

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

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Date of decision: 16th September, 2016

+ W.P.(C) No.6105/2015, CM No.11103/2015 (for stay) & CM No.11104/2015 (for direction).

M/S PAREENA ESTATE

..... Petitioner

Through: Mr. Anand Mishra & Mr. Hemant
Kumar, Advs.

Versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Ms. Mansi Gupta, Adv.

AND

+ W.P.(C) No.6181/2015 & CM No.11237/2015 (for stay).

MRS. SARITA SAXENA

..... Petitioner

Through: Mr. Anand Mishra & Mr. Hemant
Kumar, Advs.

Versus

SOUTH DELHI MUNICIPAL CORPORATION

(SDMC) & ANR

..... Respondents

Through: Ms. Mansi Gupta, Adv. for R-1.

AND

+ W.P.(C) No.6186/2015, CM No.11240/2015 (for stay), CM No.11241/2015 (for direction) & CM No.11242/2015 (for exemption).

MR. RIPUDAMAN HARYAL

..... Petitioner

Through: Mr. Anand Mishra & Mr. Hemant
Kumar, Advs.

Versus

SOUTH DELHI MUNICIPAL CORPORATION

(SDMC)

..... Respondent

Through: Ms. Mansi Gupta, Adv.

AND

+ **W.P.(C) No.6276/2015, CM No.11407/2015 (for stay) and CM No.11408/2015 (for direction).**

M/S CONSECIENT INFRASTRUCTURE Petitioner

Through: Mr. Anand Mishra, Adv.

Versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Ms. Mansi Gupta, Adv. for SDMC

AND

+ **W.P.(C) 5983/2015 & CMs No.10849/2015 (for stay) & 10850/2015 (for direction)**

SAHIL CHOPRA Petitioner

Through: Mr. Rajshekhar Rao, Mr. Anand Mishra and Mr. Om Swaroop, Adv.

Versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Sarsha Peechara, Adv. for SDMC.

AND

+ **W.P.(C) 5985/2015 & CMs No.10854/2015 (for stay) & 10855/2015 (for direction)**

SANJAY GUPTA Petitioner

Through: Mr. Rajshekhar Rao, Mr. Anand Mishra and Mr. Om Swaroop, Adv.

Versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Sarsha Peechara, Adv. for SDMC.

AND

+ **W.P.(C) 5987/2015 & CMs No.10859/2015 (for stay) & 10860/2015 (for direction)**

TARANJEET SAPRA

..... Petitioner

Through: Mr. Rajshekhar Rao, Mr. Anand Mishra and Mr. Om Swaroop, Adv.

Versus

SOUTH DELHI MUNICIPAL CORPORATION Respondent

Through: Mr. Sarsha Peechara, Adv. for SDMC.

AND

+ **W.P.(C) 5988/2015 & CMs No.10862/2015 (for stay) & 10863/2015 (for direction)**

M/S. ALMASS INDIA

..... Petitioner

Through: Mr. Rajshekhar Rao, Mr. Anand Mishra and Mr. Om Swaroop, Adv.

Versus

SOUTH DELHI MUNICIPAL CORPORATION

& ANR

.....Respondents

Through: Mr. Sarsha Peechara, Adv. for SDMC.

Mr. Ajay Arora and Mr. Kapil Dutta, Adv. for MCD.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. All these petitions entail common questions of law and hence are taken up together for decision.

2. This Court in *Sports and Leisure Apparel Ltd. Vs. MCD* AIR 2015 Del 15 held that various municipalities constituted under the Delhi Municipal Corporation Act, 1957 (MCD Act) are not authorized by the provisions of the MCD Act to levy any charges, whether by way of licence fee for grant of No Objection Certificate (NOC) / permission for outdoor advertising or by way of damages for outdoor advertising without such NOC / permission. It was further held that Section 142 of the MCD Act only provides for levy of tax on display to public view of advertisement and calculated at the rates not exceeding those specified in the Fifth Schedule of the MCD Act and the charges by way of licence fee or damages were not claimed in exercise of the said power.

3. LPA No.78/2015 preferred against the aforesaid judgment was dismissed *in limine* vide judgment dated 18th February, 2015.

