
(1957) 03 MAD CK 0018
In the Madras High Court
Case No : Writ Petition No. 743 of 1956

The Anamallais Bus Transport (Private) Ltd.	APPELLANT
Vs	
The Commissioner, Dharapuram Municipality, Dharapuram	RESPONDENT

Date of Decision : 25-03-1957

Acts Referred:

Tamil Nadu District Municipalities Act, 1920 — Section 270B, 270E, 270E(1)

Citation : AIR 1957 Mad 781 : (1957) 70 LW 1038

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : M.K. Nambiyar, K.K. Venugopal and N.G. Krishna Aiyangar, for the Appellant; T. Ramakrishna, for C.A. Vaidyalingam and V.V. Raghavan, for the Respondent

Judgement

Rajagopalan, J.—The petitioner is a motor bus transport operator, with a branch at Dharapuram Municipality, governed by the provisions of the District Municipalities Act (Madras Act V of 1920), hereinafter referred to as the Act. The precise points wherefrom a bus should commence its journey and the point where the journey should end are fixed by the authorities under the provisions of the Motor Vehicles Act and the rules framed thereunder. It was common ground, that there was no bus stand as such in the Dharapuram Municipality, which one or more of the transport operators could or were required to resort to for the commencement of the outward journey or for the termination of the trip.

The petitioner was one of six bus transport operators for the authorised routes, for each of which Dharapuram was a terminal station. The petitioner's buses commenced the outward journeys on their daily trips from the petitioner's premises. The return journey ended at these premises. There was a booking office on the premises, at which the tickets were issued for the intending passengers, before the outward journey commenced. It was in the petitioner's premises that the buses were parked when they were not in use. It was there that the passengers boarded the buses for the outward journey. They alighted

from the bus there when it reached its destination of its return journey. No bus belonging to any other operator was permitted to use the petitioner's premises. None of these facts was in dispute.

2. Dharapuram Municipality treated the petitioner's premises as a private cart stand within the scope of Section 270-E of the Act and required the petitioner to pay an annual licence fee of Rs. 300 for each of the years 1954-55 and 1955-56. The petitioner contended that he did not keep open a private, cart stand within the meaning of Section 270-E, and he declined to pay the licence fee that was demanded. The Municipality prosecuted the petitioner for failure to take out the licence required by Section 270-E.

3. The petitioner applied under Article 226 of the Constitution for the issue of a writ of certiorari or any other appropriate writ to set aside as unlawful the demands made of him by the Dharapuram Municipality. Section 270-B (1) runs:

"The Municipal Council may construct or provide and maintain public landing places, halting places and cart stands and may levy fees for the use of the same."

The explanation to Section 270-B runs:

"A cart stand shall, for the purposes of this Act, include a stand for carriage, including motor vehicles within the meaning of the Indian Motor Vehicles Act, 1914, and animals."

The marginal note to Section 270-B is:

"Provision of public cart stands, etc."

It was common ground that there was no such public cart stand in Dharapuram for use of motor buses. Section 270-E (1) runs:

""No person shall open a new private cart stand or continue to keep open a private cart stand unless he obtains from the Council a licence to do so."

Sub-clause (5) of Section 270-E runs:

"The Council may levy for every licence granted under this section a fee not exceeding three hundred rupees per annum."

4. The learned counsel for the petitioner attacked the validity of the demand for licence fees made by the Municipality on two grounds: (1) The petitioner's premises did not constitute a private cart stand and he did not keep open a private cart stand, and (2) the annual payment of Rs. 300 demanded of the petitioner was not a fee, as no services were rendered to him by the Municipality in return for the payment of the amount; in any event, what was demanded was excessive and therefore unreasonable in its quantum.

