of 1995, the writ petitioner prays for the issue of a writ of mandamus forbearing the respondents

from disturbing his peaceful possession of the hoardings in the following three places :-

i) At the Junction of G.S.T. Road and opposite to Jyothi Theatre and Monument -40 X 20;

ii) At the junction of G.S.T. Road and opposite to Jyothi Theatre & Monument - 40 X 20 ; and

iii) At the Junction of G.S.T. Road and opposite to DCM Toyota showroom and Rudhra Road - 40 X 20.

2. It is submitted by the learned counsel on either side that the case and counter case in W.P. No. 15035 of 1992 and W. P. No. 14960 of 1992

are identical as in the above writ petition No. 15733 of 1992, the difference being the location and number of hoardings erected and the same may

be disposed of by a common order. Hence these two writ petitions are tagged

along with W. P. No. 15733 of 1992 and are disposed of by this common order.

3. Heard Mr. Thirumuruganandam, learned counsel appearing for the petitioners in all the writ petitions and Mr. C. Krishnan, learned senior

Central government Standing Counsel for the respondents in all the writ petitions.

4. According to the petitioner, it had put up hoardings on the Mount Road between Katthipara Junction and New Airport. The Tamil nadu

Acquisition of Hoardings Act had come into place on 11-7-1985, but it has not been extended to the areas outside the city of Madras. The

respondents sought to auction a total number of 68 sites in the said stretch for putting up hoardings. There is a dispute between the respondents

inter se as to which sites in the above stretch belong to either the Cantonment Board or the Defence Estate Officer representing the Military and

Defence. It is further alleged that there is dispute as to whether the National High ways is entitled to the stretch of land, which they acquired for

expansion of National Highway.

5. The petitioner claims that it is paying the rent to the original lessor and continuing to pay up to March, 1993. The first respondent proposed to

auction at the first instance 20 sites out of 68 sites. In that context, the petitioner filed W.P. No. 5399/92 questioning the auction, while contending

that the lease period in respect of one site still subsists and it is valid,

6. The respondents advertised for auction and the petitioners, thereafter, filed W.P. No. 14732 of 1992 to secure certain interim orders. The

petitioner claims that in respect of the three sites, permission was granted to it on 8-5-1990 and petitioner also claims that it had paid rent up to

1993-94.

7. It is alleged that on 26-9-1992, the respondents with the aid of Military police started to cut certain hoardings on the stretch between Kathipara

Junction and New Airport, the petitioner raised objections and contended that action to remove, if any, should be taken under the Public Premises

(Eviction of Unauthorised Occupants) Act in respect of the hoardings. The petitioner alleged that there is a threat to remove the hoardings and,

hence, they have prayed for a mandamus.

8. The first respondent Defence Estate Officer contended that three hoardings

claimed are situate on the different locations one hoarding is partially situate on the cantonment land and partially on the defence land. The first respondent further contended that there is no dispute between the respondents with respect to the sites. It is claimed that the site belong to the Government of India. Ministry of Defence and the 2nd respondent has no authority whatsoever to grant the alleged permission to the petitioner to erect hoardings on the defence lands. It may be that the 2nd respondent may be entitled to collect advertisement tax and not the land rent. The averments set out in paras 1 to 8 of the affidavit are incorrect. The petitioner cannot erect or keep hoardings on the defence lands. The claim of the petitioner that it had paid rent to the 2nd respondent and assuming so the same will not entitle the petitioner to keep the hoardings on the defence lands.

9. In respect of defence lands, it is only the first respondent, who is the authority to grant permission to erect hoardings. The land, it is claimed has been classified as A-1 land for active use of Army and, therefore, question of getting permission from the 2nd respondent will not arise.

10. It is contended that there are no merits in the writ petitions as it has been filed on mere apprehensions, that the petitioner has no legal right to maintain the writ petition, that it had not obtained permission from the first respondent, that the writ petition is liable to be dismissed for not impleading the proper and necessary parties, that the petitioner has already instituted a civil suit in O.S. No. 2799 of 1993 on the file of the city civil Court. Chennai, which has since been transferred to the High Court and renumbered as C.S. No. 13 of 2001 and that the petitioner cannot maintain two parallel remedies. The issues involved in this case purely relate to title and such issues cannot be decided in the writ petition. The hoardings are erected on A-1 lands, which is meant for purposes of Army, and the 2nd respondent could only grant permission to lands classified as C lands as per the Cantonment Land Administration Rules, 1925. The petitioner is not entitled to seek any relief.

