

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 26th November, 2015

Date of decision: 04th December, 2015

+ W.P.(C) 5946/2015

SPORTS & LEISURE APPAREL LTD.

..... Petitioner

**Through: Mr. Krishnendu Dutta with Mr.
Manish Srivastava and Ms. Niti
Arora, Advocates.**

versus

SOUTH DELHI MUNICIPAL CORPORATION

.....Respondent

**Through: Mr. Sanjay Poddar, Senior
Advocate with Mr. Vikas Chopra
and Mr. Govind Kumar,
Advocates.**

CORAM:

HON'BLE MR. JUSTICE V.P.VAISH

JUDGEMENT

VED PRAKASH VAISH, J.

1. The petitioner seeks directions to the respondent from taking any coercive action including removal, dismantling, spoiling, reducing in size, defacing, cutting, etc. in respect of display made by the petitioner at its outlet bearing No.E-1, South Extension Part II, New Delhi-110049 and further to declare the proposed action of removal of the display by the respondent as illegal.

2. Succinctly stating the facts germane to the present petition are that the petitioner is in the business of manufacturing, marketing and selling apparels under the brand name 'Lacoste' and operates a retail outlet from

the property bearing No.E-1, South Extension Part II, New Delhi. The respondent vide orders dated 16.04.2010 and 29.04.2010 directed the petitioner to deposit damages in respect of the unauthorized display of 'Two Wall Wrap' at the said premises. The petitioner filed a writ petition bearing W.P.(C)No.3751/2010 seeking quashing of the above mentioned orders. The said petition was disposed of vide order dated 28.05.2010 permitting the petitioner to file a representation with the MCD, who will decide the same after affording the petitioner an opportunity of hearing.

3. Vide order dated 24.06.2010, the respondent disposed of the representation of the petitioner stating that the advertisement displayed by the petitioner is commercial in nature as it exceeds the permissible free self-signage size of 2.5 sq. mtr. and imposed damages of Rs.7,36,000/- for the month of April, 2010 and for all the subsequent months at the same rate till removal of displays or obtaining permission from the MCD as required under Section 143 of Delhi Municipal Corporation Act, 1957 (DMC Act). Aggrieved by the said order, the petitioner filed a writ petition bearing W.P.(C) No.4436/2010 and the same was allowed vide judgment dated 18.11.2014. Thereafter, the respondent, South Delhi Municipal Corporation (SDMC) filed LPA bearing No.78/2015 which was dismissed *in limine*. Review petition bearing No.293/2015 was filed in the said LPA, which was also disposed of.

4. Learned counsel for the petitioner submitted that the action of forcible removal of display of petitioner's trade name from the outlet without giving any show cause notice to the petitioner is illegal, arbitrary and is in violation of the principles of natural justice.

5. Learned counsel for the petitioner also submitted that such illegal action cannot be justified by the respondent by relying on Section 143 of the Delhi Municipal Corporation Act, 1957. This is contrary to the law laid down by the Supreme Court in **East Coast Railway & Anr. v. Mahadev Appa Rao & Ors.**; AIR 2010 SC 2794. He also submits that Section 143 of the DMC Act is not applicable in the present case as the petitioner's display is merely a self-signage and not an advertisement and thereby there is no bar or requirement of seeking permission from the respondent. Relying upon judgment in **J.K. Industries Ltd. v. MCD and Others; 2003 (69) DRJ 32**, learned counsel for the petitioner urged that display of logo is not an advertisement, and, therefore, there is no violation of any bye-laws or regulations governing advertisements.

6. Learned counsel for the petitioner further contended that the respondent is seeking to rely on Section 143 of the DMC Act but the same is barred by the principles of constructive *res judicata*. A finding that Section 143 of the DMC Act applies to the petitioner was given by respondent in the order dated 24.06.2010 and the same has been rejected by this Court in W.P.(C)No.4436/2010 vide judgment dated 18.11.2014. Further, this order has been upheld by the Division Bench vide order dated 18.02.2015 and again in review petition vide order dated 03.07.2015. He has relied upon **Rampat v. Union of India; 122 (2005) DLT 643, Bhanu Kumar Jain v. Archana Kumar and Anr.; (2005) 1 SCC 787**.

7. Learned counsel for the petitioner also urged that respondent has relied upon the Outdoor Advertisement Policy, 2007 to support that the petitioner's display is not permitted as per the said policy. However, the

said policy till date does not have the force of law. He further submitted that despite the order dated 18.02.2015 no steps have been taken by the respondent to give effect to its policy by either framing bye-laws or rules or regulations in said regard. He further submitted that there is no prohibition neither in the DMC Act or bye-laws or even the policy that a signage beyond the size of 2.5 sq. mts. is prohibited.

