

\$~29

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

+ **W.P.(C) 901/2016**

**VISIBLE MEDIA THROUGH: MR. SAMEER
TRIPATHI**

..... Petitioner

Through: Mr. Jayant K. Mehta with Mr. Vikas
Batra, Mr. Sanjeev K. Saroha & Mr.
Shailender K. Singh,

versus

NEW DELHI MUNICIPAL COUNCIL & ANR Respondents

Through: Mr. Sri Harsha Peechara & Mr.
Mananjay Mishra, Advs. for R-1.
Mr. Wajeeh Shafiq & Ms. Ekta
Verma, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **03.02.2016**

CM No.3955/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 901/2016

3. The petitioner, claiming to have acquired rights from the respondent no.2 Delhi Waqf Board (DWB) of advertising on some of the properties of the respondent no.2 DWB in the area of the respondent no.1 New Delhi Municipal Council (NDMC), has filed this petition seeking i) a declaration that the permission sought by the respondent no.2 DWB vide application dated 14th July, 2014 from the respondent no.1 NDMC in this regard is deemed to have been granted upon the failure of the respondent no.1 NDMC to either grant the permission or refuse the same, and ii) alternatively, a

direction to the respondent no.1 NDMC to decide the application within a period of 10 days.

4. Though it appears that the cause of action if any is of the respondent no.2 DWB and not of the petitioner but the counsel for the respondent no.2 DWB appearing on advance notice states that the DWB is supporting the petition and is also willing to be transposed as the petitioner, if so required.

5. In this view of the matter, the petition is entertained.

6. As far as the first relief claimed is concerned, the counsel for the petitioner draws attention to the New Delhi Municipal Committee (Pasting of Bills and Advertisements) Bye-laws, 1992 and particularly to Bye-law 3.(3) thereof which *inter alia* provides that if the respondent no.1 NDMC within 60 days of receiving an application fails to intimate in writing to the applicant about the sanction or rejection of the permission sought for outdoor advertising, the application shall be deemed to have been sanctioned.

7. Attention of the counsel for the petitioner has however been invited to the Delhi Outdoor Advertisement Policy, 2008 drafted under the aegis of the directions of the Supreme Court in ***M.C. Mehta Vs. Union of India*** (Writ Petition (Civil) No.13029/1985) and to the order dated 25th April, 2008 of the Supreme Court in the said proceedings to the effect that no contracts shall be entered or renewed or hoardings installed in contravention of the said Outdoor Advertisement Policy.

8. The counsel for the respondent no.1 NDMC has also drawn attention to Section 89 of the New Delhi Municipal Council Act, 1994 (NDMC Act) prohibiting erection, exhibition, fixation or retaining upon or over any land, building, wall, hoarding, frame, post or structure or upon any vehicle in any

manner whatsoever without the written permission of the Chairperson granted in accordance with the Bye-laws made under the Act. He thus contends that the Bye-laws enacted prior to the commencement of the NDMC Act are not saved by Section 416(2)(a) of the NDMC Act which allows Bye-laws made prior to the NDMC Act to be in force, only if not inconsistent with the provisions of the NDMC Act.

9. The counsel for the petitioner rejoins by contending that the prohibition contained in Section 89 of the NDMC Act is only against advertising without the written permission of the Chairperson granted in accordance with the Bye-laws and since the Bye-laws provide for a deemed permission, the same would also be permission within the meaning of Section 89 of the Act.

10. I however find the Clause 3 of the Policy aforesaid, under the heading “Role of Municipal Bodies (MCD / NDMC)” to be providing that prior permission of the Commissioner is needed to display any advertisement to public view. The Policy thus proceeds on the premise that there is no provision for such deemed permission. Though under Clause 3 supra, the provisions of the Delhi Municipal Corporation Act, 1957 only are set out but it is recorded that similar provisions exist in the NDMC Act also.

11. The policy having been drafted under the aegis of the Supreme Court and having been approved by the Supreme Court would be the law under Article 141 of the Constitution of India and even otherwise it may be noted that the matter of outdoor advertisements reached the Supreme Court in the light of the haphazard advertising taking place in the city of Delhi to the detriment of the traffic and the aesthetics of the city. In this view of the matter, the contention that under the Bye-laws enacted prior to the coming

into force of the NDMC Act, the provision for deemed permission is saved cannot be accepted and thus the question of the granting the declaration as sought by the petitioner does not arise.

12. As far as the alternative prayer of the petitioner is concerned, the counsel for the petitioner no.1 NDMC states that the permission sought by the respondent no.2 DWB with respect to various sites including the sites with respect to which rights have been created in favour of the petitioner is under consideration and a policy decision is in the process of being taken and will be taken within a period of six weeks from today.

13. The counsel for the petitioner rejoins by contending that the respondent no.1 NDMC is not required to take any fresh policy decision and is to decide in accordance with the Outdoor Advertisement Policy and as per Clause 6 thereof and the petitioner / respondent no.2 DWB is entitled to the consideration in accordance therewith. He also contends that considering the fact that the application for permission is pending for the last over one and a half years, the time now sought of six weeks is unreasonable.

14. Merit is found in the contention of the counsel for the petitioner, of the respondent no.1 NDMC having maintained silence for an unreasonably long time, the same is not expected from municipal authorities particularly when the matter has earlier been subject matter of litigation and drafting of policy by the experts.

15. At this stage, the counsel for the petitioner states that before the respondent no.1 NDMC decides, a hearing be given to the petitioner / respondent no.2 DWB.

16. The representative of the petitioner / respondent no.2 DWB to appear before the Director (Enforcement) of the respondent no.1 NDMC at 1500 hours on 10th February, 2016 and on such subsequent dates as may be deemed appropriate by the concerned official.

17. The petition is disposed of with a mandamus to the respondent no.1 NDMC to take a decision on the applications dated 14th July, 2014 and 15th October, 2015 of the respondent no.2 DWB on or before 4th March, 2016 and to communicate the same to the petitioner as well as to the respondent no.2 DWB. Needless to state that the decision of the respondent no.1 NDMC is expected to be a reasoned one.

No costs.

RAJIV SAHAI ENDLAW, J

FEBRUARY 03, 2016
'gsr'