

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5423 OF 2008

(@ Special Leave Petition(C) No.12971 of 2008)

Supri Advertising & Entertainment  
Pvt. Ltd. ...  
Appellant

Vs.

Dr. Anahita Pandole & Ors.  
...Respondents

With

CIVIL APPEAL NO. OF 2008

(@ Special Leave Petition (C) No.14822 of 2008)

J U D G M E N T

ALTAMAS KABIR,J.

1. Leave granted in both the Special Leave  
Petitions.

2

Having regard to the common issues  
involved in the two appeals and the connected  
applications, they were taken up for hearing  
together.

2. The respondent herein, Dr. Anahita Pandole,  
filed Writ Petition no.1132 of 2002 before the  
Bombay High Court for relief mainly against the  
Municipal Corporation of Brihan Mumbai and its  
authorities in granting licences for mobile  
hoardings, purportedly in violation of the  
provisions of Sections 308, 328 and 328A of the

Mumbai Municipal Corporation Act, 1888, Section 116 of the Motor Vehicles Act, 1988 and the provisions of the Maharashtra (Urban Areas) Preservation of Trees Act 1975. The writ petition appears to have been filed on account of the writ petitioner's concern regarding the destruction of flora and fauna and the environment of Mumbai, the damage to heritage buildings in the city and also the prejudice purportedly caused to the safety of pedestrians

3

and motorists in Mumbai. By the writ petition, the respondent no.1 sought the intervention of the High Court to put a check on hoardings, which according to the respondent no.1, had proliferated alarmingly in the city of Mumbai.

3. In the writ petition, the respondent no.1 herein challenged the permission granted to various advertising agencies for display of hoardings in breach of the guidelines framed by the Municipal Corporation of Brihan Mumbai under Sections 328 and 328A of the Mumbai Municipal Corporation Act, 1888, hereinafter referred to as "the 1888 Act", and the provisions of the other enactments mentioned hereinabove. In fact, the writ petitioner also challenged the provisions of the guidelines which had been framed on the ground that they were contrary to the provisions of the aforesaid enactments.

4

4. The case made out in the writ petition is that Section 328 of the 1888 Act, inter alia, prohibits any person, without the written permission of the Municipal Commissioner, to

erect, fix or retain any sky-sign, which includes hoardings. Section 328 further provides that no permission under the Section is to be granted or renewed, for any period exceeding two years from the date of each such permission or renewal. Sub-section (3) of Section 328 provides that the Municipal Commissioner may by written notice require the removal of any sky-sign which is erected, fixed or retained in contravention of the provisions of Section 328 or after the permission for such erection, fixing or retention thereof shall have expired or become void. In addition, Section 328 A of the Act provides that no person shall, without the written permission of the Municipal Commissioner, erect, exhibit, fix or retain any advertisement upon any land, building, wall, hoarding or structure. Certain

5

types of advertisements exempted from the aforesaid restriction, are also included in the Section.

5. In the writ petition it was alleged that permission to display mobile hoardings had been granted to different applicants which has not only caused environmental problems but had also resulted in serious damage to heritage buildings of the city, besides causing traffic hazards, even on the arterial roads of the city and disrupting the smooth flow of traffic. It may be pointed out at this stage that neither of the appellants herein had been made parties to the writ petition, but on their application they had been allowed to intervene in the proceedings.

6. The writ petition, however, focuses more on the alleged violation of the provisions of the Maharashtra (Urban Areas) Preservation of Trees Act, 1975, and reference to the provisions of the Mumbai Municipal Corporation Act and the Motor Vehicles Act, 1988, have been made to buttress such contention.

7. The allegations made in the Writ Petition were denied on behalf of the Mumbai Municipal Corporation. It was contended that the permission granted to the appellant in these appeals was in complete conformity with the provisions of the different enactments referred to in the writ petition and it was significant that apart from the complaint of the writ petitioner no other complaint had been received from any of the inhabitants of Mumbai, either with regard to environmental problems, traffic hazards or obstruction to the smooth flow of traffic on account of grant of such permission.

