

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1493 OF 2018**

Farhat Shiekh ...Petitioner
Versus
State of Maharashtra & Ors ...Respondents

Mr Ashok M Saraogi, *with Pallavi Kulkarni, Poonam Rajbhar, i/b
Prajot H Jaggi, for the Petitioner.*

Mr Vivek Kantawala, *with Amey Patil, i/b M/s Vivek Kantawala &
Co, for Respondent No. 10.*

Mr SI Menon, *with Iram Menon & Ibrahim Menon, for Respondents
Nos. 9 to 11.*

Mrs Uma Palsuledesai, AGP, *for the Respondent-State.*

Mr Ram Apte, Senior Advocate, *with Pooja Yadav, i/b Sunil K
Sonawane, for the Respondent-BMC.*

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**CORAM G.S. Patel &
 Kamal Khata, JJ.
DATED: 24th August 2023**

PC:-

1. Heard. In our view, the Petitioner seeks reliefs that are not possible in exercise of writ jurisdiction. Prayer clauses (a) and (b) of Petition at pages 48 and 49 read thus:

“(a) This Hon’ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction to quash and set aside the Impugned Order dated March 4, 2017 of Simca

(Respondent No. 9) Exhibit-DD passed by Respondent Nos. 7 and 8, Impugned Order dated March 9, 2017 of Urvashi (Respondent No. 10) passed by Respondent Nos. 4 and 5 Exhibit FF and Impugned Order dated March 9, 2017 of Tahami (Respondent No. 11) Exhibit II passed by the Respondent Nos. 4 and 5 above named;

(b) This Hon'ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing Respondent Nos. 1 to 8 to pass appropriate orders for cancelling the licenses granted to Respondent Nos. 9 to 11 in respect of the Hoardings bearing Permit Nos. 76110685, 76110686, 761101507 (now 790752921), and 761101966 (now 790753997) and to take appropriate steps to ensure that the Hoardings structures are all removed and for consequential reliefs in respect thereof."

2. To appreciate the context of these prayers, it is perhaps best to turn immediately to some of the photographs that have been attached to the Petition especially those at Exhibit "GG" at page 225. Another set of photographs at Exhibit "J" at pages 171 and 172 provides a different perspective.

3. The Petitioner complains that the advertisement hoardings put up by Respondents Nos. 9 to 12 on a property known as Sangli Villa, Bungalow No. 4 and Bungalow No. 3, Dakshinamurthy Society, JVPD Scheme, Mumbai 400 049 affect the Petitioner's ventilation, health, light, air and so on. There is no case that the hoardings are encroaching on any property belonging to the Petitioner. The Petitioner is on the adjacent plot. The Petition attempts to canvass the case that the advertisements have been

allowed illegally but curiously paragraph 8.3 of the Petition provides a materially different perspective.

4. We need to encapsulate this as accurately as possible. The entire cause of action is one in nuisance. This may well be a cause of action for a civil suit in the tort of nuisance seeking damages or compensation for the tortious Act. But the remarkable thing as paragraph 8.3 shows is that it is not the nuisance that came to the Petitioner but the Petitioner that came to the alleged nuisance. Paragraph 8.3 reads thus:

“8.3 These hoardings were all erected prior to the Petitioner and her family purchasing the said bungalow. Copy of the overall layout showing the various hoardings located therein in Bungalow nos. 3, 4 and 5, and their current status, is annexed and marked hereto as **Exhibit “B”**.”

5. Now this makes it clear that the hoardings were there without complaint long before the Petitioner and her family arrived, so to speak, on the scene, that is to say on the adjacent plot.

6. It is in this background that we must appreciate the range of arguments now being raised by the Petitioner. Every single one of the grounds taken including allegations regarding plot sites, distance requirements, materials used and so on lead essentially to a singular or solitary case, that of blocking light and ventilation to the Petitioner’s adjacent bungalow acquired subsequent to the erection of the hoardings. This is *inter alia* apparent from not only

paragraph 13 of the Petition but also from several grounds taken below paragraph 42.

7. Notably, this is not a Public Interest Litigation (“**PIL**”) that deals with the matter of regulation or licensing of hoardings generally. This necessarily means that in a Writ Petition under Article 226 of the Constitution of India the Petitioner must be able to establish locus. The allegation that there are alleged violations of revised guidelines, Writ Petition orders and so on are all, in our view, aspects that are between the licensing authority namely the MCGM and the licensee.

8. But the entire Petition ultimately comes to grounds O, P and Q at pages 45 and 46 of the Petition which read thus:

“**O.** The Petitioner is entitled to the easementary rights of natural light, air, view and ventilation which the Hoardings and the Impugned Orders directly and adversely impinge upon.

P. The Hoardings have deprived the Petitioner the right to enjoyment of her lawfully owned property and of convenient and comfortable habitation of her house and have caused huge nuisance to her and her family.

Q. The Hoardings entirely block the passage of natural light, air, ventilation and views to the Petitioner’s residence and infringe upon her fundamental right enshrined under Article 21 of the Constitution of India, 1950.”

9. It is for this reason and this reason only that prayer clauses (a) and (b) are sought.

10. The contesting Respondents are not only the advertisers, Respondents Nos. 9 to 12, but also the MCGM. We note that curiously the owners of the property on which the hoardings are installed have not been joined but we will let that pass. The MCGM is undoubtedly bound by orders passed by this Court as also by the revised guidelines. It has maintained that there is in fact no violation of either the guidelines or any applicable rules, regulations or other norms let alone orders of this Court. This is *inter alia* evident from the fact that licenses had been renewed periodically. The orders of this Court passed in various Writ Petitions including PILs are being constantly monitored and there is no complaint made about these four hoardings. While the Petitioner has made several representations, all of these are solely on what we will call the tortious action of nuisance.

11. It is true that there is no prayer for damages, and quite rightly so in the Writ Petition, but that does not mean that at the instance of this Petitioner, we are necessarily required to intervene. We leave it to the Petitioner to adopt such alternative remedies in a Civil Court of competent jurisdiction as she may be advised. We decline to exercise our discretion under Article 226 of the Constitution of India.

12. The Writ Petition is rejected. There will be no order as to costs.

(Kamal Khata, J)

(G. S. Patel, J)