4. Though a special leave petition is informed to have been preferred to the Supreme Court against the judgments aforesaid but there is no interim order therein of stay of operation of the judgments of this Court.

5. It is the contention of the petitioners in these writ petitions that the respondent South Delhi Municipal Corporation (SDMC), feeling frustrated

by denial of collection of such charges by way of licence fee and/or damages for outdoor advertising as it was earlier collecting/demanding without any authority, has illegally started withdrawing the NOC / permission earlier granted to the petitioners, either for the reason of the term thereof having lapsed or for the reason of violations of the terms on which the NOC / permission was granted or for the reason of violation of the Outdoor Advertisement Policy (OAP), 2007. It is further the contention of some of the petitioners that the respondent SDMC, without even issuing communications of withdrawal of NOC / permission, has been removing / damaging the advertisements for which NOC / permission was granted earlier or has been threatening to do so. It is yet further the contention that the respondent SDMC is unilaterally drawing conclusion of violation of terms on which NOC / permission was given or violation of OAP.

6. Arguments were heard on the aforesaid aspects and judgment reserved and has remained reserved for long and from time to time applications for interim relief or further directions have been filed in some of the petitions.

7. There is no need to narrate herein the facts of each individual case as the same have no relevance to the outcome. The two questions which have

been raised by the counsels and on which judgment has been reserved and is being pronounced are:

- A. Whether the NOC/permission once granted by the municipality for outdoor advertising at a particular site is for a particular duration only or for perpetuity, capable of being withdrawn / revoked only in the event of violation of the terms of the NOC/permission or of the OAP being established?
- B. What is the remedy, if any, of the person / advertiser to whom NOC / permission has been granted by the municipality, against the allegation of the municipality of violation by such person / advertiser of the terms of the NOC / permission and / or of the OAP?

8. Qua the first of the aforesaid questions, it is not in dispute that the respondent SDMC had a policy of, simultaneously with the grant of NOC/permission, make the recipient thereof execute an agreement, the term whereof was stipulated as of five years and in which the rate at which licence fee (which has been struck down as aforesaid) was payable was stipulated. However the NOC/permission granted neither mentioned the term or period

for which it was granted nor contained any stipulation for payment of any licence fee.

9. Qua the second of the aforesaid questions, the petitioners do not challenge the authority of respondent SDMC to withdraw the NOC / permission in the event of the terms of NOC/permission or of the OAP being violated. The challenge is only to the procedure for doing the same. It is contended that respondent SDMC has been unilaterally withdrawing the NOC / permission alleging violation, without giving any show cause notice.

10. Section 143 of the MCD Act prohibits any advertisement from being erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or from being displayed in any manner whatsoever in any place within Delhi without the written permission of the Commissioner (of the respondent SDMC) granted in accordance with bye-laws made under the Act. Sub-Section (2) thereof prohibits the Commissioner of the municipality from granting such permission if the advertisement contravenes any bye-law made under the Act or if the tax if any due in respect of the advertisement has not been paid. Sub-section (3) thereof, with respect to advertisements liable to

advertisement tax, provides for grant of such permission by the Commissioner “for the period to which the payment of the tax relates”.

11. Section 142 provides for “Tax on advertisements” and requires every person who displays any advertisement to public view in any manner whatsoever, visible from a public street or a public place, to pay a tax calculated at such rates not exceeding those specified in the Fifth Schedule as the municipality may determine. Though the proviso thereto provides for certain exemptions but we are not concerned therewith.

12. Such tax, by virtue of Sub-Section (2) of Section 142, is payable in advance in such number of installments and in such manner as may be determined by the bye-laws made in this behalf.

13. The Fifth Schedule to the MCD Act provides for tax on advertisements other than advertisements published in the newspapers at the rates “per annum” prescribed thereunder. Thus the period for which the Commissioner of the municipality, under Section 143, is empowered to grant permission also has to be the period to which the payment of tax relates i.e. “per annum”.

14. Section 143(3) read with Section 142(1) and the Fifth Schedule to the MCD Act leads to the unequivocal conclusion that the NOC/permission to be granted by the Commissioner under Section 143(1), for erecting, exhibiting, fixing, retaining any advertisement, is on annual basis.

