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

DECIDED ON: 01.09.2017

+ LPA 77/2017, CM APPL.3690/2017

SOUTH DELHI MUNICIPAL CORPORATION Appellant
Through: Mr. Sanjay Poddar, Sr. Advocate
with Mr. Mukesh Gupta and Mr. Govind
Kumar, Advocates.

versus

M/S OUTDOOR ASSOCIATES Respondent
Through: Mr. Anand Mishra with Mr.
Hemant Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

S.RAVINDRA BHAT, J. (ORAL)

1. The South Delhi Municipal Corporation ("SDMC") is aggrieved by the order of the learned Single Judge which permitted the exhibition of a wall wrap advertisement upon a commercial building, claimed by the respondent (Outdoor Associates), hereafter referred to as "writ petitioner". The writ petitioner requested the SDMC through an application along with requisite documents for permission to erect large advertisement wall wrap (40x10, i.e., 400 sq. ft.) on the third floor of a commercial building i.e., Satkar Building, Nehru Place. Apparently, the petitioner's application did not elicit any response which constrained it to seek direction through an earlier writ petition

which was disposed of on 23.12.2015. The writ petitioner even moved the Court citing the SDMC contempt. Prior to the hearing of that case on 31.12.2016, the SDMC rejected the application requesting for permission on the following grounds:

“On inspection of the site by AI/CS on 12.02.2016, it was found that a large space is covered by a white fabric on the façade of the above said premises which creates problems/obstruct in smooth ventilation/light of the entire premises/floor. Thus it is in violation of the OAP-2007 which states that ‘No on Premises Advertising Device’ shall be in any form or manner interferes with openings required for light and ventilation.”

2. Before the Single Judge, the writ petitioner had relied upon the outdoor advertisement policy for the concerned category, i.e., no.4. Based upon her interpretation of the policy, the learned Single Judge - before whom the Division Bench ruling of this Court *Anil Bhatia & Others Vs. Government of NCT of Delhi & Others* 219 (2015) DLT 473 was cited, observed as follows: -

“17. A perusal of the first photograph which has been placed on record depicts the facade where the petitioner wants to affix the wall wrap; this is on the 19th floor of Satkar building. The petitioner admittedly is a registered outdoor advertiser; it is also admitted that he has a no objection certificate from the owner of the flats in front of which the wall wrap has to be affixed i.e. flats No. 301-302. The wall wrap would be about 400 square feet i.e. 40"X10" square feet. The photograph depicting the facade measures 700 square feet. This position is admitted. The proposed wall wrap would be thus much smaller both in height and in width. Learned senior counsel for the petitioner while relying upon this photograph has rightly pointed out that this wall wrap when affixed in front of the building would not really block the light and ventilation as there is gap of almost about 4-5 feet between the building and

the proposed wall-wrap and this is clear from the manner in which the air-conditioners have been affixed upon the windows of the said flats.

18. A perusal of this photograph does advance this submission made by the learned senior counsel for the petitioner. The photographs and particularly the second photograph shows the distance between the airconditioners affixed on the wall of the flat and the wall wrap; there is a distance and the submission of the petitioner that this distance is almost 4-5 feet in length appears to be correct. Thus if the wall wrap is permitted on the front facade of the aforementioned flat, it would not prevent the windows and the doors of the flat from opening; they would still get the outside light and ventilation. The position is quite clear.

19. This Court thus endorses this submission of the learned senior counsel for the petitioner. This Court also notes that this argument is the alternate argument of the learned senior counsel for the petitioner. His first argument is premised on the submission that his permission to display advertisement through building wall wrap falls in category One and would not be governed by the obstacle of light and ventilation. The rejection letter of the respondent (dated 31.03.2016) clearly makes a reference to „On Premises Advertising Device“ which is a advertising device which falls in category Four for which alone the obstacle of light and ventilation is required to be met.

20. The fact that the case of the petitioner falls under category One is evident from a reading of clause 1.8 which permits the building wrap in commercial areas and which in turn contains no such rider.

