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Sarvesh Kumar Vs. Pwd and anr

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SooperKanoon Citation : sooperkanoon.com/1026731

Court : Delhi

Decided On : Sep-10-2013

Judge : V. K. Jain

Appellant : Sarvesh Kumar

Respondent : Pwd and anr

Advocate for Pet/Ap. : Mr. Alok Gupta, Ms. Pinky Anand, Ms. Mini Pushkarna, Ms. Namrata Sharma, Mr. Amar Nath Saini, Mr. Abul Sattar, Mr. Amiet Andlay, Mr. Arun K. Sharma, Mr. Avadh Kaushik, Ms. Zubeda Begum, Ms. Ruchi Sindhwani, Ms. Bandana Shukla

Judgement :

$~46,10,14,23 to 28 and 40&41 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision:

10. 09.2013 W.P.(C) 5118/2013 & CM 11517/2013 M/S BRITE NEON SIGNS PVT. LTD. ..... Petitioner Through: Mr. Alok Gupta, Adv. versus PUBLIC WORKS DEPTT. & ANR Through: + ... Respondent Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD W.P.(C) 869/2012 BRITE NEON SIGNS PVT LTD ..... Petitioner Through: Mr. Alok Gupta, Adv. versus PUBLIC WORKS DEPARTMENT (PWD) & ANR ..... Respondent Through: + Mr. Amar Nath Saini, Adv. Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD

W.P.(C) 2524/2013 & CM 4782/2013 M/S TRIPLE ESS COMMUNICATION PVT. LTD ..... Petitioner Through: Mr. Abul Sattar, Adv. versus PUBLIC WORKS DEPARTMENT AND ANR Through: W.P.(C) 5118/2013&other connected matters ..... Respondent Mr. Amiet Andlay and Mr. Arun K. Sharma, + + + Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD W.P.(C) 2409/2011 & CM 5111/2011 (stay) PRITHVI ASSOCIATES ..... Petitioner Through: Mr. Avadh Kaushik, Adv. versus PWD & ANR. ..... Respondent Through: Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD W.P.(C) 2478/2011 & CM 5287/2011 (stay) JR CREATIONS ADVERTISING PVT LTD ..... Petitioner Through: Mr. Alok Gupta, Adv. versus PWD AND ANR ..... Respondent Through: Ms. Zubeda Begum, Standing Counsel for PWD Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD W.P.(C) 2493/2011 & CM 5312/2011 (stay) PRATIBHA ADVERTISING PVT LTD ..... Petitioner Through: Mr. Alok Gupta, Adv. versus PWD AND ANR ..... Respondent Through: Ms. Zubeda Begum, Standing Counsel for PWD + + Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD W.P.(C) 2494/2011 & CM No.5313/2011 (stay) SARVESH KUMAR ..... Petitioner Through: Mr. Alok Gupta, Adv. versus PWD AND ANR ..... Respondent Through: Ms. Zubeda Begum, Standing Counsel for PWD Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD W.P.(C) 2495/2011 & CM 5314/2011 (stay) ROHIT SHARMA ..... Petitioner Through: versus Mr. Alok Gupta, Adv. PWD AND ANR + ... Respondent Through: Ms. Zubeda Begum, Standing Counsel for PWD Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD W.P.(C) 232/2012 & CM 484/2012 (stay) BRITE ADVERTISING & MARKETING ..... Petitioner Through: Mr. Alok Gupta, Adv. versus PUBLIC WORKS DEPARTMENT (PWD) & ANR ..... Respondent Through: + + Ms. Zubeda Begum, Standing Counsel with Ms. Ruchi Sindhwani, ASC with Ms. Bandana Shukla and for PWD Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD W.P.(C) 2257/2011 & CM Nos.4804/2011 (stay). 7415/2011 & 700/2012 EXPLO MEDIA PVT LTD ..... Petitioner Through: Mr. Avadh Kaushik, Adv. versus PWD AND ANR

..... Respondent Through: Ms. Zubeda Begum, Standing Counsel for PWD Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD W.P.(C) 2398/2011 & CM Nos.5095/2011 & 499/2012 LANDMARK OUTDOOR MEDIA SERVICES P LTD ..... Petitioner Through: Mr. Alok Gupta, Adv. versus PUBLIC WORKS DEPARTMENT AND ORS. Through: ..... Respondent Ms. Zubeda Begum, Standing Counsel for PWD Ms. Pinky Anand, Sr. Adv. with Ms. Mini Pushkarna, Standing Counsel and Ms. Namrata Sharma, Advs. for MCD CORAM: HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT
V.K.JAIN, J.

