

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

WRIT PETITION NO. 886 OF 2018

Gauri Rajesh Patwardhan.

... Petitioner.

V/s.

Executive Engineer, Road Development Section
No.IV, Public Works Department, Mumbai
and others.

... Respondents.

Mr.Shoaib I. Memon for the petitioner.

Mr.Amit Shastri, AGP for respondent Nos.1 to 3.

Ms.Kiran Bagalia and Mr.Musharaf Shaikh for respondent No.2.

CORAM : A.S.OKA AND M.S.SANKLECHA, JJ.

DATE : 13th March 2019

P.C.:

The petitioner in this petition under Article 226 of the Constitution of India has entered into an agreement with the State Government which was executed by the Executive Engineer, Road Development, Division No.IV, Andheri on behalf of the State Government. Under the agreement, the petitioner was permitted to erect an advertisement hoarding for a period of seven years starting from 26th June 2013. Clause-7 of the said agreement reads thus:

“(7) The allotment shall commence from the date of this agreement and will be effective up to a period of 7 (Seven) years as per Government in Public Works Department, Mantralaya's Marathi letter No.जाहिरात-2010/प्र.क्र २०/स्ते-६ dated

23/02/2010. However, the allotment can be terminated by the Executive Engineer, Road Development Dn. No.IV, Andheri Public Works Department, (GOM) on behalf of Government by giving one month notice to the allottee without giving any substitute place and reason. In such case allottee shall not be entitled to claim any compensation because of termination of this agreement. The size of hoarding shall not be more than 40' x 40'. In the event of breach of any of the conditions of the agreement by the Allottee the allotment is liable to be terminated summarily.”

By a letter dated 4th December 2017, the Public Works Department (for short “PWD”) of the State Government directed the Chief Engineer of the PWD to remove the hoardings within the limits of Eastern and Western Express Highways. In view of the Government Resolution dated 13th April 2017, the said highways were transferred to Mumbai Metropolitan Regional Development Authority (for short “MMRDA”) for a period of five years. By letter dated 22nd December 2017, the Executive Engineer issued a 30 days’ notice in terms of clause-7 of the aforesaid agreement by calling upon the petitioner to remove the said advertisement hoarding on expiry of a period of 30 days.

2. The challenge by the petitioner in this petition under Article 226 of the Constitution of India is to the said notice of termination dated 22nd December 2017.

3. The submission of the learned counsel appearing for the petitioner is that, firstly, no reasons have been assigned for terminating the agreement. The second submission is that the Government Resolution dated 13th April 2017 does not contain any direction for termination of the agreement. His further submission is that the hoarding of the petitioner does not come in the way of the work which is proposed to be carried out by MMRDA on these highways. His further submission is that near the spot allotted to the petitioner, others have been permitted to erect their hoardings.

4. We have considered the submissions. Clause-7 of the agreement which we have quoted above was never disputed or challenged by the petitioner. In fact, after voluntarily entering into the agreement, the petitioner acted upon the said agreement without making any protest about the said clause. The said clause puts the petitioner to notice that the allotment made by the agreement will be terminated by giving one month's notice to the allottee without giving any substitute place or without recording any reasons. The said clause binds the petitioner. Therefore, it is no longer open for the petitioner to contend that the termination could not have been effected without recording the reasons.

5. The Government Resolution dated 13th April 2017 deals with transfer of highways to MMRDA for a period of five years as MMRDA is implementing various projects such as construction of flyovers on Eastern and Western Express Highways. It was not necessary for the Government

to refer to the termination of such agreements executed for erection of advertisement hoarding in the said Resolution. Moreover, the State Government by a communication dated 4th December 2017 (Exhibit-C to the petition) specifically directed the PWD to cancel such agreements permitting erection of hoardings.

6. The petitioner is not concerned with the fact whether the work undertaken on the highways is over or is yet to be completed. The petitioner is bound by the terms and conditions of the contract on which he has acted upon. The fact that somebody else is allegedly permitted to erect similar hoarding nearby is no ground to interfere in writ jurisdiction under Article 226 of the Constitution of India.

7. We see no merit in the petition and the same is rejected.

8. At this stage, the learned counsel appearing for the petitioner prays for continuation of ad-interim relief. Ad-interim relief granted earlier will continue for a period of one month from the date this order is uploaded.

(M.S.SANKLECHA, J.)

(A.S.OKA, J.)