8. On consideration of the submissions made on behalf of the respective parties and the documents produced on their behalf and the Policy Guidelines on Grant of Permission for Display of Advertisements and Similar Devices, 2007, the Bombay High Court dismissed Notices

of Motion Nos.155/2008, 156/2008 and 171/2008,

with the following directions:

"1. In view of the relevant statutory provisions, settled principles of law and for the reasons aforerecorded, we direct that 'the mobile hoarding vehicles shall not be parked on the main roads of Mumbai or even the carriage ways and would not obstruct free flow of traffic in any manner whatsoever at main roads and

carriage ways of Mumbai'. Resultantly, we see no reason to vacate the interim orders dated 13th March 2008 and 3rd April 2008. On the contrary, the above orders are made absolute.

2. We direct the State Government and the Corporation to make appropriate regulations in exercise of their respective statutory powers and in consultation with the appropriate bodies in relation to advertisement hoardings. It need to be examined by these authorities whether such mobile hoarding vehicles can at all be granted such permissions and/or licences in light of this judgment and the law in force.

3. We further direct the concerned Police authorities and the competent authorities in the Corporation and the registering authorities to take action against such vehicles, and after giving them proper opportunity, in accordance with law and in light of the provisions of

8

the Motor Vehicles Act, 1988, particularly in relation to design, manufacturing, construction, equipping and alteration of vehicles and consequential impact thereupon upon registration of such vehicles.

4. We also issue further directions to the Chief Secretary of the State of Maharashtra to examine all these cases and fix responsibility in all the concerned Department and Public Authorities, if the officers are found to be erring. Further the State should, in consultation with other Authorities, including Municipal Corporation and Police, should frame proper policy in regard to various facets examined by the court in this judgment.

5. All concerned authorities shall ensure compliance of this order in spirit and substance.

6. Notices of Motion Nos.155 of 2008, 156 of 2008 and 171 of 2008 are accordingly dismissed. In the circumstances, we do not propose to award any costs."

9. It is against the said decision of the Bombay High Court that the present appeals have been filed.

10. Appearing for the appellant, Mr. Aspi

Chinoy, learned senior counsel, submitted that

9

the initial contract granted to the appellant under Section 328-A (4) of 1988 Act was in January, 2003, and, thereafter, a fresh contract was granted in favour of the appellant on

21.5.2007 for a period of 2 years for a licence fee of Rs.10 crores. In this regard, Mr. Chinoy referred to an affidavit filed by the then Joint

Commissioner Police, ATS, holding additional charge of Joint Commissioner of Police (Traffic),

affirmed on 15.4.2008, wherein it has been mentioned that the Traffic Control Branch, Mumbai, had been granting "no objection certificates" since 2003 to Mobile Hoarding

Vehicles. It has also been stated that 61 such

licences for Mobile Hoarding Vehicles had been granted by the Municipal Corporation of Greater

Mumbai and that advertisers were permitted to park such Mobile Hoarding Vehicles at 89 locations on public roads. In addition, "no

objection certificates" had also been granted by

the Traffic Control Branch, Mumbai, to 11 Mobile Hoarding Vehicles which have been permitted to

10

park at places other than public roads, i.e. 2

inside the BEST Bus Depot, Juhu Tara Road, Haveli

Hotel, inside Juhu Car parking-I, and at Andheri

Sahar Road inside the premises of New Airport

Colony, Vile Parle and the land belonging to

Maharashtra Maritime Board at Mahim Causeway. In

Sub-paragraph (c) of paragraph 1 of the affidavit

it has been further mentioned that on receipt of

the applications for issue of "no objection

certificate" the officers of the Traffic Control Branch, who were in charge of the local traffic division, visited the spots in respect of which requests had been received and they studied the traffic conditions on those particular spots. Only if it was found that the proposed parking locations did not create any traffic problems then only such locations were approved. Furthermore, periodical checking is carried out by the Traffic Control Branch officers to ensure that the Mobile Hoarding Vehicles are not parked on any location other than the approved locations for which the no objection had been issued.

