



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION No.10300 OF 2022**

|                                       |                 |
|---------------------------------------|-----------------|
| Sanjiv Manmohan Gupta,                | }               |
| Carrying on Business                  | }               |
| under the name and style              | }               |
| M/s. Global Advertisers,              | }               |
| As a sole propriety concern,          | }               |
| having its office at Shree Ram Trade, | }               |
| Centre, 6th floor, S.V.P. Road,       | }               |
| Borivali (West), Mumbai 400 092       | }               |
| Through C.A.A holder V.H. Ahuja       | } .. Petitioner |

**Versus**

- |                                     |   |
|-------------------------------------|---|
| 1. State of Maharashtra,            | } |
| (Writ to be served upon the         | } |
| Addl. Government Pleader,           | } |
| High Court, A.S.,Bombay)            | } |
| 2. The District Collector,          | } |
| Mumbai Suburbs,                     | } |
| Having address at Administrative    | } |
| Building, Near Chetana College,     | } |
| Bandra (E), Mumbai-400 051.         | } |
| 3. The Hon'ble Minister for State,  | } |
| Revenue & Forest Department,        | } |
| Mantralaya, Mumbai-400 032.         | } |
| 4. Municipal Corporation of Greater | } |
| Mumbai,                             | } |
| Mahapalika Marg. Fort,              | } |

Mumbai-400 001. }

5. Mr. Ganesh Shetty, }

Carrying on Business }

under the name and style }

M/s. Option Advertising Co., }

a sole proprietary concern, }

having its office at Shop No.1, }

Pooja Mitra Mandal CHS Ltd., }

Opp. ICICI Bank, Link Road, }

Goregaon(E), Mumbai }..Respondents

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**Mr. Vishal Kanade** a/w Mr. Bhushan Deshmukh i/by Mr. Girish Kedia Mr. Krushang Kedia, Mr. Manoj Agre, Advocate for the Petitioners.

**Mr. Shailendra Kanetkar**, a/w Ms. Ketki Gadkari, Ms. Aishwarya Shinde, Advocates for Respondent No.5.

**Mr. C. D. Mali**, AGP for Respondent No.1

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**CORAM : SANDEEP V. MARNE, J.**

**RESERVED ON : 11 OCTOBER 2023**

**PRONOUNCED ON : 19 OCTOBER 2023**

### **JUDGMENT:**

1. By this petition, Petitioners challenge order dated 20<sup>th</sup> August 2021 allotting a hoarding site in favour of Respondent No. 5 as well as Order dated 25<sup>th</sup> April 2022 passed by Minister-Revenue rejecting Petitioner's Review Application. The dispute amongst Petitioner and Respondent No. 5 is about allotment of hoarding site for display of advertisement at

Government Land at CTS No.679 (Part) at Bandra, Mumbai. The State Government has allotted the said site in favour of Respondent No. 5 by Order dated 20.08.2021. Petitioner sought review of the said decision before Minister-Revenue which has been rejected by Order dated 25.4.2022.

**2.** Briefly stated, facts of the case are that Petitioner carries business in the name and style as M/s. Global Advertisers. He claims that the site at CTS No. 679 (Part) near Western Express Highway at Bandra was originally operated by the Western Railway and was allotted to Petitioner vide letter dated 29.12.2006. He claims that in pursuance of such allotment, a hoarding structure admeasuring 80' x 40' x 2 at the that site was erected by him for display of advertisements. That Petitioner was conducting the business of display of advertisements at the said site since the year 2007 by regularly paying license fees to the Western Railway. The size of the original structure was permitted to be increased by the Western Railways from time to time and the Petitioner increased the size to the extent of 12,400 square feet at the site.

**3.** The State of Maharashtra claimed that the land on which the hoarding site is situated, belongs to it. On account of

claim raised by the State Government to the site in question, Petitioner submitted application dated 30.09.2011 to Collector for allotment of the said site. In the meantime, the dispute between the Railways and the State Government was resolved and it was agreed by the Railways that the land beneath the hoarding site belongs to the State Government.

4. Petitioner claims that JSRM Media is its sister concern, who made an application dated 6.10.2018 to the Collector for allotment of the said hoarding site. That another sister concern of Petitioner by name B.N.H. Traders, also submitted application dated 25.04.2019 for allotment of the hoarding site. Another letter dated 12.08.2019 was submitted by M/s B.N.H. Traders for allotment of the hoarding site.

