

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

%

Date of decision: 6th August, 2015

+

W.P.(C) No.7119/2015

M/S OUTDOOR ASSOCIATES

..... Petitioner

Through: Mr. D.K. Thakur, Adv with
Mr. R.S. Chauhan, Adv.

Versus

SOUTH DELHI MUNICIPAL CORPORATION..... Respondent

Through: Mr. Sri Harsha Peechara, Adv with
Mr. Ashish Tiwari, Adv.for SDMC.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petitioner, in this petition filed under Article 226 of the Constitution, impugns a) the notice dated 22nd May, 2015 issued by the respondent South Delhi Municipal Corporation (SDMC) to the petitioner asking the petitioner to show cause as to why No Objection Certificates (NOCs) earlier granted to it for display of building wrap with respect to the sites at i) A-270, Defence Colony, New Delhi and ii) 11/CSC, DDA Market, Outer Ring Road, Masjid Moth, New Delhi should not be revoked; as well as, b) the order dated 21st July, 2015 of the respondent SDMC revoking the said NOCs and also with respect to B-134/1 and B-134/3, Jamrudpur, New Delhi.

2. Notice of the petition was issued. Counter affidavit has been filed by the respondent SDMC. Counsel for the petitioner has today stated that rejoinder thereto has been filed. Not finding the same on record, counsel for

the petitioner has been asked to hand over a copy of the same which is taken on record.

3. Counsels for the parties have been heard.

4. As far as the Jamrudpur site is concerned, admittedly NOC granted to the petitioner with respect thereto was withdrawn by the respondent SDMC vide notice dated 19th August, 2013. It is, however, the case of the petitioner that it had represented against the said withdrawal and continued to deposit the charges/licence fee with respect thereto and the respondent also did not take any action with respect to Jamrudpur site.

5. The respondent SDMC in its counter affidavit has however stated that Demand Drafts sent by the petitioner with respect to the said Jamrudpur site were not encashed and remained in the file.

6. Counsel for the petitioner has argued that respondent SDMC having not rejected the representation made by the petitioner against the withdrawal notice dated 19th August, 2013 and having also not intimated that it had not encashed the demand drafts received from the petitioner, the petitioner proceeded on the premise that the respondent has taken back the withdrawal notice dated 19th August, 2013.

7. It has however been enquired from the counsel for the petitioner, whether there was any positive action on the part of the respondent to indicate that the withdrawal dated 19th August, 2013 had been recalled.

8. The answer is in negative.

9. I am of the opinion that without the petitioner obtaining any positive affirmation from the respondent SDMC, of recall of withdrawal notice dated 19th August, 2013, the petitioner could not have assumed in its favour that the withdrawal notice dated 19th August, 2013 had been recalled and if was aggrieved from the withdrawal notice dated 19th August, 2013, ought to have impugned the same. The facts, that the respondent SDMC did not, inspite of withdrawal notice dated 19th August, 2013, remove the wall wrap and did not return the demand drafts sent by the petitioner or that the petitioner, to its advantage, continued to display wall wrap / advertisements from the said site, cannot entitle the petitioner to presume that the withdrawal stood recalled.

10. The challenge in this petition filed in July, 2015 to the withdrawal notice dated 19th August, 2013 is barred by laches, acquiescence and waiver and thus the challenge so far with respect to the said Jamrudpur site is liable to be dismissed on this ground alone.

11. Be that as it may, the respondent SDMC has now, in order dated 21st July, 2015 also stated that the said wall wrap is installed on a temporary built room, which is not permissible and the site also is located near traffic junction and which is also not permissible under the Outdoor Advertising Policy, 2007.

12. The withdrawal of NOC with respect to the other two sites, at Defence Colony and Masjid Moth is also on the grounds of:

“(i) The site is located near traffic junction.

(ii) The display is covering a small window/ventilation of the

property.”

and

- “1. The site erected through constructing a temporary wall.*
- 2. The complete market is made with single story buildings which evident the construction of wall.*
- 3. As per the OAP, 2007 the building wraps is in category one which has to be erected through the building not through the temporary erected wall.*
- 4. The site erected also not completing the general criteria made in OAP, 2007 for permission.*
- 5. The site appears as a roof top.”*

respectively.

13. It is not as if the respondent SDMC has taken the aforesaid action without complying with the principles of natural justice. Though it is the contention of the respondent SDMC that upon the conditions of NOC and Outdoor Advertising Policy being violated, cancellation / withdrawal of the NOC / permission granted, is automatic, but the respondent SDMC, in accordance with certain directions of the Division Bench of this Court in a Public Interest Litigation in this regard, gave notice to show cause, opportunity of being heard and opportunity to rectify defects wherever rectifiable, to the petitioner. Thus, the challenge to the impugned action of respondent SDMC cannot be on this ground.

14. The challenge by the petitioner is by factually controverting the grounds on which the NOC has been withdrawn and by contending that the petitioner is neither in violations of the NOCs nor of any terms and conditions of Outdoor Advertising Policy.

15. It has, however, been enquired from the counsel for the petitioner whether not this court's jurisdiction in exercising powers under Article 226 is to ensure that the decision making process is in accordance with the law and not to adjudicate disputed questions of fact.

16. Counsel for the petitioner, though not controverting the aforesaid, has contended that determination of facts can be made by appointment of Court Commissioner.

17. It is enquired, whether not the same may also entail filing of objections to the report of Court Commissioner and adjudication of those objections and whether the jurisdiction of this Court in a writ petition can be equated to the jurisdiction of a Civil Court.

18. Once the petitioner disagrees with the factual findings on which the respondent has issued order/s dated 21.07.2015, the remedy to challenge the same is not by writ petition.

19. Counsel for petitioner has also argued that the position at site is the same since the date when NOC was granted and the wall wraps were first installed. It is contended that respondent SDMC has been inspecting the site from time to time and never found the same to be violating the terms and conditions of the NOC or Outdoor Advertisement Policy. It is argued that thus the respondent cannot be now permitted to turn around and cancel / withdraw the NOC on the ground of violation of Outdoor Advertisement Policy and NOC.

20. I am unable to agree. Firstly, the adjudication of the said plea again entails disputed questions of facts. Secondly, there can be no estoppel in the

matter of observance of rules and regulations, non observance of which affects the public at large. Even if it were to be believed that the position at site is the same since the beginning, once it is the opinion of the respondent SDMC (which it is competent in law to form), arrived at after following due procedure in accordance with law, that the sites are in violation of Outdoor Advertisement Policy, 2007 and the NOC, the fact that the respondent SDMC earlier did not take any action with respect to the same, cannot be an estoppel. It cannot be said that respondent SDMC is bound by the lapses if any of its employees. The respondent SDMC, for this reason, cannot be directed to perpetuate illegality.

21. There is thus no merit in the petition and the same is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 06, 2015

JSR

(Corrected and released on 22nd August, 2015)