11

11. Mr. Chinoy also referred to an affidavit filed by the then Joint Commissioner of Police, Traffic, Mumbai, which was affirmed on 21.4.08 on the basis of directions given by the High Court regarding details of the Mobile Hoarding Vehicles and the places where they were located. While answering the queries formulated by the High Court, it was also stated that while granting "no objection certificates" to the concerned agencies, the Traffic Control Branch had studied the flow of traffic at every particular location. In respect of 14 locations permission had earlier been granted to park Mobile Hoarding Vehicles near Heritage precincts. However, once the same was brought to the notice of the traffic police, the mobile hoarding advertisers were directed not to park the Mobile Hoarding Vehicles near Heritage precincts. It has been further indicated that though the Municipal Corporation had given permission for displaying hoardings on Municipal

roads, advertising agencies were not allowed to

12

park their vehicles arbitrarily. It was categorically mentioned that generally in the morning hours, south bound traffic is very heavy, and, therefore, Mobile Hoarding Vehicles are allowed to be parked on the north-bound carriage way and in the evening when the north-bound traffic is very heavy, the Mobile Hoarding Vehicles are allowed to be parked on the south-bound carriage way. Due care is taken to ensure that the Mobile Hoarding Vans are not parked near signals, turns, bottlenecks or any other place which may cause traffic problems hampering the smooth flow of traffic.

12. In addition to the above, it has also been stated that even when permission is granted for Mobile Hoarding Vehicles to be parked at a particular spot, at times when it is found that parking at such spots causes a disruption in the flow of traffic, officers of the traffic police at times request the vehicles to be removed. Even when situations arise like heavy traffic, diversions, natural calamities, law and order,

13

VVIP visits etc., these vehicles are asked to be removed even from the marked spots to ensure smooth flow of traffic.

13 Mr. Chinoy submitted that the appellant company had always acted upon the contract executed in their favour and it has entered into third party agreements for display of advertisement and mobile vans. Consequently, neither the traffic police nor the Municipal Council of Greater Mumbai had any authority to

determine such contract. Mr. Chinoy submitted that the appellant company had at no point of time violated any of the terms of the contract and till 17.3.2008 no objections had been raised from any quarter objecting to the parking of the mobile vans at the spots identified by the traffic police. He submitted that at no point of time had any of the Mobile Hoarding vans been directly responsible for any incident of traffic congestion and the alleged obstruction of the flow of traffic was never an issue till the respondent No.1 took up cudgels allegedly on behalf of the general public of Mumbai. Mr. Chinoy urged that in the counter affidavit filed on behalf of the respondent, no objection had been taken regarding the statements made in the affidavits of the appellant hereinabove referred to. In addition to the above, Mr. Chinoy, in reference to the prayers made in the writ petition filed by the respondent No.1, urged that no where is there any mention of Mobile Hoarding Vans nor has any relief been prayed for in respect thereof.

14. Mr. Chinoy contended that instead of focusing on the main issue regarding grant of licence for display of hoarding on mobile vans the High Court involved itself with other issues such as types of vehicles which could be used for the purpose of displaying Mobile hoardings. The High Court also took up another issue inter-connected with the first issue involving the alteration of vehicles/vans which were altered after registration to make them compatible for the purpose of carrying Mobile Hoardings. The

High Court held that the same had been done in contravention of the provisions of the Motor Vehicles Act, 1988 and the licenced granted to such vehicles for display of mobile hoardings were liable to be cancelled.

15 Mr. Chinoy submitted that the High Court had also erroneously relied on newspaper reports and photographs which were produced by the writ petitioner to bolster her case regarding obstruction and impediment of traffic allegedly caused by such Mobile Hoarding Vehicles.

16 Mr. Chinoy submitted that it is on the basis of such newspaper reports that certain presumptions had been drawn by the High Court relating to parking places allotted by the traffic police for parking of the Mobile Hoarding Vans. In this regard, reference was made to Section 117 of the Motor Vehicles Act, 1988, which, inter alia, provides that the State Government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor

16

vehicles may stand either indefinitely or for a specific period of time. It was urged that the Mobile Hoarding Vehicles were either parked on the spots allotted by the Municipal Corporation in consultation with the traffic police or in parking zones which, in any event, were meant for parking of vehicles.