(ORAL) Vide notice dated 16.8.2011, the Municipal Corporation of Delhi invited tenders for allotment of contracts for display at the existing structures of unipoles, within the jurisdiction of several zones. The petitioners before this Court submitted their respective tenders and the offers given by them was accepted by MCD. They were awarded contracts for display of advertisement through unipoles of the size 20ft. x8 ft at the sites mentioned in the allotment letters issued to them. The allotment carried an obligation on the part of the tenderers to pay the prescribed license fee to MCD and comply with the terms and conditions of allotment. The grievance of the petitioners is that despite award of contracts to them by MCD, the Public Works Department (PWD) of Delhi Government is objecting to the installation of the unipoles in terms of the allotment made to them by MCD. Being aggrieved from the objections being raised by PWD to the unipoles installed by them in terms of the contracts awarded by MCD, the petitioners are before this Court, inter alia, seeking directions to PWD not to remove or threaten to remove their advertisement unipoles.

2. Section 298 of the Delhi Municipal Corporation Act, 1951, to the extent it is relevant for our purpose, reads as under:

298. Vesting of public streets in [a Corporation]. (1) All streets within the jurisdiction of each Corporation constituted under sub-section (1) of section 3 of this Act which are or at any time become public streets, and the pavements,

stones and other materials thereof shall vest in such Corporation: Provided that no public street which immediately before the commencement of the Delhi Municipal Corporation (Amendment) Act, 2011 vested in the Union shall, unless the Central Government with the consent of the concerned Corporation so directs, vest in such Corporation by virtue of this sub-section. (2) All public streets vesting in [a Corporation] shall be under the control of the Commissioner and shall be maintained, controlled and regulated by him in accordance with the byelaws made in this behalf. (3) xxx Section 299 of the said Act obligates the municipal corporation to level, metal or pave, channel, alter or repair public streets and to the extent it is relevant, the said section reads as under:

299. Functions of Commissioner in respect of public streets:-(1) The Commissioner shall, from time to time, cause all public streets vested in [a Corporation] to be levelled, metalled or paved, channelled, altered or repaired, and may widen, extend or otherwise improve any such street or cause the soil thereof to be raised, lowered or altered or may place and keep in repair fences and posts for the safety of foot-passengers: Section 143 of the Delhi Municipal Corporation Act, prohibits placing of advertisement on any land, building, structure, etc. without prior permission of the Commissioner and the said provision to the extent it is relevant reads as under:

143. Prohibition of advertisements without written permission of the Commissioner.- (1) No advertisement shall be erected, exhibited, fixed or retained upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall be displayed in any manner whatsoever in any place within Delhi without the written permission of the Commissioner granted in accordance with bye-laws made under this Act.

3. It would thus be seen that as far as the public streets and their pavements in the areas to which Delhi Municipal Corporation Act, 1957 applies are concerned, the same vests solely in the concerned Municipal Corporation and are required to be maintained, controlled and regulated by them. The power of the corporation to maintain, control and regulate public streets would also include the power to grant permission for placing unipoles/ hoardings on such public streets though, of

course, in accordance with the byelaws made in this regard under the provisions of Delhi Municipal Corporation Act. No permission can be granted by the Commissioner for exhibiting, fixing or retaining any advertisement on any land, building, wall, structure etc if such permission would contravene the provisions of the byelaws made in this regard.

4. The learned senior counsel appearing for MCD states that in fact they have formulated a policy called Outdoor Advertisement Policy, 2007, which was approved by the Apex Court in M.C. Mehta versus Union of India [Writ Petition (Civil No.13029/1995] and the contracts are being granted strictly in accordance with the said policy and the relevant byelaws.