5. I shall first deal with the second of these contentions. It was the maximum that Sub-clause (5) of Section 270-E prescribed. It was that maximum that was levied as a fee by the Dharapuram Municipality. Whether what was demanded as

fee for the licence prescribed by Section 270-E (1) bore a just and reasonable relation to the services rendered by the Municipality or were required to be rendered by the Municipality is the question, Since the principles on which the Court could decide whether the quantum of the fee demanded for a licence was reasonable or unreasonable are so well settled; it may not be necessary to refer to the case-law on this point.

6. In para 4 (c) of his affidavit the petitioner averred:

"Where private land is being used exclusively for the owner's own buses to take off or set down passengers, the Municipality does not attempt to regulate any business or trade nor does it render any service whatever or provide any amenity to enable the Municipality to exact a licence fee. As a matter of fact, no service whatever has been rendered by the Municipality with respect to the petitioner's private bus stand on private grounds and used exclusively for the owner's buses."

In traversing these, allegations the Commissioner of the Dharapuram Municipality averred" as follows in paras 9 and 10 of the counter-affidavit:

"The allegations in para 4 (c) of the affidavit are not correct. The levy of fee u/s 270-E of the Act is not a "tax" but only a "fee". The allegation that the Municipality does not attempt to regulate any business is not correct. The petitioner keeps open the bus stand and invites members of the public to alight or board the buses at the place, and such duty is cast on the Municipality such as to supervise the same; provide amenities for passengers and to provide for scavenging and cleaning the places. It is therefore not true to say that the Municipality does not render any service whatsoever.

I state that there are six private bus stands in the Municipality. Periodical inspections are made by the Municipal Commissioner, Municipal Health Officer, Sanitary-Inspectors, Sanitary masteries, Building Inspectors, etc., and the number of visits, the percentage of work involved and the expenses incurred by the Municipality in respect of seven (sic) bus stands are given below. Further, scavengers, sweepers and cartmen have to be deputed daily to sweep the areas as lot of dirt and rubbish accumulate in view of the fact that large number of people visit the bus stands for boarding and alighting from the buses.

Designation of Officer No. of Visits Annual rate of Pay Proportion of Pay of Services Rendered Cost of Services Rs.

Commissioner Once a week 230x12 -2760 2 percent 68

Health Officer Do 200x12 -2400 5 " 120

2 Sanitary Inspectors Daily 300x12 -3600 10 " 360

Building Inspector Twice a Week 120x12 -1440 5 " 72

6 Sanitary Maistries Daily 50 x 6x12 -3600 10 " 360

1844

Maintenance of drains and drain coverings in and near the bus stands 300

Total Rs. 2144

"10. I submit that the total licence fee collected from the bus stands in the Municipality is Rs. 1,800, whereas the cost incurred by the Municipality comes to about Rs. 2,144 as per details given above. I therefore submit that the licence fee levied bears proportion to and covers only the probable expenses that is incurred by the Municipality for rendering of such services. The levy is therefore only in the nature of a fee and is not intended to be a source of revenue for the Municipality."

7. In W. P. No. 376 of 1955 (Mad) (A), I had occasion to discuss the basis of evaluation of the services which the Municipality renders or is required to render in return for the fee it levies and payment of which it demands. Beyond the averments in para 9 of the counter-affidavit, no material was placed before me on which I could hold that in fact periodical inspections were made by the officers mentioned, the Commissioner, the Health Officer, the Sanitary Inspectors, the Building Inspector and the Sanitary Maistries. Nor was anything placed before me to show that all or any of these officers were required to inspect the premises of the petitioner and those of the other transport operators similarly situate, whether or not the officers actually inspected them.

There was nothing to show that the periodicity of inspections was prescribed by any competent authority, or that it was enforced. I am constrained therefore to proceed on the basis, that services by way of inspections were not in fact rendered by the Municipality. Even if the Commissioner and the Health Officer inspected the petitioner's premises or were required to inspect it, it is extremely doubtful whether any portion of the salaries paid to such executive officers of the Municipality could be justly apportioned to the cost of supervision which the licensing system may involve. It is not necessary to decide that question in these proceedings.