17. Mr. Chinoy submitted that the writ petition filed by the respondent No.1 and the reliefs sought for therein were entirely misconceived and without any foundation. He

submitted that the High Court had erred in dismissing the Notice of Motion No.155 of 2008 filed on behalf of the appellant herein in the writ petition filed by the respondent No.1 giving a blanket direction that no Mobile Hoarding Vehicle should be parked in the main roads and carriageways.

18. Appearing for the appellant, Imaan Publicity, in Special Leave Petition (C)No.14822 of 2008, Syed Tanvir Shah learned advocate, while

17

adopting Mr. Chinoy's submissions, added a few facts which were peculiar to the said case.

19. He firstly mentioned that the licence which had been granted by the Public Works Department on 28.11.2005 was for parking mobile hoarding vans on the Eastern Express Highway, which did not in any way cause any blockage which could have a cascading affect on traffic within the city of Mumbai. In the permission so granted, it was also indicated that the appellant would also have to obtain necessary permission from the Traffic Police and the Brihan Mumbai Electric Supply and Transport Undertaking (hereinafter referred to as "the BEST Undertaking") and the Greater Bombay Municipal Corporation and it was stipulated that if any one of the three authorities chose not to grant permission, the permission granted by the Public Works Department would be cancelled.

20. Mr. Shah submitted that, thereafter, the appellant also obtained "no objection certificate" from the BEST Undertaking which

18

granted such "no objection certificate" for 10

mobile hoarding vans on the Eastern Express Highway on 14.3.2006. This was followed by permission granted on 18.4.2006 by the office of the Joint Commissioner of Police (Traffic) in respect of such 10 mobile hoarding vans on the Eastern Express Highway. The permission granted

by the said three authorities was supported by the permission granted by the Municipal Corporation of Greater Mumbai on 23.6.2006 for a period of 5 years up to the year 2011. As many as 32 conditions were included by the said Corporation in its letter granting permission for parking/plying 10 Mobile Hoarding Vans or vehicles/lorries on the Eastern Express Highway.

Mr. Shah urged that when all the concerned authorities who were required to give "no objection certificates" for permission to the appellants to display advertisements on Mobile Hoarding Vans had given such certificates, it was quite erroneous on the part of the High Court in giving the directions impugned in the appeal

19

relying on newspaper reports and photographs produced by the writ petitioner in support of her case of alleged obstruction and impediment of traffic said to have been caused by some of the mobile hoarding vehicles. Reference was made by Mr. Shah to the decision of this Court in Ramarao vs. All India Backward Class Bank Employees Welfare Association, (2004) 2 SCC 76), for the proposition that though the High Court is entitled to take into consideration subsequent events, the same can only be a relevant factor for the purpose of moulding the reliefs, but while moulding such reliefs the High Court could

not have considered grant of a relief where no factual foundation existed or was laid in the pleadings of the parties, which has been explained in paragraph 25 of the judgment.

21. Mr. Shah urged that the impugned judgment of the High Court was based more on conjecture than actual facts and was, therefore, liable to be set aside.

20

22. Learned counsel for the Mumbai Municipal Corporation, Mr. Pallav Shisodia, submitted that the High Court had failed to appreciate the fact that granting of licences by the Municipal Corporation was part of its legitimate commercial activity on which fetters could not be imposed except on grounds of public interest and disruption of normal life within the area of its jurisdiction. He submitted that the Municipal area of Greater Mumbai was divided into 3 zones, namely:

- i) City zone which extends up to Mahim;
- ii) Eastern zone which extends from Sion to Mulund; and
- iii) East-Western zone which extends from Mahim to Gaisal.