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22. *This Court is also of the view that this Court, at this stage, need not go any further into the depth of the matter i.e. as to whether case of the petitioner falls in category One or in category Four as even presuming the submission of the learned senior counsel for the respondent that the hurdle of light and ventilation has to be adhered to by all advertisers as this is a reasonable restriction which has been imposed upon the petitioner in terms of its OAP of 2007, this Court is of view that this hurdle has also been met with by the petitioner. This is clear from the photograph which has been relied upon by the respondent. At the cost of repetition, this Court notes that while permitting the building wrap on the facades of the building, there would be still a distance of about 4-5 feet between the windows of the aforementioned flats and the building wrap; this would allow access to outside light and ventilation. The objection of the respondent on this count is really not sustainable.*

23. *At this stage, this Court also notes the photographs (2) placed on record in fact show that in the adjacent flat a building wrap of a similar nature (as proposed by the petitioner) has been permitted to “Industrial Blowers Limited”. This fact has been brought to the notice of the learned senior counsel for the respondent who submits that this is probably an error which has been committed by the respondent for which the respondent will take appropriate action.*

24. *Be that as it may, this Court is of the view that the rejection letter (31.03.2016) suffers from an infirmity. It has been premised on a wrong fact; the device, if permitted to the petitioner would in no manner interfere with the requirement of light or ventilation. This being the only objection taken in the rejection letter, the rejection letter is liable to be set aside. It is accordingly set aside.”*

3. In view of the above finding, the Single Judge permitted the writ petitioner to display its wall wrap on the concerned premises. On

the first date of hearing, the Court had directed the maintenance of *status quo*. That order was later interpreted by another order dated 30.05.2017 where this Court expressed its disinclination to disturb the *status quo* order.

4. Before this Court, learned counsel for the appellant/SDMC produced the photographs with respect to the display in question. It was contended that the dimensions of the advertisement put up far exceed the 400 sq. ft. limit and that besides, the wall wrap blocks windows and therefore, natural ventilation and access to light to the inhabitants/occupants of the concerned portion of the third floor of the said building is restricted. It was submitted that given the constraints within which the Court operates under Article 226 of the Constitution of India in writ proceedings, the direction by way of permission was something that the Court could not have in the first instance granted. If at all, the Single Judge could have set aside the order refusing to grant permission and directed the re-examination of the merits in accordance with law with further direction to expedite the decision.

5. On the other hand, it is contended that there is no violation of the bye laws and that the dimensions are in accord with those indicated in the regulations. The assertion of the SDMC with respect to blockage or ventilation and access to natural light are contested. The writ petitioner argues that the occupants or users of the premises have no objection and that in these circumstances, this Court should not interfere with the order of the Single Judge. It is also submitted that the SDMC has apparently taken a conscious policy decision - though not articulated, to not grant any permission of such wall wrap

and has in fact so tailored its new policy. This is supported by the Outdoor Advertising Policy, 2017. It is contended that the policy is the subject matter of the proceedings before the Supreme Court.

6. After some hearing, counsel for the writ petitioner submitted that in case having regard to the submissions made and in view of the Court's observations, the writ petitioner would remove/dismantle the advertisement and the structures put up within two weeks, in the light of this undertaking, its application – to be made within that period for grant of permission in the light of the prevailing policy, be considered expeditiously.

7. Counsel for the SDMC expressed no objection to this statement.

8. In the light of the submissions, the following directions are issued: -

- (1) The writ petitioner/(respondent in the appeal) shall ensure that the advertisement along with the entire structure/assembly placed by it on the third floor of 301-302 (earlier number 31/32), Satkar Building, 79-80, Nehru Place, Delhi is dismantled and completely taken down within fifteen days.
- (2) File an affidavit of undertaking to the above effect within a week (and also furnish the same to the SDMC).
- (3) Simultaneously, the writ petitioner is at liberty to move a fresh application for grant of permission, in accordance with the regulations.
- (4) The SDMC shall after satisfying itself with respect to the compliance in regard to (1) & (2) above, shall ensure that its

response/order is given to the writ petitioner within two weeks thereafter.

(5) The SDMC's order shall in no way be influenced by the observations of the learned Single Judge.

9. The appeal is partly allowed in the above terms along with pending application.

Order dasti.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

SEPTEMBER 01, 2017
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