8. Two of the substantial items of the estimated expenditure of supervision and service alleged to have been incurred by the Municipality were: (1) Rs. 864 for conservancy charges and (2) Rs. 300 for maintenance of drains. These would appear to be services to which in the normal course the petitioner as a rate payer of the Municipality would be entitled. There was really nothing to show that the use of the premises as a bus stand required extra services over and above those the petitioner was entitled to as a person paying the prescribed property etc., taxes to the Municipality. So, in any event, these two items would have to be excluded in deciding whether the license fee demanded by the Municipality bore a just and reasonable relation to the services the Municipality had to render in return.

9. It was only the Municipality that was in a position to furnish the data, on the basis of which an evaluation of the services could be attempted, to verify if there was a just and proper relation between the fee of Rs. 300 a year, that was demanded and the services rendered in return. On the materials furnished to me in these proceedings I have to hold that the contention of the petitioner, that there was no such just relation, remains un rebutted. That should be sufficient to set aside as invalid the demand made of the petitioner for an annual payment of Rs. 300 as fee.

10. The question, whether the petitioner's premises constituted a private cart stand, was argued at length before me as directly arising for decision in this case. I shall record my opinion on that question also.

11. The expression "cart stand" has not been defined by the Act. The explanation to Section 270-B, which I have extracted above, in effect merely includes motor vehicles among carts. The marginal note to Section 270-B refers to public cart stands, while Section 270-E applies to private cart stands. The distinction between "public" and "private" is obviously based on the ownership of the cart stand, and that will not by itself decide the question, what is a cart stand.

Equally obviously, the expression "cart stand" should be given the same meaning for purposes of both Section 270-B and Section 270-E. It is not, however, my attempt to embark on an exhaustive definition of a "cart stand", which could be of universal application. My limited problem is to decide whether the petitioner's premises constituted a cart stand. If it does, there should be no difficulty in holding that it is a private cart stand, as distinct from a public cart stand for which provision has been made by the Act in Section 270-B.

12. Every place where vehicles of any specified description are parked, that is stand for a time, whatever be the duration, may not be a cart stand. Something more than mere standing of vehicle is necessary to make the place a cart stand. Otherwise every garage where a motor vehicle is kept standing by its owner when not in use will be a cart stand, a place where the vehicle stands. That the vehicle is used for hire may not make any difference. It was not contended that every garage where the owner of the garage parked his own buses or taxis was a cart stand, because and merely because the owner let his vehicles stand in his own premises.

13. Section 270-B applies to a public cart stand, a cart stand owned and maintained by a Municipality. It should be clear that such a cart stand is for the use of the members of the public that own or are in charge of vehicles which they desire to park there for a time. Whether the person in charge of the vehicle voluntarily uses the cart stand, or whether he is compelled by any enforceable rule or regulation to use that stand may not make any difference -- see *United Motors (Coimbatore) Limited Vs. The Palghat Municipal Council*, .

A place owned by a Municipality where it keeps its own vehicles and which is not available for use by any member of the public for letting his vehicle stand there,

cannot be a cart stand within the scope of Section 270-B. Section 270-B (1) no doubt authorises the Municipality to levy fees for the use of the cart stand. That is only permissive. If no fees are prescribed by the Municipality, there will be none to pay. Nonetheless, the place can be a public cart stand maintained by the Municipality u/s 270-B. So the payment or non-payment of fees for the use of the place, though a relevant factor, may not be determining factor in deciding whether the place is a cart stand.

In the case of a public cart Stand, at any rate, it seems clear that it is the availability of the place for use by members of the public, who own or are in charge of the vehicles, for keeping their vehicles for a time -- the duration of stay is immaterial --to let their vehicles stand there, that makes the place a cart stand. Exclusive use of the place by its owner, the Municipality for keeping its own vehicles there should suffice to establish that place is not a cart stand within the meaning of Section 270-B.