He submitted that in each zone permission has been given for 10 vehicles to be used as Mobile Hoarding Vans for the purpose of display of advertisements. He submitted that the guidelines which had been issued in the year 2000 had subsequently been superseded by the guidelines

21

published in 2008 wherein several other criteria were included for the purpose of grant of permission for display of sky-signs and advertisements under Sections 328 and 328-A of the

1888 Act. Mr. Shisodia submitted that all the said restrictions have been included in the conditions for grant of permit either by the Bombay Municipal Corporation or the Traffic Police. He urged that the High Court had taken note of the said conditions and the powers of the Corporation flowing from the provisions of Sections 328 and 328-A of the Act and had elaborately discussed the same. While holding that the guidelines had been framed by the Commissioner only for the purpose of exercising the discretion vested in him under Section 328-A, the High Court also held that the same do not and cannot have the force of law per se and are nothing but guidelines prepared for exercise of administrative power by the authorities concerned.

22

23. One of the points raised by the respondent No.1 was with regard to the height of the hoardings which were erected on the chassis of the Mobile Vans by means of a hydraulic system, which was not permitted under the Motor Vehicles Rules. Replying to the same, Mr. Shisodia submitted that the said condition would relate to the fabrication of the display vehicles which was in the domain of the Motor Vehicles Department, and in the absence of the views of the Motor Vehicles authorities and also having regard to the fact that permission for parking the said vehicles had been given by the Traffic Department, the same could not be a reason not to grant permission to the appellants to use Mobile Hoarding Vans for the display of advertisements.

24. Mr. Shisodia concluded his submissions on the note that the directions ultimately given in

the impugned judgment were completely beyond the scope of the writ petition and the prayers made therein. He submitted that the High Court had exceeded its jurisdiction under Article 226 of the

23

Constitution in giving the directions complained of without there being any factual foundation for the same.

25. No counter affidavit has been filed on behalf of the State of Maharashtra. However, Mr. Kaushik, learned counsel appearing for the State, relied upon the affidavit affirmed by the Joint Commissioner of Police (Traffic), Mumbai, whereby grant of licence to the appellant and others for parking Mobile Hoarding Vans for display of advertisements had been sought to be justified.

Mr. Kaushik also referred to paragraph 10 of the impugned judgment wherein it had been stated that the State Government had issued permits for the vans which were found road-worthy and it had no serious objection to the continuation of these vehicles on the road. He objected to the finding of the High Court in paragraph 10 of the judgment that the State had not been able to come out with a clear and definite stand on the matter in issue.

According to Mr. Kaushik, the stand of the State Government was quite clear that it had no

24

objection to the grant of permission by the concerned authorities to the Mobile Hoarding Vans subject to the condition that the flow of traffic was not impaired by the parking of such vehicles, though, of course, it had been submitted on behalf of the Corporation that in certain eventualities if there was any interference with free flow of

traffic for any particular reason, where a Mobile Hoarding Van was parked, the same had been directed to be removed to another location to enable the Traffic Police to clear the traffic jam.

26. Replying to the submissions made on behalf of the appellant, the State of Maharashtra and the Bombay Municipal Corporation, Mr. Arvind Kumar, appearing for the respondent No.1 (the writ petitioner before the High Court), submitted that the problem posed in the writ petition before the High Court was not of recent origin and had also fallen for consideration in other matters, such as the case of M.C. Mehta vs. Union of India, (1997) 8 SCC 770, regarding some of the provisions of the

25

Motor Vehicles Act, 1988, and their relevance in the management of control of traffic in the National Capital Region and the National Capital Territory of Delhi. It was submitted that the

questions raised involved public safety and, therefore, came within the ambit of Article 21 of the Constitution. It was also held that the Motor

Vehicles Act provides sufficient powers to the Transport and Police authorities to effectively deal with the problem and the same had to be construed so as to keep individual or a class interest subordinate to the larger public interest. In fact, certain directions were also given by this Court to the police and all other authorities entrusted with the administration and enforcement of the Motor Vehicles Act and control and regulation of traffic, in exercise of the powers vested in this Court under Article 32 read with Article 142 of the Constitution.

27. The said directions were given mainly with the intention of ensuring public safety and to

26

ensure that the vehicles used on the roads did not impair public safety.