11. The 2nd respondent had filed a separate counter affidavit practically adopting the counter affidavit filed by the first respondent. The 2nd respondent has stated that on inspection, the first two hoardings in the schedule are located on GLR survey No, 307 and the third one is located on GLR survey No. 373 and the petitioner has unauthorisedly erected one more

hoarding with size 20 X 20 situate in GLR Survey No. 307, which is partially located on cantonment as well as on defence lands. The 2nd respondent has stated that inadvertently it had collected rent only in respect of the hoarding put up on the cantonment land. The 2nd respondent, further, contended that there is no dispute between the respondents 1 and 2. The 2nd respondent is entitled to receive only advertisement tax for any hoarding erected in the defence area and rent in respect of hoardings, which was permitted by it on the land owned by the cantonment board. The 2nd respondent, further stated that hoardings have been erected on the defence lands with respect to which the 2nd respondents has neither the authority nor it had granted permission to erect hoardings on payment of land rent. Even if the 2nd respondents office had collected land rent by inadvertence, it would not entitle the petitioner to keep the hoarding on defence land and the first respondent is entitled to take appropriate action accordingly. The 2nd respondent has also prayed for dismissal of the writ petition.

12. The petitioner came out with a version that it had put up hoardings on the lands owned by the cantonment board and there is dispute between the cantonment board and the Defence Department with respect to the particular piece of land where it had erected the hoardings. Such a plea has no legs to stand as the very Cantonment Board had admitted that the land over which the hoardings have been put up belong to the Defence and not to the Cantonment Board excepting one of the hoardings, which is located partially on the land owned by the two. The Defence Estate Officer had also stated that the hoardings have been put up on the defence land, which the petitioner is not entitled to, nor such a permission has been granted. However, the learned counsel for the petitioner contends that there is collusion between the 1st and 2nd respondent with respect to the location of the hoardings and that the petitioner is ready with the material to prove that the hoardings are located on the lands belonging to the cantonment. Such disputed question as to where the hoardings are located and to whom the lands belong to cannot be gone into in a writ petition as it is disputed question of fact.

13. Further, the 2nd respondent had admitted the title to the first respondent to the land in controversy. However, the title or other disputes or

possession of the land or the nature of land cannot be gone into in a writ petition. The petitioners only other grievance being that the petitioner is

being threatened and at any time the hoardings will be cut and removed by the first respondent without following the due process. The petitioners

also specifically stated that Military Police has taken action to remove the hoardings,

14. In these writ petitions, it will not be proper for this Court to adjudicate all these disputed question of title or possession or enjoyment or right to

erect hoardings, instead it would be sufficient if the respondents. Whoever is the owner of the land, is directed to initiate appropriate action by

following the due process of law before evicting or directing the petitioner to remove the hoardings put up by the petitioner. It is well open to the

respondents to initiate action under the Public Premises (Eviction of Unauthorised Occupants) Act, or such other statutory provision, as even

according to the respondents they have not authorised the petitioner or the authorisation, if any, given by the 2nd respondent has lapsed.

15. Be that so, it would be fit and proper to direct the respondents or whomsoever the owner of the land, either the Defence Estate Officer or the

Cantonment Board to initiate action to remove the hoardings with respect to the unauthorised hoardings or occupation of the petitioner in respect

of various locations under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, which alone is the due process required

to be followed by the respondents to remove the unauthorised occupation or hoardings put up by the petitioners. It is made clear and it is needless

to add that the respondents are at liberty to take suitable action without delay irrespective of any other pending proceedings as the direction is

issued with the consent of either side.

16. In the circumstances, in all the three writ petitions there will be a direction to the respondents to remove the occupation or hoardings put up by

the petitioners by taking such suitable action as may be open to them under the Public Premises (Eviction of Unauthorised Occupants) Act, and by

following the procedure prescribed therein. The writ petitions are ordered accordingly. Parties shall bear their respective costs.