14. In my opinion, the test should be the same in deciding whether a given place is a private cart stand within the scope of Section 270-E. As I said, the real difference between a public and private cart stand lies in the ownership of the cart stand. It has still to be established that a given place is a cart stand. Exclusive use of the place by its owner for his own vehicles would be inconsistent with the concept of a cart stand, whether the place is owned by the Municipality or is privately owned. Both in the case of a public cart stand and a private cart stand what makes it a cart stand is the willingness of the owner of the place to let the vehicles of others besides himself to use the place, to let the vehicles of others to stand there, whether on payment of fees or for other consideration.

15. The further use to which a person in charge of a vehicle puts that vehicle when it stands in the place in question may not be a factor that determines the issue, whether the place is a cart stand. The vehicle may be stationed there to load or unload. Or it may have been loaded or unloaded elsewhere, and the vehicle is kept at the place for a time before the owner of the vehicle sets out on his journey. It is not the use of the vehicle but the use of the place that should finally determine whether or not a place is a cart stand. The place can be a cart stand only if the vehicles of others besides the owner of the place can use that place for keeping their vehicles when stationary, whatever be the duration of the period during which the vehicles stand at the place.

16. The purpose of a cart stand is to let vehicles of others than the owner of the cart stand, stand there. The place must be "open", i.e., accessible to others who are in charge of the vehicles as owners or otherwise. It is not access given to members of the public for any purpose that makes the place a cart stand. In the case of the petitioner's premises, merely because he allowed members of the traveling public to come to the place where the buses stood and buy tickets at the booking office or even from conductor, that would not amount to keeping open a cart stand within the meaning of Section 270-E. The expression "open" in the context of Section 270-E could mean "open to the use of others for keeping

their vehicles".

17. The two factors that the petitioner's buses stood in his premises when not in use and that the members of the traveling public were allowed into the premises to buy their tickets, had no bearing on the question, whether the premises constituted a private cart stand. There was a third factor. The place was open to the members of the traveling public to board the petitioner's bus and to alight therefrom on its return journey to Dharapuram. Did that make the petitioner's premises a private cart stand? My answer to that question is in the negative.

I have already pointed out that it was the use of the place for allowing the vehicles to stand that is the determining factor, and not further use of the vehicle when it stands there. Suppose the petitioner allowed others to use his place for their vehicles, but the passengers were denied facilities to board those buses or to alight therefrom, the place would still be a cart stand, and the denial of access to the traveling public would not really be a determining factor. The further use to which the vehicle is put by its owner will however be an item of evidence to consider whether the owner of the vehicle used the place.

18. The number of vehicles allowed to stand at a given place is not the determining factor either. Whether it is five, ten or fifty, the position would be the same. What is decisive is, whether all these vehicles belong to the owner of the place, or whether one or more of them belongs to another. Similarly, whether the vehicle which uses the place is a bus, a lorry or a taxi would make no difference to the principle to apply. They are all "carts" within the scope of the explanation to Section 270-B. I am considering only the cases of motor vehicles available for hire, though I have recorded earlier that may not by itself, make any real difference to the principle to apply to determine whether a given place is a cart stand.

19. Let me take some illustrative examples. A person who owns, say five taxis, keeps them on his premises in garages or sheds. Keeping the vehicles there when they are stationary will not make the premises a cart stand. If he allowed members of the public, who want to hire these taxis, to enter his premises to engage these taxis, that again would not make the premises a private cart stand. If in addition, he allowed the person who hires a taxi to get into the taxi while it still stands on the premises, would it make the place, which was not otherwise a cart stand, a cart stand for purposes of Section 270-E?

20. Let me take the example of a lorry owner next. As in the case of taxis, neither the fact that the lorries are garaged in the owner's premises nor the fact that these lorries could be hired at those premises would make the premises a cart stand. If these lorries are loaded or unloaded at the premises, whether to suit the convenience of the owner of the lorry or that of the hirer, would that be sufficient to make these premises a private cart stand within the meaning of Section 270-E?

