

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1277 OF 2017

Mr.S.C.Naidu a/w Mr.Shashipal Shankar for the
Petitioners
Ms Pooja Thorat a/w Ms Kejali Mastakar and Mr.Anuj
Seth and Mr.Jaivardhan Sing for the respondent-BMC

P.C.:

1 Heard the learned counsel appearing for the parties. Rule. Respondent waives service. Taken up for hearing. The petitioner made an application for renewal of the four permits issued under sections 328/328A of the Mumbai Municipal Corporation Act, 1888 (for short 'the said Act'). In this petition we are concerned with only permit which is mentioned in prayer clause (a). On the basis of the application made by the petitioner for renewal of the subject permit, a communication dated 14th February 2014 was issued by the Deputy Municipal Commissioner, Zone-IV recording that the petitioners have not rectified three defects. The first defect was that the hoarding was not aesthetically covered. The second defect was that the distance from the other hoarding was less than 20 meters. The third one is that the hoarding is obstructing the light

and ventilation. An appeal was preferred by the petitioner before the First Appellate Authority which held against the petitioner. Being aggrieved by the said part of the order of the First Appellate Authority, a Second Appeal was preferred by the petitioner which has been dismissed by order dated 13th July 2016. The Appellate Authority consisted of two Additional Municipal Commissioners. The relevant part of the order passed by the Second Appellate Authority reads thus:

"The Senior Inspector (Licence), K/West Ward/Dy.S.L. (ZoneIV and VII) has stated that one hoarding permit No.761101104 facing traffic from Santacruz to Andheri, S.V.Road and next hoarding permit No.761101105 is facing traffic from Mithibai College,V.M.Road to Vile Parle so both the hoardings are visible from different directions of the road.

Sir, Inspector (Licence), K/West ward added that the distance between these hoardings is 15 meters and also stated that hoarding is 10 feet away from the building and obstructing the view of the building behind it.

We are pleased to reject the appeal on following ground:

There are two hoardings in the compound of Kapadia Apartments, S.V.Road, Vile Parle (West), Mumbai belonging to M/s.Sheen Ads

Permit No.761101104 (S.V.Road) and Permit No.761101105 but both the hoardings are on same side and alignment of road and having less than 20 mtrs distance between them and it also obstructs the view of the building behind. Hence, we pass the following order:

1 The order of first appellate authority is confirmed.

2 The appeal is dismissed."

2 Thus, it was held that the distance between the two hoardings in the compound of the Kapadia Apartment was less than 20 meters. It was held that both the hoardings are on the same side and same alignment of the road.

3 The submission of the learned counsel for the petitioner was that both the First and Second Appellate Authorities have not applied their mind. He invited our attention to the relevant guidelines. He submitted that the guidelines provide that the minimum distance between two hoardings on the plots on the same side of road/alignment should be at least 20 meters. He pointed out that the clause specifically clarifies that the same side of alignment shall mean the same direction of road. He invited our attention to the photographs on record. He submitted that photographs would show that the alignment of the hoardings is different and therefore, unless alignment is on the same side, the rule regarding maintaining the distance of 20 meters

could not have been applied. The learned counsel for the Mumbai Municipal Corporation firstly urged that what is recorded by both the Authorities is a finding of fact. The learned counsel also tendered on record a report dated 27th November 2014 which was before the First Appellate Authority which is signed by the Senior Inspector of Licence and the Advertisement Inspector of K/West Ward. The said report is taken on record and marked 'R-1' for identification. She also tendered across the bar another report dated 8th April 2015 signed by the Senior Inspector of Licence and the Advertisement Inspector of K/West Ward which is taken on record and marked 'R-2' for identification. Her submission is that after recording a finding of fact that the hoardings are on the same side, rule of 20 meters has been rightly applied. She also tendered on record Inspection Report dated 8th January 2018 which is again signed by the same Officers and the same is taken on record and marked 'R-3' for identification. She invited our attention to the sketch and photographs annexed to the report. She submitted that as a matter of fact during the site visit on 8th January 2018, the Municipal Officers found that that two hoardings were erected on the same side of S.V.Road and were found visible facing from three roads which are mentioned in the report. She submitted that if the said report (R-3) is considered, it completely supports the factual finding recorded in the impugned Orders and therefore, no interference is called for.

