

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***ORDINARY ORIGINAL CIVIL JURISDICTION*****WRIT PETITION (L) NO. 2048 OF 2019****Madanmohan Chandrabhan Gupta****..... Petitioner****VERSUS****Municipal Corporation of Greater Mumbai
& Ors.****..... Respondents**

Mr.Mayur Khandeparkar, a/w. Mr.Girish B.Kedia, Mr.Manoj Agre for the Petitioner.

Mr.N.V.Walawalkar, Senior Advocate, a/w. Mr.R.Y.Sirsikar for the Respondents – MCGM.

Mr.Sunil Chaudhari, Senior Licence Inspector, K/E Ward present.

Mr.Mandevia, Inspector, Licence Department present.

CORAM : R.D. DHANUKA, J.**DATE : 30th AUGUST, 2019****P.C.**

Rule. Mr.Walawalkar, learned senior counsel for the respondents waive service. By consent of parties, petition is heard finally.

2. The petitioner was granted permission for erecting hoarding structure from two illuminate 'V' shape structure admeasuring 40 x 20 ft. at initial stage, situated on the plot of land belonging to Smt.Ashadevi Gupta on 22nd September,2000. The respondents granted necessary permission on 12th October,2002 on compliance of requirement therein. The petitioner thereafter installed the said hoarding structure in 'V' shape on the said site. The respondent issued a licence in favour of the petitioner.

3. In the month of July 2012, the respondent no.1 had introduced the policy pursuant to the guidelines issued by this court in Writ Petition No.1132 of 2002. In the said policy, it was provided that no hoarding shall be allowed on the Corporation properties except by inviting tenders.

4. The petitioner was issued two show cause notices both dated 3rd May, 2017 in response to the application made by the petitioner for renewal of permission for advertisement hoarding permit. The petitioner replied to the said show cause notice. The respondent passed an order against the petitioner pursuant to the said show cause notice. The first and second appeals preferred by the petitioner came to be rejected. The petitioner thus filed this petition under Article 226 of the Constitution of India.

5. The petitioner made a statement before this court on 15th July, 2019 that by a letter dated 25th April, 2019 the petitioner had already informed the respondent that one pillar of the hoarding which was on municipal land, reserved for garden has been shifted. In view of this statement made by the learned counsel for the petitioner, this court directed the respondents to verify the position and indicate whether shifting of one pillar on the municipal land, reserved for garden is in compliance with the impugned order passed by the authorities or not.

6. Pursuant to the said order, the respondents filed an affidavit dated 21st August, 2019 confirming that one of the pole on the municipal land was already removed by the petitioner. It is further stated in the affidavit that insofar as land bearing CTS No.227 on which the pole of the said hoarding is placed is being acquired by DP

Department of the respondent. In the affidavit in reply it is also the case of the respondents that in view of the removal of one pillar of the said hoarding, the structural strength of the hoarding has necessarily weakened and it has become risky and hazardous to the surrounding area.

7. The petitioner has disputed this allegation made in the affidavit in reply and has annexed complete structural stability certificates dated 24th April, 2019 and 27th August, 2019 in support of his contention that the hoarding installed by him is safe and is not in risky condition.

8. In view of the fact that the pole which was on the municipal land on which the hoarding was placed has been admittedly removed, the policy framed by the municipal corporation pursuant to the guidelines framed by the High Court and more particularly that no hoarding would be allowed on the Corporation property accepted by inviting tenders now would not apply to the facts of this case.

9. In my view, the entire show cause notice which culminated into the impugned order passed by the authorities on the premises that one of the pole of the hoarding was placed on the municipal land without inviting tenders thus in my view, do not survive. The impugned orders as well as the the show cause notice which are subject matter of this petition and more particularly described prayer clause (a) of the petition deserve to be quashed and set aside.

10. I, therefore, pass the following order :-

- (a) Writ petition is made absolute in terms of prayer clause (a).

(b) The application for renewal made by the petitioner on 26th August,2014 for renewal permission of advertisement of hoarding permit SAP Nos. 76110141 and 76110142 stands restored to file. In view of the fact that the said applications were made at the time when one pillar on the hoarding was on the municipal land, the petitioner would be at liberty to submit an addendum to the said applications for renewal already made on 26th August,2014 in view of the subsequent events.

(c) If any such addendum is filed by the petitioner, the respondents shall consider the original applications dated 26th August,2014 with the addendum in accordance with law and on its own merit within three months from the date of receipt of such addendum.

(d) It is made clear that during the pendency of the application for renewal and for a period of two weeks from the date of communication of the order if the same is adverse against the petitioner, the respondent shall not take any coercive steps against the petitioner on the basis of the show cause notice and the impugned orders which are quashed and set aside by this order.

(e) Rule is made absolute in the aforesaid terms. There shall be no order as to costs.

[R.D.DHANUKA, J.]