5. By Order dated 20 August 2021, the State Government allotted the said hoarding site in favour of Respondent No. 5. Such allotment is shown to have been made towards replacement of another site, which was earlier allotted to Respondent No. 5 at City Survey No. 8 (Part) at Parigha Khadi, Bandra. After such allotment made on 20.08.2021, Petitioner's sister concern M/s B.N.H. Traders received letter dated 1 September 2021 from the office of Collector, Mumbai

Suburban stating that its request for allotment of the said hoarding site was disposed of on account of absence of any policy about display of advertisement as well as defacement caused by the advertisement hoarding. The Letter dated 1 September 2021 made a reference to the letter of Divisional Commissioner, Kokan dated 1st July 2021.

**6.** Petitioner filed Review Application before the Minister-Revenue seeking review of decision dated 20 August 2021 allotting the hoarding site in favour of Respondent No. 5. By Order dated 23.09.2021, the Minister-Revenue granted stay to the Order dated 20.08.2021. However after hearing both the sides, the Minister-Revenue passed order dated 25.4.2022 rejecting review application filed by the Petitioner. Accordingly, Petitioner has filed present petition challenging the order of Minister-Revenue dated 25.4.2022 as well as Allotment Order dated 20 August 2021 made in favour of Respondent No. 5.

**7.** Mr. Kanade the learned counsel would appear on behalf of the Petitioner and submit that the action of the State Government in awarding the hoarding site in favour of Respondent No. 5 is totally arbitrary. That few days after

passing of Order dated 20 August 2021, application made by sister concern of Petitioner has been rejected on 1<sup>st</sup> September 2021 stating that there is no policy framed by the State Government for display of advertisement and that the erection of advertisement hoarding would cause defacement. He would submit that while citing those reasons in communication dated 1st September 2021, the Collector ignored the fact that the State Government had granted allotment of very same site for erection of advertisement hoarding of Respondent No. 5. He would submit that though letter dated 1st September 2021 makes a reference to the Divisional Commissioner's Letter dated 01.07.2021, the said letter has neither been served on Petitioner nor its copy is produced by the State Government. That Petitioner is not aware about contents of letter dated 01.07.2021 which is the basis for issuance of letter dated 1st September 2021 by the Collector.

**8.** Mr. Kanade would further submit that since the concerned advertisement site is being operated by the Petitioner since the year 2006 on account of allotment made in his favour by Western Railways, such allotment ought to have been continued by the State Government. That the

decision to allot hoarding site is taken as per whims and fancies of the State Government rather than evaluating the merits of the competing claims made by Petitioner and Respondent No. 5. He would submit that the hoarding structure erected by Petitioner at the site still continues to exist and Petitioner needs to be granted the allotment of said site. That under pretext of shifting the site of Respondent No. 5, Petitioner's site is arbitrarily taken away. He would pray for setting aside the order passed by the Minister-Revenue as well as the Allotment Order dated 20.08.2021 issued in favour of Respondent No. 5.

**9.** *Per contra*, Mr. Kanetkar the learned counsel appearing for the Respondent No. 5 would oppose the Petition. He would submit that Petitioner cannot claim any right in respect of the hoarding site in question. He would submit that Respondent No. 5 was actually allotted hoarding site at CTS No. 8 (Part) on 24.10.2013. However on account of MMRDA carrying out flyover work at the that site, Respondent No. 5 could not erect its hoarding at the allotted site. He therefore sought shifting of the site and this is how the hoarding site in question has been allotted to Respondent No. 5 by order dated 20.08.2021. That therefore allotment made in favour of Respondent No. 5

cannot be linked to the so called request made by the Petitioner or his alleged sister concerns.

**10.** Mr. Kanetkar would further submit that Petitioner cannot seek allotment of hoarding site in question on the basis of application made by an altogether different entity of M/s B.N.H. Traders, who has not filed the present petition. If on the other hand, Petitioner claims connection with M/s B.N.H. Traders, he has not challenged the refusal letter dated 1st September 2021 either before the Minister or in the present petition. The said rejection letter has attained finality. That Respondent No. 5 has already erected hoarding structure at the site and on account of interim order passed by this Court on 6th September 2022 granting *status quo*, Respondent No. 5 is not able to display advertisements at that structure. He would submit that Petitioner has failed to make out even a semblance of right in respect of the concerned hoarding structure allotted in favour of Respondent No. 5 as a substituted site in pursuance of rights created by in its favour in the year 2013.

