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

WRIT PETITION NO.1991 OF 2016

Madanmohan C. Gupta (HUF) ... Petitioner
Vs.
Municipal Corporation of Greater Mumbai & Ors. ... Respondents

Mr. Girish Godbole a/w Mr. Rajiv Narula i/by Jhangiani Narula & Associates for the Petitioner.

Mr. J. Reis, Senior Counsel a/w Ms. Pallavi Thakar for the Respondents.

**CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 12th JUNE, 2017

ORAL JUDGMENT (Per A.S. Oka, J.)

1 The submissions of the parties were heard on 8th June, 2017. The parties were put to notice that the Petition will be disposed of finally at the stage of admission. Rule. Advocate on record for the respondents waive service. The challenge in this Petition under Article 226 of the Constitution of India is mainly to the order dated 13th July, 2016 passed by the officers of the Mumbai Municipal Corporation in a Second Appeal against an order passed by the First Appellate Authority.

2 A show cause notice dated 27th November, 2012 was issued to M/s. Advance Advertisers by the Assistant Commissioner, K/West Ward. The present petitioner is stated to be carrying on business in the name of M/s. Advance Advertisers. In the said show cause notice, it was stated that the permit has been granted to the petitioner to display the Illuminated Advertisement Hoarding more particularly described in the said notice which is valid upto November, 2012. It was alleged that on inspection of the advertisement hoarding it was revealed that the hoarding is violating certain clauses of policy guidelines of the year 2007. The said clauses read thus :-

- “1 Clause Part II A- 2: All poles on support of hoarding is erected and back of hoarding board is aesthetically not covered.
- Structure of the hoarding alongwith its support and the rear side of the hoarding is not painted as per Annexure – I of the Policy Guidelines.
- 8 Increase in Hoarding size.”

3 The petitioner was called upon to show cause as to why his request for renewal of the permit should not be rejected and why the permit along with the agreement should not be revoked. The petitioner replied to the show cause notice by a reply dated 17th December, 2012. By a further notice dated 28th December, 2012 the petitioner was informed by the Mumbai Municipal Corporation that inspection of the

site reveals that the petitioner has not made compliances. Thereafter, there was correspondence exchanged between the petitioner and the officers of the Municipal Corporation. The second show cause notice was issued on 11th June, 2013. By the said show cause notice, the petitioner was informed by the Senior Inspector of Licence, K/West ward that Tata Power Company Limited has raised an objection to the advertisement hoardings in respect of two permits mentioned in the show cause notice. The objection raised by Tata Power Company Limited was also set out in the said show cause notice. By a letter dated 22nd June, 2013 the petitioner informed the Senior Inspector (Licence) that out of two permits, the Permit No.761143384 has been cancelled and for Permit No.761143356, there was a NOC granted by the said Company. By a letter dated 20th July, 2013 the Senior Inspector (Licence), K/West Ward informed the petitioner that copy of the NOC produced by the petitioner cannot be considered as the said Company has now raised an objection. Thereafter, there was further correspondence exchanged between the parties.

4 By a communication dated 13th February, 2015/ 2nd March, 2015, the petitioner was informed that he has not rectified the following violations :-

- “1) Clause Part II A-2 : All poles on support of hoarding is erected & back of hoarding board is aesthetically not covered structure of the hoarding alongwith its support & the rear side of the hoarding is not painted as per Annexure-I of the policy Guidelines.
- 5) Complaint received from Tata Power Co. Ltd. vide their letter 28th March, 2013 regarding advertisement hoarding close to EMV lines.”

Therefore, by the said communication issued by the Municipal Corporation (Zone-4), he proceeded to reject the application for renewal of Permit No.7661143356 (for short “the said permit”) and revoked the said permit along with the agreement. Against the said decision, an Appeal was preferred by the petitioner. The First Appellate Authority by order dated 2nd September, 2015 upheld the order of the Deputy Municipal Commissioner. Being aggrieved by the said order, a second Appeal was preferred by the petitioner which is dismissed by the impugned order dated 13th July, 2016.

5 The learned counsel appearing for the petitioner has taken us through the orders of the Appellate Authorities. He pointed out that the First Appellate Authority has considered only one objection namely the letter of objection issued by the Tata Power Company Limited. He pointed out that the Second Appellate Authority in the impugned order

referred to the fact that a fresh NOC has been issued by the said Company on 12th June, 2015. He pointed out that that the Second Appellate Authority has confirmed the order of the First Appellate Authority on an altogether new grounds namely that the hoarding was blocking the view of the building behind it and the hoarding is situated in close vicinity of EMV lines. Thirdly, it was observed that the view of the Senior Inspector (Licence) K/West Ward is adverse. He submitted that the order of rejection of the application for renewal of permit could have been passed only on the basis of grounds in the two show cause notices and on no other grounds. He submitted that the impugned order of the second Appellate Authority is therefore in breach of principles of natural justice. The learned Senior Counsel appearing for the Municipal Corporation supported the impugned orders and submitted that in view of the observations made by the Second Appellate Authority, no interference is called for.

