

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

WRIT PETITION (L) NO. 1663 OF 2019

Ahmed Haji Mohammed Jarrahan	}	Petitioner
versus		
Municipal Corporation of Greater	}	
Mumbai and Ors.	}	Respondents

Mr. Rajendra N. Bhagattjee for the petitioner.

Mr. Ashwin Sakolkar with Ms.K. Mastakar for the Municipal Corporation.

Mr. S.B.Gore-AGP for respondent no.4.

Mr. Ahmed H. M. Jarrahan, petitioner present.

CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.

DATED :- JUNE 12, 2019

P.C. :-

1. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the notice issued by the Municipal Corporation to the petitioner.

2. The petitioner has, pursuant to the licence, erected a hoarding on the terrace of City View Building, Dr. Annie Besant Road, Worli, Mumbai. Licence/Permit No.761101161 enables the petitioner to put up a hoarding and display advertisements thereon. The case of the petitioner is that at the instance of the

Joint Commissioner of Police (Traffic), the Municipal Corporation has issued the impugned notice. The Joint Commissioner feels that the hoarding and the display of advertisement thereon is contrary to clause 16(d) of the Policy Guidelines for the Grant of Permission for Display of Sky-Signs and Advertisement and Sections 328 and 328A of the Mumbai Municipal Corporation Act, 1888, which enable grant of permissions or licences.

3. The Joint Commissioner of Police (Traffic) is of the opinion that not only has the hoarding been permitted to be erected at a junction where at least two or three roads converge, but there is a special permission granted to illuminate it at night. When such a hoarding and advertisement being displayed thereon is illuminated at night, it raises concerns about public safety. The heavy traffic junctions and signals are not the places where such hoardings should be erected and advertisements displayed. Motorists are bound to be disturbed and distracted and concentrate on driving the vehicles safely.

4. The Municipal Corporation has proceeded to take note of the objection of the Joint Commissioner of Police (Traffic) and has now issued the show-cause notice. The notice not only refers to the remarks of the Joint Commissioner, but takes note of the

alleged serious violations and says that if no sufficient cause is shown, then, it will proceed to cancel or revoke the permit or revoke. As of today, there is no order of cancellation or revocation of permit. The show cause notice is yet to be adjudicated.

5. The argument of Mr. Bhagattjee is that the hoarding carries advertisements and the advertisers have agreed with the petitioner to bear the cost of illumination of these hoardings. They want their advertisements displayed thereon to be illuminated at night. If these advertisements do not catch the public eye, then the advertisers, who are but the agents of those who manufacture and market the products, would suffer a loss. It is not that the illumination is done suddenly. The Joint Commissioner of Police (Traffic), therefore, should not have issued such a communication without fully satisfying himself as to whether there is obstruction to the smooth flow of traffic or whether the motorists are necessarily going to be distracted while driving their vehicles. He also contends that the hoarding is at a sufficient distance from the intersection or signal, i.e. more than 25 meters, and therefore poses no risk.

6. We have perused, with the assistance of Mr.Bhagattjee, the petition and the annexures. Today the issue is restricted to the permission or the act of illuminating the hoardings at night. The Joint Commissioner of Police (Traffic) has issued the impugned communication after taking note of the location of the hoarding structure and the advertisement displayed thereon. Mr.Bhagattjee does not dispute that Exhibit 'H' at page 29 are the photographs which are taken and relied upon by the petitioner himself. The hoarding of the petitioner is at a junction of at least three roads. There is a traffic signal and vehicles converge at this junction. To avoid accidents and any untoward incidents, the Joint Commissioner of Police (Traffic) feels that the hoarding's illumination at night ought not to be permitted. The Joint Commissioner acts on a larger consideration of public safety and public health. We do not think that the Joint Commissioner of Police (Traffic), while inviting the attention of the Municipal Corporation, has exceeded his powers in any manner. He is justified in remarking that there is a policy and in the absence of which, no hoarding structure can be erected. That policy does not confer any absolute and unconditional right to erect hoarding nor to display advertisements, let alone to demand the right to illuminate them. The right to erect hoardings and display such

