

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1786 OF 2015

Mr. Hemang P. Mehta

... Petitioner

Versus

The Municipal Corporation of
Greater Mumbai and Ors.

... Respondents

Mr. Jacob Kandantot for the Petitioner.

Mrs. Shobha Ajitkumar for the Respondent Nos.1 to 4 - BMC.

**CORAM : A.S. OKA &
C.V. BHADANG, JJ.**

DATE : 15th JANUARY, 2016

PC.

1 Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the Respondent. Considering the narrow controversy involved in the Petition, the same is forthwith taken up for final disposal.

2 The Petitioner applied for renewal of permit to display advertisements on hoardings to the first Respondent – Municipal Corporation. After the said application was submitted, the Assistant Commissioner, H/West Ward issued a show cause notice dated 7th December, 2012 to the Petitioner pointing out to the Petitioner several

violations allegedly committed by him. The hearing was conducted by the Deputy Municipal Commissioner (Special) - (Second Respondent) on the said show cause notice. By order dated 30th March, 2015, the hoarding permit was ordered to be revoked.

3 Apart from the merits, the challenge is on the ground of the breach of principles of natural justice. It is contended that the notice dated 11th March, 2015 (Exhibit-K to the Petition) was issued to the Petitioner calling upon him to remain present before the second Respondent on 12th March, 2015 at 10.30 am. There is a specific averment in the Petition (clause (xiii) of paragraph 5) that the notice was served to the Petitioner on 13th March, 2015. The impugned order records that the hearing was conducted on 12th March, 2015. The objection of the learned counsel appearing for the Respondents is that there are two appeals provided against the said order and therefore an efficacious remedy is always available.

4 We have considered the submissions. In normal course, by accepting objections raised by the Respondents, we would have relegated the Petitioners to the remedy of an Appeal. On the last date, we had directed the Respondents to take instructions as regards the date and time of service of notice dated 11th March, 2015. The learned

counsel has not received any instructions.

5 We have perused the notice dated 11th March, 2015. The notice calls upon the Petitioner to remain present before the second Respondent at 10.30 am on the next date. Even assuming that the notice was served on 11th March, 2015, it is apparent that not even 24 hours' advance notice was served to the Petitioners. Therefore, in any event, action of the second Respondent of hearing the show cause notice on 12th March, 2015 is in breach of principles of natural justice. Therefore, relegating the Petitioner to the remedy of filing First Appeal will be an empty formality.

6 Accordingly, we dispose of the Petition by passing the following order :-

ORDER

- (i) The impugned order dated 30th March, 2015 is hereby set aside;
- (ii) We direct the Petitioner to remain present before the second Respondent at 10.30 am on 1st February, 2016 for hearing on the application for renewal of permit as well as for hearing on the show cause notice dated 12th February, 2012. Appropriate order shall be passed by the

second Respondent within a period of one month from 1st February, 2016;

- (iii) The order passed by the second Respondent shall be communicated to the Petitioner;
- (iv) Till the date of communication of the order passed by the second Respondent, the hoardings of the Petitioner which are subject matter of this Petition shall not be removed subject to condition that the Petitioner shall not display any advertisements thereon;
- (v) In the event, the order be adverse to the Petitioner, the said protection will continue to operate for a period of 30 days from the date of service of the order;
- (vi) All contentions on merits are kept open;
- (vii) The Petition is disposed of on above terms.

(C.V. BHADANG, J)

(A.S. OKA, J)