6 We have carefully considered the submissions. We have already reproduced the objections raised by the Municipal Corporation in the first show cause notice dated 27th November, 2012. As reproduced earlier, there were two objections raised in the said show cause notice. In the communication/ order dated 13th February, 2015/ 2nd March, 2015, the second objection in the show cause notice dated

27th November, 2012 is not even referred and therefore, it is obvious that the order dated 13th February, 2015/ 2nd March, 2015 is not based on the second objection (increase in the hoarding size). The first ground set out in the said order is of violation of clause Part II A-2 which is set out in the first show cause notice. The second ground in the order dated 13th February, 2015/ 2nd March, 2015 is regarding complaints received from the Tata Power Company Limited on the basis of which the second show cause notice was issued. We have carefully perused the order of the First Appellate Authority. The impugned order of rejection of application for renewal and revocation of permit seems to have been upheld only on the basis of the objection raised by the Tata Power Company Limited. The said order of the First Appellate Authority notes that the report of the Advertisement Inspector records that the Tata Power Company Limited has withdrawn the objection and has issued a no objection certificate. It is observed by the First Appellate Authority that the said Company has suddenly changed the stand after a period of three years and the letter dated 12th June, 2015 was issued without citing any reasons. It was observed that the matter appears to be fishy. The entire approach of the First Appellate Authority appears to be completely illegal. There was an objection raised by the Tata Power Company Limited which was withdrawn by the letter dated 12th June, 2015 and NOC was issued. The First Appellate Authority had no

jurisdiction to go into the question as to why the said Company has changed its earlier stand. The observation that the matter appears to be fishy was completely uncalled for as it has no basis.

7 Now, we come to the order of the Second Appellate Authority. The Second Appellate Authority seems to have accepted the contention of the Appellant that the earlier objection raised by the Tata Power Company Limited has been withdrawn and now a fresh NOC dated 12th June, 2015 has been issued by the said Company. However, the Second Appellate Authority has relied upon new grounds which were not a part of both the show cause notices and which were not part of the order of rejection of the application for renewal of permit. It was observed by the Second Appellate Authority that the hoarding was blocking the view of the building behind it. Secondly, it was observed that the hoarding is in close vicinity of EMV lines. Thirdly, it was observed that the view of Senior Inspector (Licence), K/West Ward is adverse. The second Appellate Authority could not have invented these new grounds. In any event, the said grounds could not be held against the petitioner as the same were not a part of the show cause notices.

8 Therefore, the scenario which emerges is that the order of rejection of an application for renewal of permit made by the petitioner

and the order of revocation of permit cannot be justified on any of the grounds set out in both the show cause notices.

9 Therefore, the Writ Petition must succeed and the application made by the petitioner for renewal of the said permit will have to be considered afresh without being influenced by the orders of the Appellate Authority. However, the petitioner is not entitled to display any advertisement on the hoarding unless a permit is granted by the Mumbai Municipal Corporation.

10 Accordingly, we pass the following order :-

ORDER

- (i) The impugned order of the Second Appellate Authority dated 13th July, 2016, the order dated 2nd September, 2015 passed by the First Appellate Authority and the order dated 13th February, 2015/2nd March, 2015 are hereby set aside;
- (ii) Within a period of four weeks from the date on which an authenticated copy of this judgment and order is produced by the petitioner before the concerned Authority of the Mumbai Municipal Corporation, the application for renewal of Permit No.761143356 shall

be decided afresh by the Municipal Corporation. Needless to add that while deciding the application, the concerned authority shall not take into account the impugned orders which have been set aside;

- (iii) We make it clear that the petitioner shall not be entitled to display advertisement on the hoarding unless the permit earlier granted to the petitioner is renewed or a fresh permit is granted;
- (iv) Before deciding the application for renewal of permit, the concerned Authority will verify whether the petitioner is displaying any advertisement on the hoarding. If the Authority finds that the petitioner is displaying any advertisement on the hoarding, the concerned authority will be justified in rejecting application on that ground;
- (v) Rule is made partly absolute on above terms;
- (vi) All concerned to act upon an authenticated copy of this order.

(SMT. VIBHA KANKANWADI, J)

(A.S. OKA, J)