advertisement may be claimed to be a part and parcel of the right to freedom to carry on business/trade of one's choice, but even that is subject to reasonable restrictions. The restrictions carved out are for public safety. If the policy itself says that no hoarding shall be erected around traffic signals and junctions within 25 meters of the road, then, the only argument that Mr.Bhagattjee canvasses is that this is far beyond 25 meter distance. It does not in any manner disturb the driver of the vehicle or the pedestrians. They may be crossing the roads, but there is absolutely no obstruction to the traffic movement.

7. We do not think that in writ jurisdiction we should be measuring distances or directing the exercise of the nature desired by Mr.Bhagattjee. We find that the hoarding structure is erected at Worli Naka, at the junction of Dr. Annie Besant Road, G.M. Bhosale Marg, Ganpatrao Kadam Marg and Dr. E. Moses Road. All these roads converge at this junction and the hoarding is exactly at the northern end of this junction. Once such is the location of the hoarding, then, the reasonable expectation that there should be no illumination of the advertisement at night calls for no interference in writ jurisdiction. More so, on the specious plea that we must go by the policy strictly and that limits a

distance of more than 25 meters. Pertinently, the damage likely to be caused by illumination at night is not to be necessarily measured or its side effects cannot be said to be minimised merely by distance. The illuminated advertisements may be of such nature as are visible and catch the eye from a longer distance or from further away. The motorists then are bound to be affected while driving the vehicles.

8. In these circumstances, we do not think that the Joint Commissioner of Police (Traffic) exceeded his powers. Once we find that he was acting to subserve larger public interest, then all the more we are disinclined to entertain this petition. It is dismissed.

9. Mr. Bhagattjee's apprehension is that since the petition is dismissed, the ad-interim order is vacated, the Municipal Corporation will act promptly and forthwith and remove the hoarding itself. This apprehension is entirely misplaced and has no basis. The Joint Commissioner of Police (Traffic) does not say that the hoarding structure should be removed. He says, display the advertisement, but without illuminating it at night. He has merely recommended that the hoarding license be revoked. The Municipal Corporation has issued the show-cause notice to the

parties. It will follow the principles of natural justice. Presently, no coercive steps have been taken, much less to remove the hoarding itself. In these circumstances, the apprehension is misplaced. If the petitioner does not illuminate the advertisement at night, then he need not apprehend removal of the hoarding structure forthwith. With this clarification all the more we are not inclined to continue the ad-interim order. It is vacated forthwith.

10. Before parting, we must notice Sections 328 and 328A of the Mumbai Municipal Corporation Act, 1888 and the following conclusions of the Hon'ble Supreme Court in the case of *Municipal Corporation of Greater Bombay vs. Bharat Petroleum Corporation Ltd.*¹:-

“8. The main and salutary purpose of Section 328/328A is to regulate the installation/construction of signboards of the nature defined and envisaged therein to keep road margins and space above such margins not indiscriminately meddled with so as to affect the free movement and free flow of traffic, preserve the ecology and environment by averting and regulation to the extent required, ensuring, in public interest, adverse physiological and psychological impacts either directly or indirectly due to the use of neon lights/ illuminations used for the installations. The provision for licensing is

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incidental and necessarily required to properly and effectively enforce the regulations and the levy and collection of fee also ultimately seem to achieve the same purpose. The statutory provisions seem to have been thus enacted with a laudable public purpose and the definition is also not only inclusive in nature but the enumeration of the various nature of fixtures, the manner and methods adopted therefor, as also the obvious and ostensible object of such fixtures/installations found specified therein, under the scheme of things, are found to be with the intention of making the provision an all inclusive one to cover or rope in all possible things and not to operate in a manner to bring about any limitation on their scope, and that too to render the very provision otiose, redundant and meaningless.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)