

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 10475 OF 2024
IN
WRIT PETITION NO. 8871 OF 2023

Mira Bhayandar Municipal Corporation & Ors ...Applicants/Org.
Respondents
Nos. 2 to 6

In the matter between

Hoarding Owners Association of Mumbai & ...Petitioners
Ors

Versus

State of Maharashtra & Anr ...Respondents

Mr Girish Kedia, with Krushang Kedia, for the Petitioners.

Mr NR Bubna, for the Respondent No. 2.

**Mr PP Kakade, GP, with AA Alaspurkar, AGP, for the Respondent-
State.**

**CORAM M.S. Sonak &
 Kamal Khata, JJ.**

DATED: 19th July 2024

PC:-

1. Heard learned Counsel for the parties.

2. This application seeks vacation of interim reliefs we granted
in our order dated 18th July 2023.

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3. Mr Bubna, on behalf of the learned Counsel for the Mira Bhayander Municipal Corporation (“Corporation”), submits that after making initial payments, the Petitioners have failed to make further payments towards the display of hoardings. He pointed out that presently, Petitioners are due and payable in an amount of approximately Rs. 1.5 crores. Further, Mr Bubna pointed out that the hoardings put up by the Petitioners are way beyond the permissible size indicated in Rule 6 of the Maharashtra Municipal Corporations (Regulation and Control of Display of Sky-signs and Advertisements Rules 2022 (“Rules”). He submitted that because of non-payment and the breach of 2022 Rules, the earlier licenses granted have expired and not renewed.

4. Mr Bubna submits that despite all the above circumstances, only on account of interim protection granted by this Court on 18th July 2023, the original Petitioners continue to display their hoardings without even bothering to comply with the conditions imposed by this Court in its order dated 18th July 2023.

5. Mr Kedia, the learned Counsel for the Original Petitioners, disputes the above contentions. He submits that the hoardings have been displayed from 2012 onwards based on the Corporation's permission. He submits that the Corporation insists on payment of fees contrary to the rules it purports to rely upon. Accordingly, Mr Kedia submits that this application be dismissed.

6. Mr Kedia, without prejudice, submits that the original Petitioners will reduce the size of the hoardings to 40 feet by 30 feet.

He says that the original Petitioners will maintain a distance of 1.5 mts between two hoardings or, rather, comply with rules regarding minimum distance between two hoardings as applicable. Further, Mr Kedia submits that the original Petitioner, without prejudice, will pay the demanded license fees subject to the condition that the Corporation refund the excess fees with interest, should this payment be excessive and contrary to the rules.

7. The order dated 18th July 2023 required the original Petitioners to pay the license fees as demanded. Besides, it was not contemplated that the original Petitioners would continue to display hoardings that exceed the maximum size prescribed under the rules. The order dated 18th July 2023 could never have been construed as a direction to renew the license to display hoardings contrary to the rules applicable to the Corporation. Therefore, the Corporation makes out a strong prima facie case to vacate the interim relief.

8. However, considering the alternate submissions made by Mr Kedia, we refrain from vacating the interim relief. This shall be subject to the original Petitioners, within a maximum of 15 days from today, reducing the size of the five hoardings, which are the subject matter of the Petition, from 40 feet x 30 feet, which is the maximum permissible under the rules. The hoardings will have to comply with the requirements of the rules in all respects. Secondly, interim relief is not being vacated subject to the original Petitioners paying the demanded amount of Rs. 1.5 crores or thereabouts within 15 days from today. Such payment can always be made without prejudice or under protest.

9. Further, we clarify that the payments made by the original Petitioners will have to abide by the final orders in this Petition. If this Court ultimately finds that the Corporation has charged excessive amounts in breach of its own rules and regulations, the Corporation will be liable to refund the excess amount with interest as shall be determined by this Court at that stage.

10. The Corporation has agreed to renew the license in accordance with the rules upon reducing the size of the hoardings and ensuring they are in accordance with the rules. Further, upon payment of the demanded fees of Rs. 1.5 crores without prejudice, the Corporation should renew the license as soon as it is satisfied that the original Petitioners have complied with the rules and paid the fees without prejudice.

11. If, however, the Petitioners do not ensure that the five hoardings are following the rules or if the Petitioners fail to pay the demanded amount of Rs. 1.5 crores within 15 days, then the interim order we granted on 18th July 2023 shall stand vacated, and the Corporation would be free to remove the offending hoardings. This is without prejudice to the action under the Contempt of Courts Act. In our order dated 18th July 2023, we recorded an undertaking on behalf of the Petitioners to pay the demanded license fees.

12. On instructions, Mr Kedia submitted that all along this highway, there are several other hoardings that do not comply with the rules that the Corporation now seeks to rely upon. He submits

that such hoardings are also beyond the maximum prescribed size and do not otherwise comply with the rules' requirements.

13. Mr Bubna, learned Counsel for the Corporation, states, based on instructions, that the Corporation officials will carry out an inspection within 15 days from today. Further, if during the inspection hoardings in breach of said rules are detected, legal action will be immediately initiated against such hoardings. This statement is recorded, and the Corporation is directed to act accordingly.

14. Mr Kedia states that along with the compliance report, the Petitioners will also file a list of such hoardings along with photographs in case the corporation does not take action against such hoardings in the meantime.

15. The Original Petitioners and the Corporation must file compliance reports and photographs by 23rd August 2024.

16. Our order dated 18 July 2023 is modified accordingly. There shall be no order for costs. The Interim Application is disposed of with the above directions.

(Kamal Khata, J)

(M.S. Sonak, J)