

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.08.2017

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.28829 of 2007
MP.No.2 of 2007

Balajee Publicities,
Rep. By its Proprietor S.Gunasekaran,
Old No.48, New No.101, 1st Avenue,
Indira Nagar, Adyar, Chennai 600 020 ...Petitioner

Versus

1. The Collector of Chennai,
Singaravellu Maaligai,
Rajaji Salai, Chennai - 1.
2. The Tahsildhar,
Mylapore Division,
Greenways Road,
Mylapore, Chennai - 4 ...Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Certiorarified Mandamus calling for the records in NE/MU/KA.No.07/61373/2005, dated 22.07.2006 on the file of the 1st respondent and quash the same as illegal, arbitrary and direct the 1st respondent to issue the hoarding permission to the petitioner to install the hoarding of size 24' /12' in the site "Near the beginning of First Main Road, Gandhi Road, Adyar facing T.V.K.Bridge (Near Malar Hospital)", Chennai 20.

For Petitioner : Mr.A.Thiyagarajan, Senior Counsel
Assisted by A.Vinu Pradha

For Respondents : Mr.A.N.Thambidurai,
Special Government Pleader

ORDER

[Order of the Court was made by M.SATHYANARAYANAN.,J]

By consent, this writ petition is taken up for final disposal.

2 The petitioner challenging the rejection of the application submitted by him seeking permission for erection of hoarding in a particular place and came forward to file this writ petition.

3 The petitioner in the affidavit filed in support of this writ petition would aver among other things, that the 1st respondent has granted license to have authorized hoarding at Sardar Patel Road, Near Aavin Milk Parlour, Adyar facing Northern side, vide its proceedings in L.Dis.37/99 dated 07.04.1999 and as per the said proceedings, the petitioner kept the advertisement hoarding and was also paying lease rent regularly without any delay. However, a hotel constructed nearby, raised an objection and therefore, the petitioner was called to shift the location of the hoarding in an alternative place and the petitioner had located a place near the beginning of first main Road, Gandhi Nagar, Adyar facing T.V.K.Bridge (Near Malar Hospital)". The hoarding location was inspected by the concerned officials and the traffic police accorded "No Objection" for erection of said advertisement and along with the said letter, the petitioner had approached the Corporation of Chennai for No objection Certificate to erect the hoarding in the particular place.

4 However, the office of the 1st respondent vide impugned order dated 22.07.2006 has rejected the application on the ground that the place selected by the petitioner for location of hoarding is right in the middle of the road and therefore, license / permission cannot be granted and he was called upon to choose alternate place for erecting the hoarding and challenging the legality of the same, the petitioner came forward to file this writ petition.

5 The 1st respondent has filed his counter and took a stand that the petitioner after removing the hoarding erected in front of the hotel, had filed a petition dated 15.05.2016, seeking permission for the erection of the hoardings in an alternative place near the beginning of the First Main Road, Gandhi Nagar, Adyar, facting Thiru.Vi.Ka bridge (Near Malar Hospital) and also produced no objection from traffic police and the place was also inspected by the District Revenue Officer, Chennai District and as per the inspection report the place selected for re-erecting the hoarding near the beginning of the

First Main Road, Gandhi Nagar, Adyar facing T.V.K.Bridge (Near Malar Hospital) is in the middle of the road and hence, not recommended for erection of hoarding in that place. The petitioner was also given an option to select another place and therefore, the said permission cannot be granted and prays for dismissal of the writ petition.

6 Mr.A.Thiyagarajan, learned Senior Counsel assisted by Ms.Vinu Prabha, learned counsel appearing for the petitioner has drawn the attention of this Court to Chapter XII-A of the Chennai City Municipal Corporation Act, 1919 and would submit that as per section 326-C (3), the Commissioner may refuse to grant license for reasons to be recorded in writing ; provided that a license shall not be refused unless the applicant has been given an opportunity of making his representation and in the case on hand, without providing such an opportunity, the application being submitted by the petitioner for erection of hoarding in an alternative place came to be rejected and since the relevant statutory provisions have been violated, he need not avail remedy under Section 326-H of the said act and prays for interference.

7 Per contra, Mr.A.N.Thambidurai, learned Special Government Pleader appearing for the respondents has invited the attention of this Court to the Counter affidavit of the 1st respondent and would submit that based on the inspection report submitted by the District Revenue Officer, Chennai District, a fair decision has been taken to reject the location of the hoarding is that the place selected by the petitioner which is right in the middle of the road and though the petitioner was given an opportunity to choose another place, however, he did not do so and prays for dismissal of this writ petition.

