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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2307 OF 2015

Vandana Mangesh Borse

...Petitioner

VS

The Municipal Corporation of Gr. Mumbai And Anr.

...Respondents

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Mr. Shoaib Memon, a/w. Ms. Shaheen A. Razak and Ginni Ahuja, for the Petitioner.

Mr. Anil Singh, Senior Advocate, a/w. Ms. K.H. Mastakar, for Respondent No.1.

Shri. Prabhakar Pawar, Senior Inspector (LIC) P/S Ward, is present in Court.

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CORAM : S.C. GUPTE, J.

DATED: JUNE 28, 2016

P.C. :

. This petition challenges the original and appellate order of the authorities of the Respondent Corporation declining renewal of permission to put up a hoarding.

2. The Petitioner's case, in brief, is as follows:

The Petitioner, who is in the business of outdoor advertising and publicity, had put up a hoarding on the face of a

building owned by Veena Co-operative Housing Society Ltd. at Link Road, Goregaon West, Mumbai. The hoarding site was maintained by the Petitioner in pursuance of a sanction granted by the Deputy Municipal Commissioner (Special) of the Respondent Corporation in July 2005. It is submitted that, in pursuance of new policy guidelines issued by the Municipal Corporation for display of sky-signs and advertisements under Sections 328 and 328A of the Bombay Municipal Corporation Act, 1888, the Petitioner applied afresh for a permission for display of hoardings at the site. On this application and also on a show cause notice issued in that behalf, the Deputy Municipal Corporation (Zone-IV) of the Respondent Corporation, rejected the Petitioner's application for renewal and revoked the permission to put up any hoarding at the site on the ground that the hoarding was found to be erected on a wall covering a duct and not on a dead wall, thereby violating the relevant clause of the policy guidelines. Being aggrieved, the Petitioner preferred a first appeal before Joint Appellate Authority consisting of Joint Municipal Commissioner and Deputy Commissioner. The appellate authority confirmed the rejection order passed by the Deputy Municipal Commissioner (Zone-IV). The Petitioner preferred a second appeal against the order before Joint Appellate Committee comprising of Additional Municipal Commissioner (Projects) and Additional Municipal Commissioner (Western Suburbs). The second Appellate Authority, by its order dated 7 February 2015, confirmed the first appellate order and directed the Petitioner to remove the hoarding within seven days of the date of receipt of the order. These orders have been challenged in the present writ petition.

3. Display of advertisements and sky-signs, with permission of the Municipal Corporation of Greater Mumbai, was the subject matter of certain writ petitions filed before this Court. During the pendency of these writ petitions, the Municipal Corporation framed new policy guidelines effective from 1 January 2008 in supersession of all other guidelines issued in that behalf in the past. The Corporation made a statement before this Court in one of the pending petitions undertaking to take action in accordance with the policy and discharge its public duty in this behalf in accordance with law. Further detailed guidelines were laid down by this Court in Writ Petition No.1132 of 2002 regarding granting of permission for erection of hoardings in Greater Mumbai and also for processing renewal applications of hoardings and sky-signs. These guidelines *inter alia* require the Municipal Corporation not to grant or renew licence permissions concerning any hoardings, sign-boards or sky-signs, except in accordance with law. Renewal of licence permissions are required to bear an endorsement/certification of the Zonal Deputy Municipal Commissioner about his satisfaction that the grant/renewal is in accordance with law. The Municipal Corporation has, accordingly, been granting and renewing licence permissions in conformity with the policy guidelines and Court directives referred to above.

4. The question which arises in the present petition is, whether the impugned orders of the Municipal Corporation and its refusal to renew the licence permission granted to the Petitioner to put up a hoarding at the subject site, suffers from any illegality, warranting inference in the writ jurisdiction of this Court. The relevant clause of

the policy guidelines provides that hoardings would be allowed only on dead walls and not on any other walls. In the present case, the hoarding was put up on a wall covering a duct in the building with openings at regular intervals in the wall. It is the Respondent Corporation's case that the ducts are provided in multistory buildings with a view to provide ventilation, sunlight and fresh air to the residents. It is the case of the Corporation that the subject duct not only contains drainage and water pipelines of the building, but also windows of bathrooms of individual flats on two sides facing each other; that the subject hoarding on the wall covering the duct in a slanting profile with deflection of two feet from the wall, deprives the residents of sunlight and ventilation and is, accordingly, not permissible.

5. Learned Counsel for the Petitioner submits that there is no definition in the guidelines of a dead wall. It is submitted that the duct wall has no significance from the point of view of servicing of any tenement in the building. It is submitted that the Corporation has allowed the Petitioner to erect the hoarding as far back as in 2005 and a substantial expenditure has been incurred by the Petitioner for such erection. It is also submitted that the society of flat owners in the building has given its no objection to the erection of the hoarding at the site, indicating thereby that there is no complaint from any resident regarding air, light or ventilation.

6. Whether or not there is any formal definition of a 'dead wall' in the policy guidelines of the Municipal Corporation concerning hoardings and sky-signs, it is quite clear, to my mind, that a wall, which

contains openings with a view to provide air and ventilation to the residents, particularly considering that behind the wall there are window openings of bathrooms apart from the piping, cannot be described as a dead wall. The openings in the wall do service the tenements around it by providing ventilation and sunlight through the bathroom windows. If the Corporation, based on its guidelines not to allow any hoarding on walls other than dead walls in the building, refuses to grant permission to erection of any hoarding on a wall, through which apartments or flats in the building are serviced, it cannot be suggested that the Corporation has either failed to perform its statutory duties or has acted illegally, warranting interference of the writ Court in its jurisdiction under Article 226 of the Constitution of India.

7. The grant of permission to the Petitioner so far is neither here nor there. The original permission was granted to the Petitioner for erection of hoarding at the site when the new guidelines in respect of hoardings and sky-signs were not in place. The guidelines have come into place as a result of public interest litigations filed before this Court. The guidelines have been placed before this Court in the PILs and a solemn assurance has been given to the Court by the Corporation to accord hoarding permissions strictly in accordance with the guidelines. The grant or renewal of the hoarding permission has been a contested matter between the Petitioner and Respondent Corporation ever since the new guidelines came into effect. Accordingly, when the Corporation refuses to issue a hoarding permission on the basis of the new guidelines, it is no answer that the Corporation had earlier, i.e. prior to the guidelines, permitted the hoarding to be erected at the site.

8. The Society's no objection to the erection of a hoarding at the site does not take the Petitioner's case any further. The guidelines are framed by the Corporation as a policy matter and it is not for any individual to contract out of the provisions of the policy.

9. Learned Counsel for the Petitioner, lastly, submits that the Corporation has not taken action against various hoardings at similarly situated sites, namely, where the hoardings have been placed on duct walls covering the openings in the wall. Mr. Singh, learned Senior Counsel appearing for the Municipal Corporation, states on instructions of the Officers of the Municipal Corporation, who are present in Court, that as and when any irregularity is brought to the notice of the Court, the Municipal Corporation takes uniform action against all hoardings, which are placed on walls other than dead walls and that, in the event any particular site containing hoardings on other walls has escaped the attention of the Municipal Corporation, the Corporation shall take steps to remove such hoardings. The statement is accepted by this Court. In any event, the fact that some other similarly placed illegal hoardings have not been proceeded against, is no answer to the action initiated by the Corporation in accordance with its policy guidelines in the present case.

10. There is, in the premises, no merit in the petition and the same is dismissed.

11. On the application of learned Counsel for the Petitioner, the

Respondent Corporation is directed not to take any steps for removal of the subject hoarding for a period of four weeks from today.

(S.C. GUPTE, J.)