21. In my opinion, in neither of the hypothetical cases I have mentioned above

would the further use of the vehicle, when it stands on the premises of the person who owned both the place and vehicles, have any real bearing on that question, whether these premises constitute a private cart stand within the meaning of Section 270-E. I fail to see how the position of the owner of a bus could be different. The further use of the bus when it is stationary, that is, when it stands, does not affect the determination of the question, is the place where the vehicle is allowed to stand by its owner a cart stand.

22. I shall now examine the scope of the decided cases which have a bearing on this question, and which were referred to during the course of the arguments.

23. The learned counsel for the petitioner pointed out that what has to be licensed u/s 270-E (1) is keeping open a private cart stand. The learned counsel referred to *Jeffrey v. Weaver*, 1899 2 QB 449 (B), where the learned Judges had to consider the significance of the expression "open or keep open" with reference to a public house for sale of intoxicating liquors. Grantham J. observed at page 453.

"....I am of, opinion that the words "open or keep open" must bear the interpretation that would be placed upon them in ordinary parlance, and that to bring a case within the purview of this section the premises must be opened or kept open for people to come in."

I have already pointed out that the expression "keep open" must be construed in the context in which it is used. Kept open for whom is the question. No doubt, the petitioner kept open his premises for the use of traveling public. That, however, is not the keeping open that Section 270-E (1) would appear to provide for. I have pointed out that a private cart stand is "kept open" only if it is kept open to others in charge of vehicles besides the owner of the place, to keep their vehicles, thereto let their vehicles stand there.

24. *Queen-Empress v. Ayyakannu Mudali*, ILR 21 Mad 293 (C) and *Queen-Empress v. Ayyakannu Mudali*, ILR 22 Mad 455 (D), were decisions of Division Benches of this Court rendered at successive stages of the same case against Ayyakannu Mudali, who was charged with contravention of Section 189 of the Madras District Municipalities Act (Act 4 of 1884). Section 189 of that Act ran :

"Whoever without such licence . . . uses or permits to be used any place for any of the said purposes . . . shall be liable to a fine ..."

The statutory provision for licences and the purpose for which licences had to be obtained was Section 188 of Act 4 of 1884. The relevant portion of Section 188, in so far as it related to cart-stands, ran :

"188 (1) The Municipal council at a meeting may direct (ii) the owner or occupier of any of the following places . . . public halting place, cart stand ... to apply to the Chairman for a licence"

These statutory provisions have since been replaced by Sections 270-B and

Section 270-E of Act 5 of 1920. There were separate provisions in the 1920 Act for public cart stands and private cart stands. The obligations laid by Section 188, of Act 4 of 1884 on the owner or occupier of a cart stand to take out a licence was substantially the same as that now laid by Section 270-E of Act 5 of 1920 on the person who opens a new cart stand or continues to keep open a private cart stand.

25. In ILR 21 Mad 293 (C), the learned Judges pointed out:

"... the levying of fees is not necessary in order to constitute a place where carts stand, a "cart stand" within the meaning of the section."

Dealing next with the problem of the owner of a place parking his own vehicles, the learned Judges observed:

"... We think that a place is not necessarily a "cart stand" within the meaning of the section, merely because one or more carts stand there. It cannot have been intended to apply to the keeping, let us say, of one or two carts on the premises of the owner of the carts any more than the words "horse lines" in the same section can be held to include the ordinary stables attached to a dwelling house."

Having thus eliminated the owner of the premises and his vehicles from further consideration, the learned Judges proceeded to lay down :

"The term must be construed reasonably with due regard to all the circumstances of the case, e.g., how many carts use the place from time to time, whether they belong to one or more persons, whether fees are levied, how long the carts remain there, and the purpose for which they go there, whether for the sale of goods to the owner of the premises or to others, or for the purpose of being engaged for hire, and so forth."

26. As I understand this passage in its context, these considerations listed by the learned Judges applied to the vehicles of others who resorted to the premises in question. They were relevant considerations in deciding whether others in charge of the vehicles used those premises.

