



Pradnya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10220 OF 2024

Pawan Advertising

...Petitioner

Versus

State of Maharashtra and ors.

...Respondents

Ms. Minal Chandnani, *for the Petitioner.*

Mrs. Rupali Shinde, AGP, *for Respondent No.1-State.*

Adv. Kavita N. Solunke, *for Respondent Nos.2 to 4-MMRDA.*

Mr. Sachin Pawar, *Regional Planner, is present in Court.*

CORAM M.S. Sonak &
Kamal Khata, JJ.
DATED: 24th July 2024

Per M.S. Sonak, J. :-

1. Heard learned counsel for the parties.
2. The Petitioner challenges the Mumbai Metropolitan Regional Development Authority's ("MMRDA") order dated 11 July 2024, which rejected the Petitioner's applications for retention of their hoardings, which are the subject matter of this Petition.
3. The Petitioner has pleaded that the hoardings were put up with permission from the Panchayat and that they comply with the sizes indicated in the Panchayat's NOCs.

4. Learned counsel for the MMRDA had submitted before us that Panchayat was not even the appropriate authority to grant such permissions and that the hoardings could not have been erected without prior permission from the MMRDA. Learned counsel also submitted that the size of the hoarding was more than what was referred to in the NOC. In any case, the size of the hoarding was beyond the permissible limits set out in the MCGM guidelines of 2022 and circular dated 2nd December 2022, which governed such matters.

5. Since there was a factual dispute about the size and location of the two hoardings, we directed the MMRDA to hold a site inspection in the presence of the Petitioner's representative.

6. In compliance with our orders, the MMRDA has submitted the site inspection reports to this court. The MMRDA has also annexed photographs of the hoardings that are the subject matter of this Petition to this site inspection report.

7. Regarding the first hoarding on land bearing Survey No.45, H. No.15 of Village Surai, Taluka Bhiwandi, District Thane, the report indicates that the hoarding size is 81.5 feet x 40 feet when, in fact, the permissible size is a maximum of 40 feet x 40 feet. Further, this hoarding is erected 7 feet from Mankoli-Mothagaon road, which, according to MMRDA, would be dangerous to the public commuting on the road.

8. In so far as the second hoarding on land bearing Survey No.48, H. No.4 of Village Surai, Taluka Bhiwandi, District Thane is concerned, the site inspection report states that the hoarding size is

125 feet x 40 feet when, in fact, the maximum permissible size would be 40 feet x 40 feet in terms of the MCGM guidelines of 2022 and circular dated 2nd December 2022. Further, the report states that this hoarding is erected 9 feet from Mankoli-Mothagaon road, which would be dangerous for the public commuting on the said road.

9. From the site inspection report, it is clear that the Petitioner erected these hoardings by obtaining permission from the Panchayat even though the Panchayat was not at all the prescribed and appropriate authority. Further, the Petitioner breached the conditions of the NOC granted by the Panchayat. In any case, the hoardings erected by the Petitioner are way beyond the permissible limits in the MCGM guidelines 2022 and circular dated 2nd December 2022.

10. As pointed out in the site inspection reports, such hoardings are hardly 7 feet and 9 feet away from Mankoli-Mothagaon road and, consequently, would prove to be a danger to the public commuting on this road. The Petitioner made false statements in this Petition, and based on such false statements, interim relief was obtained because we did not permit the MMRDA to proceed with the demolitions until the position at the site was verified.

11. Learned counsel for the Petitioner states that at the second site, i.e. on land bearing Survey No.48, H. No.4 of Village Surai, Taluka Bhiwandi, District Thane, the Petitioner had put up three different hoardings having the size of 40 x 40 feet. Based on this, learned counsel for the Petitioner submitted that there was no suppression of facts.

12. With the deepest respect to the learned counsel for the Petitioner, this submission hardly mitigates the suppression and false statements made on oath by the Petitioner. The photographs furnished along with the site inspection report, which were admitted as reflecting the correct position at the site by learned counsel for the Petitioner, indeed show three hoardings almost touching each other to form one hoarding of 125 feet x 40 feet. The MCGM guidelines and the circular dated 2nd December 2022 cannot be defeated by such subterfuge of joining three or more hoardings and still, in all seriousness, urging that each joint hoardings are within the maximum limits of 40 feet x 40 feet. Such an attempt compounds the false statements made on oath to snatch interim relief. Such conduct has to be sternly dealt with.