5. In my view, so long as unipoles/ hoardings sought to be installed on public streets, section 2 of sub section 57 of Delhi Municipal Act, 1957, PWD can have no objection to such installation and would have no legal right to remove any unipole, hoardings, etc which conforms to the licence granted by MCD in this regard. To this extent, the grievance of the petitioners is fully justified.

6. However, MCD would have no jurisdiction to grant any license in place unipoles/ hoardings on any land, building or other structure which does not come within the purview of public streets as defined in section 2(57) of the Delhi Municipal Corporation Act and if permission is granted for installation of unipoles/hoardings etc on such land, building or structure, and the management and control of that land, building or structure vests in PWD, it would be competent for the said department to remove such unipoles/ hoardings.

7. The learned senior counsel appearing for MCD states that MCD would have jurisdiction to grant license for installation of such unipoles/ hoardings/ advertisements not only on public streets, but on any public place throughout Delhi. I, however, cannot accept the said contention. Section 143 of the DMC Act on which reliance is placed by the learned senior counsel for MCD only prohibits errection, exhibition, fixing or retention of any advertisement on any land, building, wall etc. except in accordance with the written permission of the Commissioner granted in accordance with the byelaws made under the MCD Act. This provision does not empower MCD to grant licenses for erection, exhibition or fixing of

advertisements on any public place throughout the city. What actually it means is that no person can put any advertisement at any place in Delhi, without obtaining such permission, but that would not empower MCD to grant license for erecting, exhibiting or fixing such advertisements on any place of its choice. The power to permit installation of advertisements, hoardings etc, to my mind, comes only on account of the public streets vesting in the corporation in terms of Section 298 of Delhi Municipal Corporation Act and, therefore, the licence can be granted only in respect of erection, exhibition, fixing or retention of advertisements on public streets as defined in Section 2(57) of the Act.

8. The learned counsel appearing for PWD states that in some cases, unipoles/ hoardings have been installed at the place other than the place for which the contract/ license was awarded by MCD. Obviously, the contractors cannot place unipoles/ hoardings at a place other than the place for which permission was granted to him by MCD. It is an obligation of MCD to remove any such unipoles/ hoardings, from any public street.

9. In some cases there may be dispute between MCD and some other agencies such as PWD as to whether the land, building or structure, subject matter of the licences granted by MCD are public streets within the meaning of Section 2(57) of DMC Act or not. It is not possible for the Court to go into such disputed questions of facts in the writ petitions. However, some mechanism needs to be created to resolve any dispute between MCD and the agency such as PWD in this regard.

10. For the reasons stated hereinabove, all the aforesaid writ petitions are disposed of with the following directions: (i) A joint survey of the sites on which unipoles/ hoardings/ advertisements have been installed by the petitioners before this Court shall be carried out by the nominees of the Commissioners of the concerned Municipal Corporation and Principal Secretary, PWD, Govt. of NCT of Delhi, along with the representative of the concerned contractor. If it is found during the course of the said survey that the unipoles/ advertisements/ hoardings have been installed on a public street and at the same place for which permission was granted by MCD to the contractor, PWD shall not interfere with such unipoles/hoardings/ advertisements; (ii) If it is found that any hoarding has been

installed at a place different from the place for which license was granted by MCD to the contractor, it shall be the duty of MCD to remove such unipoles/advertisements/ hoardings within one week of identifying such hoardings. (iii) If there is dispute between MCD and PWD as to whether any particular place for which permission has been granted by MCD to install unipoles/ advertisements/ hoardings is a public street within the meaning of section 2(57) of the DMC Act or not, the issue would be referred for decision of the Chief Secretary, Government of NCT of Delhi or his nominee and his decision in this regard would be final and binding on MCD as well as on PWD. (iv) If it is found that MCD has granted license for installing unipoles/ advertisements on any place which is not a public street within the meaning of Section 2(57) of the MCD Act, the contractor to whom such a permission is granted can have such remedy as is open to him in law in this regard against MCD, but, he cannot install unipoles/ hoardings at such a place. There shall be no orders as to cost. V.K. JAIN, J SEPTEMBER 10 2013/rd

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