15. Though Delhi Municipal Corporation Tax on Advertisements (Other Than Advertisement Published in Newspapers) Bye-Laws, 1996 are found to have been framed but not found to contain any provision as to the period for which NOC can be issued or is to be issued granting permission for outdoor advertising. Bhatia's Compendium on Delhi Municipal Laws 2nd Edition (2012) is found to contain a number of circulars / directives issued by the Advertisement Department of the Municipal Corporation of Delhi but none of them also are found to be dealing with the said aspect.

16. The petitioner in each of the petitions has filed the NOC / permission issued by the respondent SDMC to them. A perusal thereof shows (i) that no time / period for which the NOC / permission has been granted is mentioned therein; (ii) that some of the NOCs grant permission "consequent upon deposit of advertisement tax" without specifying for which year; and, (iii)

that other NOCs grant permission “consequent upon deposit of advertisement tax” for the year in which the NOC has been issued.

17. It is also not the case in any of the petitions that advertisement tax for more than a year has been accepted at the time of issuance of the NOC.

18. In the aforesaid scenario it has but to be held that the NOC / permission granted by the respondent SDMC to each of the petitioners was for that year only and not for the period of five years or for any period more than one year, as indeed it could not have been in accordance with Section 143(3) of the MCD Act. Also, in the light of the said statutory provision, the grant of NOC / permission by the respondent SDMC to the petitioners or any of them for a period of more than one year and / or beyond the year for which it was granted in any case being contrary to the statute, would be bad.

19. I may in this regard also notice that grant of NOC / permission in perpetuity, as contended by the counsel for the petitioners, would also be contrary to public interest. The advertising sites and avenues in the city are limited. Grant of NOC / permission with respect to any site to any person disentitles others from applying therefor. The respondent SDMC as State within the meaning of Article 12 of the Constitution of India cannot be seen

as granting NOC / licence to any person for ever, closing the rights of others to apply for advertising from the said site. The same would also lead to monopolistic and restrictive trade practice and would be violative of the rights of others to carry on business from the said site. For this reason also, the said contention of the counsel for the petitioners cannot be accepted.

20. Once it is found and held to be so, it has but to follow that none of the petitioners today have any valid NOC / permissions in their favour inasmuch as the judgment itself in these petitions has remained reserved for slightly more than a year. Thus, unless any of the petitioners have been granted a fresh NOC / permission during the pendency of these petitions, none of the petitioners would today be entitled to continue with the advertisements qua which these petitions were filed under the NOC/permission earlier granted to them as under the statutory provisions aforesaid there can be no advertisement without such permission.

21. The petitions for this reason alone have become infructuous.

22. I thus answer the first of the aforesaid questions framed by holding that the NOC/permissions granted under Section 143 (1) for erecting, exhibiting, fixing or retaining any advertisement over any land, building,

wall, hoarding, frame, post or structure and without which no advertisement can be erected are valid for a period of one year from grant thereof and under Section 143(3) the Commissioner of the respondent SDMC is not empowered to grant any permission for a period more than one year.

23. Though in view of the above, the need to answer the second question aforesaid does not arise but for the sake of completeness, I proceed to answer the same.

24. Section 144 provides that permission granted by the Commissioner under Section 143(1) shall become void if the advertisement contravenes any bye-law made under the Act or if any material change is made in the advertisement or any part thereof without the previous permission of the Commissioner or if the advertisement or any part thereof falls otherwise than through accident or if any addition or alteration is made to or in the building, wall, hoarding, frame, post or structure upon or over which the advertisement is erected, exhibited, fixed or retained if such addition or alteration involves the disturbance of the advertisement or any part thereof or if the building, wall, hoarding, frame, post or structure over which the

advertisement is erected, exhibited, fixed or retained is demolished or destroyed.

25. Section 145 provides that any advertising in contravention of the provisions of the MCD Act or bye-laws made thereunder raises a statutory presumption, unless and until the contrary is proved, that the contravention has been committed by the person on whose behalf the advertisement purports to be.

