

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 1944 OF 2016

Hiroo Jethanand Thadani .. Petitioner

Vs.

The Municipal Corporation of
Greater Mumbai and anr. .. Respondents

Mr.S.I. Memon, for the Petitioner.
Ms.K.H.Mastakar, for Respondent No.1 – BMC.
Mr.Amit Shastri, AGP for Respondent No. 2- State.

**CORAM : SHANTANU.S.KEMKAR &
M.S.KARNIK, JJ.
DATE : 21st JULY, 2016**

P.C. :

. Not on board. At the request of the petitioner, taken
up on production board.

2. Heard learned Counsel for the petitioner and
learned Counsel for the respondent No.1 and learned AGP for
respondent No.2. In this Petition, the petitioner has challenged
the order passed by the Second Appellate Authority thereby

rejecting the Appeal filed by the petitioner against the order dated 24/11/2014 passed by the First Appellate Authority. The dispute is in respect of a hoarding of which the petitioner is holding a permit situate in the compound of National Airport Authority Land, Near Patco Petrol Pump, S.V.Road, Vile Parle, (West), Mumbai. According to the petitioner, they are the oldest advertisers and have erected hoarding which is existing since 1993. According to the petitioner, the hoarding is erected before the hoarding of M/s.Simca Advertising was erected.

3. At the site, there are two hoardings one belonging to M/s.Simca Advertising and other belonging to the petitioner and distance between these 2 hoardings is less than 20 meters. As per the policy guidelines of 2007, the distance criteria introduced vide Part II A-7(a) of the guidelines provided inter se distance between the two hoardings as 20 meters.

4. The Respondent No.1 – Corporation issued a show cause notice dated 19/11/2012 to the petitioner for various

violations. One of the violation related to the distance being less than 20 meters between the two hoardings. First Appellate Authority by order dated 24/11/2014 was pleased to revoke the permit of the petitioner and thereby directed the permit M/s.Simca Advertising to be renewed.

5. The Second Appellate Authority by the impugned order dated 13/07/2016 was pleased to reject the Appeal and directed the removal of the hoarding within 7 days, failing which the same shall be removed by the Assistant Commissioner, 'K'/West Ward.

6. Learned Counsel for the petitioner argued that the petitioner's hoarding was erected first in point of time than that of M/s.Simca Advertising. According to the petitioner, though the application was preferred by M/s.Simca Advertising prior to the application made by the petitioner, but M/s.Simca Advertising failed to take any step to expedite the decision on application. According to the learned Counsel, both the

Authorities have committed error in adopting the criteria of giving preference to the date of making of the application. The petitioner, according to the learned Counsel had made the payment of advertisement fees to the MCGM before M/s.Simca Advertising and therefore, according to him, this criteria should have applied.

7. Learned Counsel for the respondent No.1 – MCGM, on the other hand, supported the orders passed by the First and Second Appellate Authorities. According to the learned Counsel for the respondent No.1, the date of sanction, date of fresh NOC issued by the National Air Port Authority, the date of NOC issued by MCGM being the same in respect of the petitioner as well as M/s.Simca Advertising, the criteria adopted by the Appellate Authorities of giving preference to the date of application cannot be said to be arbitrary or irrational. Merely because the first payment of advertisement fees made by the petitioner to the MCGM is made one day prior to that made by M/s.Simca Advertising does not mean that it is only the criteria of first

payment of advertisement fees should have been adopted by the respondents.

8. Second Appellate Authority while coming to the conclusion that the permit of the petitioner should be revoked has given the following reasons.

During the hearing M/s.Simca Advertising stated that, their application is oldest one i.e. of 08.02.1987 and as per High Court order the old application should be considered as the first one, therefore, their hoarding should be retained and renewed as the oldest advertiser.

In this case, one of the parties i.e. M/s.Simca Advertising has made the application earlier, whereas the other party M/s.Vin Ads Advertising claims that its case should be considered since it has paid the advertisement fees earlier.

Sr.Inspector (Licence), K/West ward stated that M/s.Vin Ads Advertising has not modified the hoarding in accordance with the Policy Guidelines and submitted the details as below :

Sr. No	Name of Advertisers	Date of Application	Date of Sanction by D.M.C.	Date of fresh NOC issued by National Airport Authority	Date of NOC issued by MCGM	Date of First Payment of advertisement fees to MCGM
1	M/s.Vin Ads Advertising In the compound of National Airport Authority Land, Near Patco Petrol Pump, S.V.Road,Vile Parle (West), Mumbai 400 056.	17/01/90	17/10/90	21/12/90	22/12/90	04/11/93
2	M/s.Simca Advertising In the compound of National Airport Authority Land, Near Patco Petrol Pump, S.V.Road,Vile Parle (West), Mumbai 400 056.	08/02/87	17/10/90	21/12/90	22/12/90	05/11/93

We are pleased to reject the appeal on following ground:

As per the distance criteria introduced vide Part II A-7(a) of the Policy Guidelines, the inter se distance between the two hoardings has been fixed as 20 mtrs.

We therefore are of the opinion that, the date of application for erection of hoarding should be considered simultaneously the application also has not complied with the clauses mentioned in Show Cause Notice.”

9. In our considered view, therefore, in the absence of there being any other provision to the contrary, the criteria of applying the date of application for erection of the hoarding cannot be said to be arbitrary or irrational. Both the Authorities have concurrently found against the petitioner and we do not find any perversity or irrationality in the view taken by the Authorities below in the facts of this case. The Authorities having noted that dates of sanction as well as dates of NOC in respect of both the advertisers happen to be the same, in the absence of any differentiating criteria, took into consideration the date of application, which view in our opinion, cannot be said to be arbitrary or illegal.

10. We, therefore, decline to interfere with the

impugned order in exercise of our writ jurisdiction, Writ Petition is accordingly dismissed with no order as to costs.

(M.S.KARNIK, J.)

(SHANTANU.S.KEMKAR, J.)