8. *Per contra*, learned senior counsel for respondent contended that the present writ petition deserves outright dismissal as the relief sought by the petitioner no more survives since the same has already been adjudicated by this Court in W.P.(C)No.3751/2010 vide order dated 28.05.2010 and has been examined by respondent vide its speaking order dated 24.06.2010.

9. Learned senior counsel for the respondent submitted that the petition is liable to be dismissed as the same has been barred by principles of *res judicata*. The facts and issue involved herein has already been adjudicated by this Court in W.P.(C)No.3751/2010 filed by the petitioner against the respondent, wherein, vide order dated 28.05.2010 the Court directed the respondent to treat the petition as the representation of the petitioner and examine the grievance of the petitioner. He further submits that in compliance of order dated 28.05.2010, the respondent examined the representation of the petitioner and after affording an opportunity of hearing passed a speaking order dated 24.06.2010.

10. Learned senior counsel for the respondent further submitted that the petitioner has not even obtained permission of the Commissioner for erecting advertisement upon the said premises and thereby has violated

Section 143 of the DMC Act. Further, the petitioner's display is in contravention of the Outdoor Advertisement Policy, 2007 as well as Delhi Prevention of Defacement of Property Act. He also pointed out that the petitioner's commercial display of "LACOSTE" measuring 3200 sq.ft. does not attract the exemption granted under proviso (c) of Section 142(1) of the DMC Act which deals with only one self-signage not exceeding the size of 2.5 sq. mtr.

11. Lastly, learned senior counsel for the respondent submitted that respondent has caused no deliberate harm to the petitioner but was obeying the directions issued by the Supreme Court in '**M.C.Mehta v. Union of India; (2007) 15 SCC 464**'. The same was followed by this Court in W.P.(C)No.3367/2015 vide order dated 06.05.2015 whereby the Municipal Corporation of Delhi has been directed to ensure full implementation of Outdoor advertisement Policy, 2007.

12. Mr. Sanjay Poddar, learned senior counsel for respondent has pointed out that the petitioner made a representation dated 07.07.2015 and sought permission to display the trade name i.e. 'LACOSTE' at the premises of the petitioner and the said application was rejected by passing a detailed order on 14.07.2015. The petitioner has challenged the said order by filing writ petition bearing W.P.(C) No.10535/2015 which is pending.

13. I have heard the learned counsel for the parties and have also perused the material on record.

14. It is brought to the notice of this Court that the petitioner's representation dated 07.07.2015 (at page 244) seeking permission for

display of trade name i.e. 'LACOSTE' containing pictorial depiction of the products on the premises situated at E-1, South Extension Part-II, New Delhi – 110049 has already been decided and rejected by respondent by its letter No.D/ADVT/AC(Enf.)/2015-2016/631 dated 14.07.2015 (at page 248). The said rejection has also been challenged by the petitioner by way of W.P.(C) No.10535/2015, which is pending adjudication. The following reliefs are claimed in the said W.P.(C) No.10535/2015 by the petitioner;

“(a) quash/ set aside decision/ order conveyed to the petitioner vide letter/ communication dated 14.07.2015 bearing No.D/ADVT/AC(Enf.)/2015-2016/631 dated 14.07.2015 issued by the respondent under the signatures of Asst. Commissioner, ADVT. DEPT. (Enf.).Cell;

(b) to direct the respondent/ authority to process the formal application dated 06.06.2015 of the petitioner seeking permission for making the said display in accordance with law and accordingly grant permission.....”

15. The respondent vide its letter dated 14.07.2015, conveyed to the petitioner that its display is in violation of the guidelines as contained in Outdoor Advertising Policy, 2007 and its request could not be acceded to.

16. Thus, in view of the facts and circumstances of the present case also keeping in view the reliefs claims by the petitioner in the writ petition bearing W.P.(C) No.10535/2015, which is pending, I am of the considered opinion that nothing survives in the present petition. The same is accordingly dismissed. However, it is made clear that both the parties are at liberty to raise all their respective pleas in the said writ petition bearing W.P.(C) No.10535/2015.

17. The writ petition stands disposed of.

C.M. Appl. Nos.18469/2015 & 10773/2015

The applications are dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

DECEMBER 04th, 2015
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