13. Thus, this is a case where the Petitioner suppressed correct facts and made false statements to invoke this Court's extraordinary and equitable jurisdiction and snatch an interim order. Apart from the fact that the Petitioner has no case on merits, this Petition must be dismissed for suppression and misstatement of correct facts. Based upon such conduct, the petitioner made commercial gains. Even today, attempts were made to see if the matter could be adjourned and interim relief continued. For this later ground, the Petitioner is also liable to pay exemplary costs.

14. My Brother and I agree that this case warrants the imposition of exemplary costs payable by the petitioner to Tata Research and Cancer Centre for treating children below ten years. However, there is a disagreement on the quantum. I think that the cost of Rs.5,00,000/- would be appropriate, but my Brother feels that the petitioner should pay costs of Rs.25,00,000/-. Accordingly, though

we dismiss this Petition with costs, my Brother proposes to dissent and write a separate opinion on the quantum of costs imposed on the Petitioner.

15. The MMRDA must immediately pull down these hoardings and recover the cost for such demolition from the Petitioner.

16. This petition is dismissed, with costs of Rs.5,00,000/- to be paid by the petitioner to the Tata Research and Cancer Centre for treating children under ten years old. The costs must be paid and proof of payment must be filed within 15 days, in the registry of this Court. The interim orders are vacated.

(M.S. Sonak, J)

Per Kamal Khata, J. :-

17. I agree with what is stated hereinabove.

18. However, I differ on costs payable by the Petitioner. The reasons are as follows:

19. The costs imposed must be substantial and serve as a genuine deterrent for those who have the audacity to flout the law. It is utterly unacceptable for these costs to be so trivial that they fail to dissuade individuals from engaging in illegal activities. The imposition of paltry sums only emboldens offenders, making a mockery of the legal system.

20. These costs must be a significant fraction of the investment involved, thereby impacting the rate of return on investment and

rendering non-compliance economically prohibitive. To put things into perspective, erecting a 40ft x 40ft hoarding costs no less than Rs. 50 lakhs, while advertising fees range from a few thousand to several lakhs per day. Costs that are insignificant in comparison to these figures are nothing short of a slap on the wrist.

21. Let us be clear: trivial costs do nothing to dissuade wrongdoers. In fact, they might as well be an invitation to break the law again, given their negligible impact.

22. In this very case, the petitioner has had the audacity to erect two illegal hoardings, with one exceeding the permissible size by nearly double and the other by three times. This blatant disregard for the law is appalling.

23. Moreover, the petitioner has not just breached the law with brazen impunity but has also engaged in outright fraud by obtaining permissions from the Panchayat, when it is the Mumbai Metropolitan Region Development Authority (MMRDA) that alone has the authority to issue such permits. This level of deceit is inexcusable.

24. We have been made aware, by the MMRDA's advocate, that there are numerous other illegal hoardings that have been identified by the authorities. This clearly demonstrates a persistent and egregious pattern of non-compliance by offenders.

25. The costs imposed must be viewed from the perspective of the lawbreaker, ensuring they are high enough to make anyone think twice before engaging in unlawful activities. If not, they serve no purpose other than to undermine the enforcement of the law.

26. In my opinion, a cost of Rs.25,00,000/- is not just appropriate but necessary to convey the seriousness of the situation and to act as a genuine deterrent. Any amount less than this, such as Rs.5,00,000/-, is clearly inadequate and would fail to address the gravity of the offense.

(Kamal Khata, J)

P.C. :

27. On the conclusions there is no disagreement. The only disagreement is about the quantum of costs. The Petition is accordingly dismissed. The MMRDA must immediately pull down the hoardings which are the subject matter of this Petition and recover the costs for such demolition from the Petitioner.

28. Regarding the disagreement on the quantum of costs, the Registry to place this matter before the Hon'ble The Chief Justice.

(Kamal Khata, J)

(M.S. Sonak, J)