27. When the case came up again before the High-Court in ILR 22 Mad 455 (D), the learned Judges referred to the facts that had been established by the evidence on record :

".it is clear that some ten or fifteen carts from outside villages daily resort to the premises of the accused, laden with produce and goods of various kinds..... The carts do not bring produce for sale specially to the accused, but for sale to the general public, and the accused acts as a broker between the owners of the produce and the public. He allows the carts to stand on his premises until the sale and removal of the goods is completed and apparently until they are paid for. It seems to us that these facts show clearly that the place is used as a cart stand within the meaning of Section 188 of Madras Act 4 of 1884. The accused allows the carts of the public to come to his premises and to

stand there while their goods are being sold."

Here again the learned Judges were dealing with vehicles of others and not with the vehicles of the owner of the place. These were factors which showed that others in charge of vehicles used the premises, which use was the factor to be taken into account in deciding whether the place was a cart stand. If I may say so with respect, it is the last sentence in the passage that I have extracted above that laid down the principle to apply in deciding whether a given place was a cart stand :

"The accused allows the carts of the public to come to his premises and to stand there while their goods are being sold.""

That was the determining factor, though the other circumstances referred to by the learned Judges were relevant, but in relation to the vehicles of persons other than the owner of the premises. They were relevant for determining the question, did they use the premises as a cart stand, and of course the question, did the accused allow the place to be used as a cart stand.

28. In *Public prosecutor v. Mahomed Sherif*, 36 MLJ 27: AIR. 1919 Mad 316)(E), another Division Bench approved of the principles laid down in ILR 21 Mad 293 (C), which was explained as follows:

".....according to ILR 21 Mad 293 (C), the several words, used in Clause (IX) of Section 188 of the District Municipalities Act should be reasonably construed."

With reference to the case before them, in which the question was whether the premises in question constituted a livery stable, the learned Judges observed :

"But the reasonable construction indicated in the decision is that if the element of letting out on hire is involved in the use of the places indicated by the words, the legislature intended that such places should fall under the section and a licence ought to be taken out for keeping such a place and the omission to take out a licence be punished."

It should be remembered that it was not a case of cart stand that had to be considered in the 36 MLJ 27: AIR 1919 Mad 316 (E), but a livery stable, which was also included in Section 188 of Act 4 of 1884. The element of letting out the vehicle on hire determined whether the place was a livery stable.

29. The decision of Burn J. in *Ponnuswamy Iyer In re*, AIR 1988 Mad 535 (F), is directly in point. The learned Judge observed:

"The finding is that the petitioner's buses are taken, to the shed on arrival at Tiruvarur, that the passengers alight at the shed and the new passengers for the return journey take their seats in the buses there. The buses do actually "stand" in the shed; by this is meant not merely that they stop there for a shorter period or longer time but that they "stand" for the purposes of their owner's business in the sense in which we use the word in the expression "cab stand", "taxi stand" and the like."

The learned Judge came to the conclusion that the shed in question was a private cart stand within the meaning of Section 270-E of the Act. It was on this decision that the learned Government Pleader mainly relied in support of his contention, that the petitioner's premises in Dharapuram constituted a private cart stand.

30. With all respect to Burn J., I regret my inability to accept as correct the interpretation he placed on the expression "cart stand" in Section 270-E. The test he postulated, was did the vehicles stand for purposes of the owner's business? It should be remembered that in that case the same person owned both the place and the buses. As in that case, the business of the petitioner before me was that of a bus transport operator. Providing facilities for passengers to board the bus or alight therefrom was certainly part of the petitioner's business.

But then parking the buses when not in use would also, be part of the petitioner's business. Could it be said that by merely parking his bus in his premises for purposes of his business, these premises became a private cart stand within the meaning of Section 270-E? Apparently that would not have been enough, even according to Burn J. If it did not, would the addition of another item of transport business, issue of tickets on the premises, make any difference?