**11.** I have also heard Mr. Mali, the learned AGP appearing for the State Government. He would oppose the Petition and

support the order passed by the Minister-Revenue. He would take me through the Affidavit in Reply to justify the Order. In pursuance of direction issued by this Court, Mr. Mali has placed on record copy of Divisional Commissioner's Letter dated 01.07.2021.

**12.** Rival contentions of the parties now fall for my consideration.

**13.** There are rival claims between Petitioner and Respondent No. 5 with regard to advertisement hoarding site at CTS No. 679 (part), Western Express Highway, near pipeline and nallah, at Bandra, Mumbai. Petitioner claims that he has been operating the site in question since 2006 as a licensee of Western Railways and has a prior claim over that site. Respondent No. 5, on the other hand, claims that its claim flows through allotment made in its favour as early as on 24.10.2013 at a different location at CTS No. 8 (part) at Parigha Khadi, Bandra. It is the case of Respondent No. 5 that the allotment Letter dated 20 August 2021 is made merely as a substituted site on account of non-operation of advertisement hoarding at CTS No. 8 (Part) at Parigha Khadi, Bandra due to restrictions placed by MMRDA. It is therefore

necessary to examine the background in which the site is allotted to Respondent No. 5.

**14.** There appears to be some history about the allotment of advertisement hoarding sites in favour of Respondent No. 5. Respondent No. 5 filed an application for erecting hoarding sites and beautification of area surrounding at CTS No. 629 and CTS No. 8 at Nandadip Garden, PWD, Kala Nagar, Bandra East, Mumbai. After conduct of survey, order dated 24.10.2013 was issued by the State Government allotting one hoarding site of 40'X40' size in 'V' shape and one single hoarding of same size at CTS No. 8, Parigha -Khadi, Bandra and similar two hoardings at CTS No. 629 Bandra. It appears that Mumbai Metropolitan Regional Development Authority (MMRDA) requested the Collector for shifting of the advertisement hoarding sites allotted to Respondent No. 5 on account of construction of flyover at Kala Nagar junction.

**15.** On account of objection raised by MMRDA, Respondent to 5 could not operate the hoarding site allotted vide letter dated 24 October 2013. It was also observed that the site of hoarding No. 1 falling in CTS No. 8 (part) was affected by Mangroves. Respondent No. 5 therefore made a request to Collector for change of location of Hoarding No. 1 to CTS No.

679. In the meantime, on account of vesting of the land at CTS No. 679 at Bandra in State Government, the Collector Mumbai Suburban District had sent letter dated 21.10.2015 to the Western Railways for removal of advertisement hoarding of M/s. Bright Outdoor Media. After conducting site inspection, the Collector made a recommendation to the State Government vide letter dated 26th August 2019 explaining in the detail the reasons for shifting of one of the sites allotted to Respondent No. 5 vide Order dated 24 October 2013. The Collector recommended shifting of hoarding No. 1 of Respondent No. 5 to CTS No. 679. This is how order dated 20 August 2021 came to be passed allotting hoarding site in favour of Respondent No. 5.

**16.** From the above chronology of events leading to passing of order dated 20 August 2021, it is clear that the decision to allot hoarding site at plot No. 679 (part) to Respondent No. 5 is a well considered decision taken by the State Government. It cannot be stated, by any stretch of imagination, that the State Government had any competing claims between Petitioner and Respondent No. 5 with regard to the hoarding site at CTS No. 679 (part).

**17.** True it is that Collector's communication dated 1 September 2021 issued to M/s B.N.H. Traders is not happily worded. The Collector has cited twin reasons for absence of policy and defacement caused due to hoardings. Collector's letter is based on the Divisional Commissioner's letter dated 1<sup>st</sup> July 2021, which also cites same reasons. As a matter of fact, by the time the Collector issued communication dated 1<sup>st</sup> September 2021, the Order dated 20.08.2021 was already passed by the State Government allotting hoarding site at CTS No. 679 (part) Bandra to Respondent No. 5. Collector's letter dated 1<sup>st</sup> September 2021 is not under challenge in the petition, which would also demolish the theory of competing claims sought to be raised by Petitioner. Since the letter dated 1<sup>st</sup> September 2021 is not under challenge, the correctness of reasons stated therein need not be determined.