28. Mr. Arvind Kumar submitted that after the aforesaid decision of this Court in M.C. Mehta's case (supra), certain other writ petitions on the same issues were also taken up for consideration along with several Interlocutory Applications filed in the disposed of writ petition, being Writ Petition (Civil) No.13029 of 1985. I.A.No.12, which was filed in the said writ petition, was made by the Delhi Outdoor Advertising Association praying for clarification/modification of the Order dated 20.11.1997 in so far as it related to the direction given therein for the removal of all hoardings which are on roadsides and which are alleged to be a disturbance to safe traffic movement. Mr. Arvind Kumar pointed out that this Court rejected the said prayer upon observing that the order dated 20.11.1997 was quite clear and had been correctly understood by the authorities and all concerned. This Court observed that the order directed that every hoarding, other than traffic

27

signs and road-signs on road sides have to be removed irrespective of its kind; every hoarding irrespective of whether it is on the road side or not, which is hazardous and a disturbance to safe traffic movement so as to adversely affect free and safe flow of traffic, is required to be identified by the authorities and promptly removed. It was also observed that obviously the hazardous hoarding which is a disturbance to safe traffic movement has to be a hoarding visible to

the traffic on the road.

29. Mr. Arvind Kumar then pointed out that the Certificate of Registration of one of the Mobile Hoarding Vans for which permission had been granted to the appellant for display of hoardings clearly indicated that the vehicle in question was a Medium Goods Vehicle which had been referred to as a Display Vehicle. Furthermore, in the Goods

Carriage Permit the usage of the vehicle was shown to be for carrying general goods. Mr. Arvind Kumar urged that the vehicle in question had been altered to meet the requirements for raising

28

hoardings on the vehicle in violation of the Motor Vehicles Act and the Motor Vehicles Rules. In

addition to the above, Mr. Arvind Kumar also pointed out from the pictures annexed to the affidavit filed on behalf of the respondent No.1

that the hoardings on the mobile vans had been raised and placed in such a manner when parked that a portion of the hoarding was jutting out on the main carriageway which in itself was a traffic hazard. He also pointed out that Mobile Hoarding Vans were also parked at will even in "No Parking" Zones.

30. Mr. Arvind Kumar urged that in addition to the above, the raised hoardings were raised above the height permitted for carrying goods on transport vehicles and created distraction for motorists which could lead to serious consequences as far as the pedestrian public was concerned.

31. Mr. Arvind Kumar submitted that after meticulously considering all the materials on record and the submissions made on behalf of the parties, the High Court had rightly dismissed the

writ petition with the directions given in the impugned judgment keeping in mind the general public interest as against the commercial interest of a few. It was submitted that the impugned judgment of the High Court was just and equitable and no interference was called for therewith.

32 We have carefully considered the submissions made on behalf of the respective parties, having particular regard to the issues that have been raised, which undoubtedly concerned the public interest and safety of motorists and pedestrians and seek to ensure free and smooth flow of traffic in the city of Mumbai. We have also considered the writ petitioner's concern with regard to the damage to the flora and fauna and the environment of Mumbai, together with the damage to heritage buildings in the city.

However, all the actions taken by the respondents in permitting erection of hoardings, either fixed or otherwise, appear to have been taken within the confines of the Mumbai Municipal Corporation Act, 1888. While generally considering the complaint

30

made by the respondent No.1 in her writ petition, the Bombay High Court has tangentially taken up another issue involving the eligibility under the Motor Vehicles Act and Rules of Mobile Hoarding Vans to operate on the roads in their modified form. One of the issues raised by the respondent No.1 is that the vehicles which were used as Mobile Hoarding Vans had originally been registered as "goods carrying vehicles" or "display vehicles". It was urged that after their modification the Mobile Hoarding Vehicles

underwent a complete transformation which necessitated the grant of fresh Certificates of Registration from the Motor Vehicles authorities.

33. Though the said issue has been given a good deal of thought by the High Court, the authority to decide such a question would be authorities under the Motor Vehicles Act and not the Court.

Secondly, the authorities who are entitled in law

to grant licence for displaying such advertisements, such as the Mumbai Municipal  
31

Corporation and the traffic police, have assented to the grant of such licences upon holding that they do not constitute a traffic hazard nor did they disrupt the smooth flow of traffic on the roads on which they are permitted to be parked.