The next question is would the addition of yet another item of the petitioner's business, allowing passengers to get into the stationary bus or to alight from the stationary bus within the premises of the petitioner, make any difference. With all respect to Burn J., I must record my inability to accept that the test the learned Judge postulated was a correct one.

31. The learned Judge referred to analogous expressions "cab stand" and "taxi stand". But the learned Judge did not discuss what constituted a "cab stand" or "taxi stand" to make it a cart stand within the meaning of Section 270-E. I have indicated earlier that the mere fact that the owner of the taxis garaged his taxis in his premises even for purposes of his business would not make those premises a private cart stand.

If Burn J. intended to lay down that even in such a case it would be a cab stand or taxi stand in the sense, that it was a private cart stand I would venture to differ from him. In my opinion, the expression "cab stand" or "taxi stand" equated to private cart stand within the meaning of Section 270-E of the Act still imports the idea, that the place is available for the use of others besides the owner of the place, whether or not he himself owned the taxi cabs.

32. Burn J. no doubt referred to ILR 21 Mad 293 (C) and ILR 22 Mad 455 (D), in his judgment, I am not sure the learned Judge attached the importance if deserved to the principle laid down in ILR 22 Mad 455 (D).

"The accused allows the carts of the public to come to his premises and to stand there while their goods are being sold."

For the reasons I have mentioned earlier in discussing what constitutes a cart

stand, I venture to differ from Bum J. and with all respect to the learned Judge I must decline to accept as correct the principle he laid down, that allowing passengers to get into or alight from houses in the bus owner's premises where the bus stood, made those premises a private cart Stand within the meaning of Section 270-E.

33. No doubt AIR 1938 Mad 535 (F), was referred to in United Motors (Coimbatore) Limited Vs. The Palghat Municipal Council, , by a Division Bench of this Court. But it should be remembered that in that case the learned Judges pointed out at page 475 :

"In the present case it is in dispute that the municipal stand is a cart stand within the meaning of Section 270-B of the Municipalities Act. It has not to be considered whether the use of the stand by the appellant's buses makes it a cart stand within the meaning of the Act, but whether the appellant has used a cart stand which is a cart stand within the meaning of the Act as such."

It was to decide that question the learned Judges referred to the decision of Bum J. in AIR 1938 Mad 535 (F) and reached the conclusion :

"We can have no doubt that in the present case by standing in the municipal stand or bus park, however, it be named, for the purpose of taking up and putting down passengers, the appellant used the stand within the meaning of Section 270-B....."

The learned Judges had no occasion in that case to discuss to what extent such a use of a place determined whether the place was kept open as a private cart stand within the meaning of Section 270-E.

34. The use to which the owner of a vehicle puts that vehicle when it stands in the place of another may help in deciding whether the owner of that vehicle used the place as a cart stand. Still it is the use of the place that is the decisive factor. If the owner of the place uses that place only for his own vehicles to the exclusion of every one else, that excludes the possibility of treating that place as a private cart stand within the scope of Section 270-E; the further use of the vehicle by its owner, even for purposes of his business, would not make that place a cart stand. It is not the use of the place by its owner for his vehicles that requires a licence, u/s 270-E. The licence prescribed by that section is required only to keep open a private cart stand.

35. At this stage, at least, I should like to make it clear that I am concerned in this case only with the question, whether the petitioner's premises constituted a private cart stand. Whether mere standing of a vehicle in a public cart stand constitutes use of that public cart stand is a question that I have not had to discuss or determine in these proceedings.

36. In my opinion the second of the objections of the learned counsel for the petitioner should also prevail. The petitioner's place was not a private cart stand within the scope of Section 270-E. Whether kept open or not for other purposes,

it was not kept open as a private cart stand. Therefore no licence was required u/s 270-E, for these premises. On that ground also the demand for a fee that the Municipality has made of the petitioner has to be set aside.

37. The petition is allowed and the rule is made absolute. There will however be no order as to costs.