

2. In our view, this would be sufficient to dispose of the Petition. However, Respondent No. 3 the Mumbai Metropolitan Region Development Authority (“**MMRDA**”) apparently insists that its letter of 12th October 2021 at Exhibit “S” at page 131 will nonetheless survive and requires to be defended.

3. We do not believe this is correct and it is for this limited reason that we now issue Rule, make it returnable forthwith and proceed to dispose of the Petition finally in respect of the 3rd Respondent MMRDA and its impugned communication of 12th October 2021.

4. The Petition arises this way.

5. The Petitioners entered into a tripartite agreement on 5th January 2010 with Respondent No. 4, Public Works Department of the State Government (“**PWD**”) and Respondent No. 5, the Maharashtra State Road Transport Corporation (“**MSRTC**”) for constructing Bus Queue Shelters on the Western Express Highway. Part of this agreement related to the Petitioners being allowed to construct advertisement hoardings (cantilevered or lollypop design). This land at that time belonged to or was vested in the PWD. We are not concerned with the details of the kind of construction but it is sufficient to note that in the agreement PWD was described as “the owner”. The tripartite agreement was for 25 years and was renewed periodically or cyclically with endorsements of renewal at the foot of the agreement by each party. The agreement also had an attested plan that denoted the advertising space. The agreement was

renewed until 4th January 2021 (by an endorsement of 28th July 2020) and, apparently, by MSRTC until 30th November 2023. The Petitioners have been making payment in the timely manner to PWD. There is certainly no grievance about non-payment. The Petitioners also have a municipal license from 2011 for permission to display the advertisements.

6. The Petitioners began work of constructing of bus queue shelters and began displaying advertisements as permitted by the license.

7. In 2015, the MCGM sought to blacklist the Petitioners over a contractual dispute. The Petitioners filed Writ Petition No. 168 of 2018 in this Court. The MCGM had declined renewal of the advertising license. Representations were made. Ultimately, the MCGM made an order of 28th November 2017 against the Petitioners. This Court on 16th April 2018 noted that the MCGM withdrew the blacklisting order and, as regards the 28th November 2017 order allowed the representation of the Petitioners to be placed before the higher officials for an early disposal within six weeks. On 18th May 2018, MSRTC wrote to the Petitioner issuing a certificate for putting up certain types of advertising hoardings or supports on 20 Bus Queue Shelters. There was again another problem with the MCGM as to whether a particular type of advertisement support was or was not permitted. The Petitioners filed another Writ Petition (L) 2385 of 2018. This was disposed of on 27th June 2019 and disputes were referred to sole arbitration of a Retired Judge of this Court/of the Calcutta High Court.

8. In the meantime, by a Notification of 18th June 2019, PWD notified that both the Eastern Express Highway and the Western Express Highway — until then with or housed or vested in PWD — would be transferred permanently and as a whole to MMRDA.

9. Pursuant to this, the Joint Municipal Commissioner addressed a letter of 31st July 2019 to a member of a special committee in regard to the directions issued by the Additional Municipal Commissioner to visit sites and suggest sizes at 20 locations where projecting or cantilevered advertising hoardings may be permitted on the Western Express Highway. There was a joint inspection on 3rd August 2019. Some 22 locations were identified. PWD then wrote on 19th August 2019 to MCGM saying that the contract awarded to the 1st Petitioner for the Bus Queue Shelters for a period of 25 years was still valid subsisting and binding. There was no interruption at this stage in the contract that the 1st Petitioner held or the permission granted to the 1st Petitioner regarding the hoardings or advertising sites.

10. On 16th January 2020, PWD wrote to the 1st Petitioner granting permission for excavation to put up certain types of hoardings on 20 locations. The Police also granted permission on 22nd July 2020.

11. On 8th March 2021, the Petitioner wrote to MMRDA now requesting for its approval for a renewal of the principal agreement. The 1st Petitioner stated that MSRTC had renewed the contract 2025. All amounts and rents have been paid until January 2022.