4 We have given careful consideration to the submissions. Relevant clause in the policy which is admittedly applicable reads thus:

MODIFIED CLAUSE

"The minimum distance between two hoardings on poles on the same side of the road/alignment shall not be less than 20 metres. The distance will be measured from the perimeter of the hoarding. Here same side of alignment shall mean same direction of road.

This restriction applies only to the distance between hoardings on ground level and not the distance between hoardings on (a) ground and dead wall; (b) dead wall and terrace; (c) ground and terrace."

(Underline supplied)

5 On the basis of the said clause, the submission is two hoardings which are referred in the order of the First and Second Appellate Authorities have a different alignment and the said hoardings are not visible from the same direction and they are visible from different directions. In substance, the argument is that it cannot be said that the hoardings are of the same alignment though they may be on one side of the road.

6 It is, therefore, necessary for us to ascertain what was the material before the First and Second

Appellate Authorities. As far as the Second Appellate Authority is concerned, it does not refer to any report by any Municipal Officer. The learned counsel for the Mumbai Municipal Corporation has tendered a copy of the report which is marked as 'R-2'. We have carefully perused the said report. The said report does not deal with the aspect of alignment of two hoardings which are referred in the Order by the Second Appellate Authority. Thus, what is noted in the impugned order of the Second Appellate Authority is the oral statement of the Senior Inspector of Licence of K/West Ward. The same does not find place in the report dated 8th April 2015 which was before the Second Appellate Authority. We have also perused the report which was before the First Appellate Authority. The report records that the distance between the two hoardings is less than 20 meters and in fact only 10 feet. However, the aspect of alignment of hoardings is not dealt with. Therefore, in our view, both the Appellate Authorities could not have recorded factual findings which are recorded in the impugned orders as there was no material for coming to the said conclusion before both the Appellate Authorities. It is not recorded in both the orders that the Officers constituting the Appellate Authorities had visited the site for ascertaining the factual position. Now, the Municipal Corporation wants to defend the impugned orders based on Inspection Report dated 8th January 2018 and the annexures thereto. The petitioners had no opportunity to deal with the said report before both the Appellate

Authorities. In fact, both the Appellate Authorities did not have benefit of the said report. Therefore, it will be appropriate, if by setting aside the orders of both the Appellate Authorities, the case is remanded to the First Appellate Authority. It will be open for the Mumbai Municipal Corporation to produce the report dated 8th January 2018 before the First Appellate Authority. If necessary, the Officers constituting the First Appellate Authority can always make a site visit. If the order of remand is made, it will enable the petitioner to deal with the report dated 8th January 2018.

7 Accordingly, we dispose of this petition by passing the following order:

(I) The impugned order dated 13th July 2016 passed by the Second Appellate Authority and the impugned order dated 6th January 2015 passed by the First Appellate Authority confined only to the Permit No.761101105 are hereby quashed and set aside. We make it clear that the order of the First Appellate Authority in so far as it relates to Permit No.761101104 is not disturbed;

(II) We direct the petitioners to appear before the First Appellate Authority on 8th February 2018 at 11.00 a.m for fixing the schedule of hearing. The report dated 8th January 2018 shall be placed before the First Appellate Authority

- for its consideration;
- (III) It will be always open for the Officers constituting the First Appellate Authority to make a site visit especially for dealing with the contention regarding the alignment of the hoardings. It will be also open for the First Appellate Authority to call for the site inspection report from the Municipal Officer;
- (IV) The First Appellate Authority shall decide the appeal afresh as expeditiously as possible and in any event within a period of one month from the date fixed for appearance of the parties;
- (V) Needless to add that till the disposal of the appeal and till the renewal of the Permit, it will not be open for the petitioners to display any advertisement on the hoarding in question;
- (VI) However, till the disposal of the appeal, the hoarding shall not be removed. If appeal is decided against the petitioners, the hoarding shall not be removed for a period of 30 days from the date on which the order is communicated to the petitioners;
- (VII) All contentions of the parties on merits are kept open which will be decided by the First Appellate Authority and the Second Appellate Authority if occasion for doing so arises;
- (VIII) Rule is partly made absolute on above terms with no order as to costs.

(P.N.DESHMUKH,J.)

(A.S.OKA,J.)