8 This Court has considered the rival submissions and also perused the materials placed before it.

9 The Vires of Section 326-A of the City Municipal Corporation Act, 1919 was put to challenge by filing writ petition before this Court and this Court has upheld its validity and consequently, CA.No.2702 of 2008 and other batch of cases were filed before the Hon'ble Supreme Court of India, which was reported in (2008) 3 MLJ 1058 (SC) [Novva ADS Vs. The Secretary, Department of Municipal Administration and Water Supply and another], wherein the Apex Court has considered the issue and observed in Paragraph 42 that "even if there is no obstruction but there is distraction that is also to be considered." The Apex Court, further in paragraph 44 has also observed that "there is no ban on advertisement hoardings but obstructive and destructive ones are to be prohibited" and

admittedly the Hon'ble Supreme Court has dismissed the appeals and upheld the order passed by this Court, as to the validity of section 326-A of Chennai City Municipal Corporation Act, 1919, and the 1st respondent in the light of the inspection report submitted by the District Revenue Officer, Chennai has reached the conclusion that the location sought for by the petitioner is in the right in the middle of the road and as such the permission cannot be granted. The petitioner was given an option to choose another place and however, the petitioner did not do so. Though, it is contended by the learned senior counsel appearing for the petitioner that the petitioner need not avail the remedy available under Section 326-H of the Chennai City Municipal Corporation Act, 1991, and in the considered opinion of this Court, the 1st respondent has rightly exercised his power strictly in accordance with law and therefore it cannot be faulted with.

10 It is also brought to the knowledge of this Court that in terms of Rule 10 of Chennai City Municipal Corporation Licensing of hoardings and Levy and Collection of Advertisement Tax Rules, 2003, a committee was constituted by the Commissioner Corporation of Chennai.

11. In the light of the liberty granted to the petitioner by the 1st respondent while rejecting his request, the petitioner is at liberty to select a new place for erection of hoarding in an unobjectionable manner, identified by the committee constituted under Rule 10 of the above said Act, along with prescribed fee to the Commissioner, Corporation of Chennai, or the Officials authorized within a period of four weeks from the date of receipt of a copy of this order and the concerned official, on receipt of the same, is directed to consider the said application on merits and in accordance with law in the light of Section 326-C of Chennai City Municipal Corporation Act, 1919 and the relevant rules and pass appropriate orders within a further period of eight weeks thereafter and also communicate the decision taken, to the petitioner.

12. In the result, the writ petition stands dismissed, subject to above observations. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

1. The Collector of Chennai,
Singaravellu Maaligai,
Rajaji Salai, Chennai - 1.

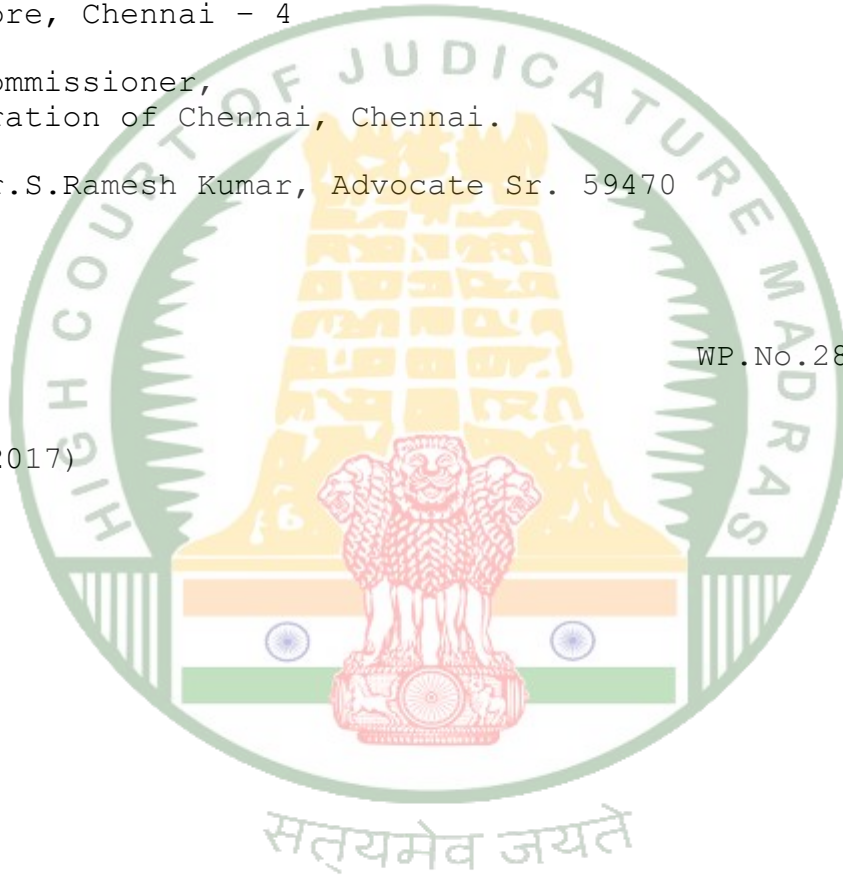
2. The Tahsildhar,
Mylapore Division,
Greenways Road,
Mylapore, Chennai - 4

3. The Commissioner,
Corporation of Chennai, Chennai.

+lcc to Mr.S.Ramesh Kumar, Advocate Sr. 59470

WP.No.28829 of 2007

MSM(CO)
VR(19/09/2017)



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