**18.** Petitioner's alleged right to erect hoarding at CTS No. 679 at Bandra flows out of his arrangement in Western Railway when the concern plot of land was in the control of Western Railway. Once the land vested in the State Government, any licensee or allottee of Western Railway cannot compel the State Government to allot the hoarding site to himself. No right is created in favour of Petitioner to seek

allotment of hoarding site in question merely because he was a previous licensee of Western Railways. The State Government is empowered to take its own decision for allotment of hoarding site, based on facts and circumstances of each case. This is not a case of consideration of competing proposals of two parties, but merely a case of grant of alternate site. In the present case, the State Government has taken into consideration the fact that Respondent No. 5 was not been able to erect hoarding No. 1 allotted to him at CTS No. 8 (part) at Parigha Khadi Bandra in terms of allotment Order dated 24 October 2013. Thus some right existed in favour of Respondent No. 5 to erect a hoarding in view of Allotment Order dated 24 October 2013. Since that right was violated, the State Government has taken corrective action in allotting the alternate site to Respondent No. 5. On the contrary, no right existed in favour of the petitioner, who claimed allotment of the site in question only on account of previous allotment made in his favour by the Western Railway.

**19.** Respondent No. 5 was objected by MMRDA from erecting a hoarding site as per the allotment order dated 24 October 2013. Such an objection was raised by a State Instrumentality. This can be a relevant factor to be taken into

consideration by the State Government. Therefore, its decision to grant alternate site to Respondent No. 5 cannot be faulted. It is not that the Respondent No. 5 was a fresh applicant seeking allotment of the hoarding site in question. Therefore, the State Government could not have compared the merits of applications submitted by Petitioner and Respondent No. 5. Thus, there was no question of any comparative assessment between the two applications. In such circumstances, it is difficult to hold that the State Government has committed any error in allotting the alternate site to Respondent No. 5. The State Government has merely granted permission to shift the said site of hoarding No. 1 from land bearing CTS No. 8 (part) Parigha Khadi Bandra to land bearing CTS No. 679 (part) Bandra. It is difficult to hold that such an action of the State Government suffers from the vice of arbitrariness.

**20.** Allotment of hoarding site in favour of Respondent No. 5 is an administrative decision taken by the State Government. The scope of judicial review over administrative action lies in an extremely narrow compass. Courts are concerned more with the decision-making process and not with the merits of the decision. A Court cannot substitute its own opinion in place of the opinion of the decision making

authority. As long as it is satisfied that the decision making authority has taken into consideration the relevant factors and has eschewed the irrelevant factors, the administrative decision cannot be subjected to judicial review by Courts.

**21.** Since allotment of the hoarding site is an administrative decision, it is highly debatable as to whether the review filed by Petitioner before the Minister-Revenue was maintainable. However, since no error is traced in the order of allotment, I do not wish to delve deeper into the issue of maintainability of review application filed by Petitioner and I proceed on an assumption that the review application was maintainable. Perusal of the Order passed by the Minister-Revenue would indicate that he has considered the relevant factor of allotment of subject hoarding site to Respondent No. 5 in lieu of another site allotted to it in 2013. There is no patent error in the decision of the Minister-Revenue.

**22.** In the result, I find the order of allotment dated 20<sup>th</sup> August 2021 as well as the Order dated 25<sup>th</sup> April 2022 passed by Minister-Revenue to be unexceptionable. The petition, being devoid of merits, is accordingly dismissed without any order as to costs.

**[SANDEEP V. MARNE, J.]**

**23.** After the order is pronounced, Mr. Kanade, the learned counsel appearing for the Petitioner would pray for extension of interim order of *status-quo* for a period of 6 weeks. The learned counsel appearing for Respondent No.5 would submit that though the same can be continued, the same may not be continued for a long time. Accordingly, the order of *status-quo* shall stand extended for a period of 4 weeks from today.

**[SANDEEP V. MARNE, J.]**