26. Finally, Section 146, in the cluster of Sections, commencing from Section 142 supra under the head “Tax on advertisements other than advertisements published in the newspapers” under Chapter-VIII of the MCD Act titled “Taxation”, empowers the Commissioner, if any advertisement is erected, exhibited, fixed or retained in contravention of the provision of Section 143, to require the owner / occupier of the land, building, wall, hording, frame, post or structure upon which the advertisement is erected, exhibited, retained, to take down or remove such advertisement or enter into any land, building, property or vehicle and have the advertisement dismantled, taken down or removed or spoiled, defaced or screened.

27. The statutory provisions particularly Sections 144, 145 and 146 dealing with “Permission of the Commissioner to become void in certain cases”, “Presumption in case of contravention” and “Power of Commissioner in case of contravention” respectively noticed above, do not provide for any procedure to be followed by the municipality in the event of the advertisement contravening the terms of the permission or any bye-laws or any policy, but void the NOC/permission granted, thereby making the advertisement unauthorized and empower the Commissioner/SDMC to require the owner or occupier to remove the advertisement and/or to itself remove the advertisement. No opportunity of hearing has been provided to be given.

28. No provision in any bye-laws made with respect to advertisements or in the OAP in this respect also has been cited by the counsels. I however find Bye-law 16 of the Bye-laws aforesaid to be providing that whosoever contravenes any provision of the MCD Act or the Bye-laws and the terms and conditions or directions given shall be punishable with a fine of twenty rupees for each day during which such contravention or failure continues and that if the contravention still continues, the Commissioner shall require the owner or occupier to take down or remove such advertisement or to enter

into any land, building or property and have the advertisement removed. Qua advertisements put up unauthorisedly i.e. without obtaining any NOC / permission, Bye-law 13(7) provides that the same will be removed without any notice whatsoever.

29. The position under the Bye-laws is thus the same as in Section 146 noticed above.

30. I am of the view that the provisions of Section 146 and the Bye-laws empowering the Commissioner / SDMC to, in the event of violation of any terms on which NOC / permission has been given or violation of any Bye-laws or policy, either require removal of the advertisement or to remove the advertisement, cannot be read as vesting an unguided discretion in the Commissioner / SDMC, to be exercised at the *ipse dixit* of the Commissioner / SDMC. In my view, the proper course for the Commissioner, in exercise of power under Section 146 would be to, if the advertisement has been put up without the requisite permission under Section 143(1) or if the period for which permission has been granted has expired to, without any notice, enter into any land or building or property and have the advertisement taken down, or removed or spoiled and in cases

where NOC / permission has been granted and is in force but the terms thereof have been contravened , to require the owner or occupier to remove the violations and only if the same is not done to enter into any land or building or property and have the advertisement removed.

31. Section 441 of the MCD Act provides that where any notice or order is issued or made under this Act requiring anything to be done or for the doing of which no time is fixed in the MCD Act or any Rule or Regulation framed thereunder, specify reasonable time for doing the same. Accordingly, the Commissioner, MCD in any exercise of powers under Section 146 requiring an advertisement to be removed should fix a reasonable time for doing the same. Considering that the permission under Section 143(1) is valid for a period of one year only, in my view, the period of seven days inclusive of any holidays in between would be reasonable. During the said period of seven days, it would be open to the person who has put up the advertisement or is responsible for the advertisement qua which a notice has been given, to represent to the respondent SDMC that there is no contravention and respondent SDMC, as a State within the meaning of Article 12 of the Constitution of India is expected to upon such representation being made deal with the same. The best course of action to

be followed in such cases would be to have a joint inspection of the site demarcating the violations and simultaneous correction. It cannot be forgotten that the aspect of outdoor advertising has been the subject matter of a large number of litigations and the OAP was ultimately framed in terms of the directions issued by the Supreme Court of India. The said Policy is driven by city development imperatives and hoardings are permitted only if they are not a road safety hazard or if they support the city's public service development and enhance its aesthetics. Thus if the permissions / NOCs granted in terms of OAP are found to contravene, no long drawn enquiry in the name of compliance of principles of natural justice can be permitted or directed to be held. Continuance of advertisements in violation of the terms on which the same have been permitted causes a public injury which cannot be compensated in terms of money and thus calls for quick action.

32. I answer the second question framed above as aforesaid.

The petitions are disposed of.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 16, 2016

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