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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10226/2015 & C.M. No.25352/2015**
NAMITA UPPAL

..... Petitioner
Through Mr.Anand Mishra, Mr.Utkarsh
Tripathi and Mr.Hemant Kumar,
Advocates.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent
Through Mr.Mukesh Gupta, Standing Counsel
for SDMC.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER
% **28.02.2017**

Petitioner before this Court is aggrieved by the cancellation/withdrawal order passed by the respondent/South Delhi Municipal Corporation qua the two sites where advertisements rights had been granted to the petitioner. The first site was A-120A, Ambedkar Colony, Chattarpur, New Delhi and the second site was A-244, Ambedkar Colony, New Delhi. Petitioner had been granted these permissions on 08.5.2014 and 22.7.2014 respectively; they were for display of self-signage.

On 01.12.2014 petitioner received two show-cause notices from the respondent alleging that during the inspection by the officers of the Department violation of the OAP-2007 was found to have been committed by the petitioner in the display of these advertisements.

On 24.12.2014, the petitioner responded to the impugned notices and sent her reply. Her submission was that her display of the self-signage was in conformity with the OAP. On 05.5.2015, the petitioner appeared in the office of the SDMC; she was not granted a hearing. On 15.5.2015 she wrote to the concerned officer seeking an appointment. She again appeared before the respondent on 03.6.2015. On 31.7.2015 the impugned order was passed by the respondent cancelling/withdrawing the NOC/licence granted to the petitioner qua the aforementioned two properties. This order was never communicated to the petitioner.

On 21.9.2015, the petitioner submitted her representation stating that this impugned order passed on 31.7.2015 was illegal. This was to no avail. Petitioner was constrained to file this writ petition.

A counter affidavit/status report has been filed by the respondent. The contention of the respondent is that this petition is misconceived; question of facts have arisen which cannot be decided in this petition. This petition is in fact an abuse of the process of the court. It is pointed out that admittedly the petitioner had been granted permission to display self-signage at the aforementioned two properties. Qua the first property i.e. A-120A, Ambedkar Colony, Chhatarpur, New Delhi an inspection was carried out by the Department on 03.7.2014; it was observed that a commercial display (of Planet of the Apes) was being used by the petitioner instead of self signage; this was in violation and contravention of the OAP-2007. A show cause notice dated 01.12.2014 was issued to the petitioner.

Petitioner was called for hearing on 05.5.2015; she was given a personal hearing in the matter on 13.7.2015 pursuant to which the order dated 31.7.2015 was passed. It is pointed out that the fact of the personal hearing has been concealed by the petitioner. Qua the second property i.e. the property bearing No.A-244, Ambedkar Colony, New Delhi in respect of a permission of self-signage measuring 20' feet x 8' feet, the petitioner was displaying a commercial media in excess size which was again a violation OAP-2007; show notice dated 01.12.2014 was served upon the petitioner. The petitioner continued to violate this condition. She was again given a notice dated 22.5.2015; personal hearing was granted to the petitioner on 13.7.2015 before the order dated 31.7.2015 was passed.

Learned counsel for the respondent reiterates that his submission that the petitioner was granted a personal hearing which fact has been concealed by the petitioner. Documents have also been placed on record which substantiate the stand of the respondent that a personal hearing had been granted to the petitioner qua both the properties on 13.7.2015 and these documents had been signed by the petitioner herself. There is no quarrel in this regard. In fact the petitioner does not dispute that the petitioner had gone for a personal hearing in the chamber of the Assistant Commissioner on 13.7.2015 and a personal hearing was granted to her.

These submissions of the respondent have been noted. This Court notes that the Co-ordinate Bench of this Court in WP(C) 6105/2015 M/s Pareena Estate Vs. South Delhi Municipal Corporation had held that Section 143(3) read with Section 142 (1)

and Fifth Schedule to the DMC Act leads to the unequivocal conclusion that the NOC/permission granted by the Commissioner under Section 143 for erecting, exhibiting, fixing, retaining any advertisement is on annual basis. Admittedly, these permissions had been granted by the Commissioner under Sections 143(1) of the DMC Act. These permissions have come to an end by efflux of time. The first permission qua the property No.A-120A, Ambedkar Colony, Chhattarpur, New Delhi had been granted to the petitioner on 08.5.2014 and the NOC/permission for second property i.e. property No.A-244, Ambedkar Colony, Chhattarpur, New Delhi had been granted on 22.7.2014. The period of one year has long since expired. These permissions having expired by efflux of time; nothing survives in this petition.

The contention of the respondents that this petition should be dismissed with exemplary costs is also noted. The body of the petition does show that the petition is premised on averments that a personal hearing had not been afforded to the petitioner before the impugned order dated (31.7.2015) was passed. The tenor of these averments are particularly noted in paras 11 and 12 of the petition. The petitioner has on oath stated that he had visited the office of the respondent on 05.5.2015; she was not given a hearing, no opportunity of hearing had at all been granted to the petitioner. This has been averred in para 12 as well. The petitioner also did not place on record these documents seeking her personal appearance in the office of the respondent Department.

This Court is of the view that the petitioner has deliberately

concealed this fact that she had been granted personal hearing before the respondent on 13.7.2015; This was an important fact as apart from the grievance of the petitioner that the orders of withdrawal of her permissions vide communication dated 31.7.2015 were illegal for the reason that he was conforming to OAP-2007; this petition also avers that no opportunity of hearing had been granted to the petitioner. At the cost of repetition, this is clearly mentioned in para 12 of the petition. It is only the respondent who had come forward to the Court and placed on record the documents showing that the petitioner had been granted a personal hearing on 13.7.2015.

This Court is thus constrained to dismiss this petition with costs quantified at Rs.25,000/-. Petition dismissed.

INDERMEET KAUR, J

FEBRUARY 28, 2017

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