12. On 10th June 2021, MMRDA wrote to the 1st Petitioner noting the request for an extension of the tenure of the tripartite agreement and its approval by the Commissioner of MMRDA and asked for further information regarding the advertising boards. The 1st Petitioner supplied this information.

13. PWD then by its letter of 12th October 2021 wrote to the Petitioner stating that there was no agreement between the 1st Petitioner and MMRDA. MMRDA had claimed that no rent or charges had ever been paid by 3rd Respondent to 1st Petitioner regarding the advertisements. Consequently, the 3rd Respondent MMRDA stayed the operations of the Petitioner vis-à-vis the advertisements. This is MMRDA's impugned letter of 12th October 2021 at page 131 that is challenged in this Petition.

14. It seems to us that this is a classic case of one department being unable or unwilling to talk to another department of the same government. As Mr Dhond points out there is no question or dispute about the fact that the Petitioners have made full payment to PWD or MCGM as the case may be. Page 99, 28th June 2019 shows the transfer of the highway and clearly indicates that the Western Express Highway is being shifted from the PWD to West in the MMRDA. The department is known as the मार्ग विकास विभाग क. ४ Andheri Mumbai. Then we find at page 137, मार्ग विकास विभाग क. ४ wrote to the 1st Petitioner on 14th January 2022 demanding payment for precisely the advertising hoardings and the bus shelters that are part of the tripartite contract. This is at Exhibit "V" to the Petition. The 1st Petitioner actually *made* payment and this is shown at page 144 and 145. At page 144 is the 1st Petitioner's covering

letter of 18th January 2022. The Manager's Cheque drawn on HDFC Bank is at page 145. It is in favour of the Executive Engineer *Road Development Division No. 4*, clearly the transferee in 2019 from the PWD.

15. Finally, there is the document at page 146 issued by the very same *Road Development Division No. 4*, which grants the permission for excavation etc in respect of these cantilevered hoardings.

16. Now that the State Government's impugned document and page 175 of 24th March 2022 stands withdrawn, we are unable to see how MMRDA can possibly sustain its demand at page 131 in these circumstances. We do not follow what that demand is. Payment has been made to the transferee of the road, and it has been made by a demand draft. There is a communication from the PWD saying that the transferee is in fact MMRDA (or a division of the MMRDA). In any case, so far as the Petitioner is concerned, this makes no difference once it has been notified of the change of vesting of a public asset, and a demand for payment made by the authority supposed to be in charge of that asset has been fully met. MMRDA cannot possibly claim that there is "no privity of contract" or that there is "no agreement", no permission" or "no payment". All these have been done. MMRDA is undoubtedly bound by the actions of its predecessor agencies as also by actions taken by and in the name of the Road Development Division No. 4.

17. In our view, MMRDA's communication at Exhibit "S" at page 131 cannot survive. It is quashed and set aside. Rule is made

absolute in terms of prayer clauses (a) and (b) which are set out below. Rule is restricted to the MMRDA communication, the State Government's impugned order having been withdrawn:

“a) That this Hon'ble Court be pleased to issue a Writ of Certiorari or a Writ in a nature of Certiorari or any other appropriate Writ under Articles 226 of the Constitution of India and after examining the legality and validity thereof quash the impugned order/letter dated 24th March 2022 (*Exhibit-EE hereto*) issued by the Respondent No.3 and also quash the letter dated 12.10.2021 issued by the Respondent no.3 (*Exhibit-S hereto*).

b) That this Hon'ble Court be pleased to issue a Writ of Mandamus or a Writ in nature of Certiorari or any other appropriate writ, directions or order under Article 226 of the Constitution of India to directing the Respondents to act in consonance with the terms and conditions of the Agreement dated 5th January 2010 and permit the Petitioners to carry out their work as per the Tripartite Agreement and permissions granted.”

18. We have not in this order decided any potential dispute that may be forthcoming between MMRDA and the State. It is for the MMRDA and the State Government to clarify once and for all between them which agency and authority is to be paid by the Petitioner. We note Mr Dhond's statement on instructions that the 1st Petitioner will make payment on time and without default to whichever authority or agency is notified.

(Madhav J. Jamdar, J)

(G. S. Patel, J)