The respondent No.1 has not been able to provide any data on the frequency of the obstruction of smooth flow of traffic along the roads on which the Mobile Hoarding Vans had been allowed to be parked.

All that has been pointed out by the respondent No.1 is that the height and width of the displayed hoardings tend to distract motorists and obstruct vehicular traffic of a certain height.

34. On the other hand, the affidavits filed on behalf of the Mumbai Municipal Corporation and the Mumbai Traffic Police clearly indicate that they have no objection to the grant of licences to Mobile Hoarding Vans and that those already granted had been so granted after a proper study had been made of the traffic conditions and the

flow of traffic at the spots where the Mobile  
32

Hoarding Vans were ultimately permitted to be

parked for displaying their hoardings. It is also significant that except for the respondent No.1 no other citizen of the city of Mumbai has joined the litigation to support the stand taken by the respondent No.1/writ petitioner. Care has been taken by the Municipal authorities, as well as the traffic police, to ensure that the cone of vision of the person driving a vehicle was not obstructed by such Mobile Hoardings. As indicated hereinabove, the objection taken by the respondent No.1 with regard to the damage being caused to the heritage buildings in the city had been taken note of by the concerned authorities and such hoardings and advertisements have been directed to be removed, either from the buildings themselves or from in front of them. In this connection we may also add that though the destruction to the flora and fauna of Mumbai city was not treated as the principal issue before us, it would certainly be in the interest of the public to see that such greenery within the city is not destroyed or interfered with. It is well accepted that trees provide an ecological respite against the amount of pollution generated in a commercial city like Mumbai on account of the sheer number of vehicles that travel on the roads and the volume of people moving in and out of Mumbai city in connection with their work. It would definitely be in the interest of the residents as well as the mobile population of Mumbai if the green cover available in Mumbai is not only preserved but also increased. In this regard we are in agreement with the concern shown by the writ petitioner/respondent No.1 herein.

35. Care has also been taken where the flow of traffic is high in a given direction to allow parking of Mobile Hoarding Vans on the opposite carriageway so that no distraction or obstruction is caused to the cone of vision of the motorists while proceeding with the flow of traffic. Care has also been taken to ensure that Mobile Hoarding Vans are not parked near signals, turns, bottlenecks or any other place which may interrupt

34

the smooth flow of traffic. In spite of the above, in case of a traffic blockage at a spot where such Mobile Hoarding Vans are parked, it has been stated that they are asked to move to some other location to clear such blockage.

36. Mr. Chinoy has referred to Section 117 of the Motor Vehicles Act, which empowers the State Government or any Authority authorized in this regard by the State Government, in consultation with the local authority having jurisdiction in the area concerned, inter alia, to determine places at which motor vehicles may stand either indefinitely or for a specified period of time. In the instant case, the State Government, in consultation with the Mumbai Municipal Corporation, appears to have invoked the provisions of the said Section to indicate the spots at which the Mobile Hoarding Vans could be allowed to park and that too after a study of the flow of traffic at such given spots. Similarly,

the Mumbai Municipal Corporation has also exercised its jurisdiction under Sections 328 and

35

328-A of the Mumbai Municipal Corporation Act in granting licences for the parking of Mobile

Hoarding Vans for the display of advertisements.

Since the authorities which have been empowered to grant such licences and to specify spots for parking, have exercised their authority, it would not be safe for the Court to question the decision taken by the said authorities on the basis of allegations made by an individual, without having anything more to rely upon, especially, in the face of the affidavits affirmed both on behalf of the Mumbai Municipal Corporation and the Mumbai Traffic Police.

37. There is, however, one sphere which possibly requires further inquiry and that is with regard to the modification of the vehicles carrying the mobile hoardings from their original form to make them suitable for display of such hoardings. Although, the same is not directly in issue in the instant case, the said question has been gone into by the High Court in some detail.

However, as has been rightly submitted by Mr.

36

Shisodia appearing for the Mumbai Municipal Corporation, the same is within the domain of the Motor Vehicles Authorities and not the concern of the Mumbai Municipal Corporation or the Mumbai Traffic Police. In respect of such grievance, the respondent No.1 may take up the issue with the authorities under the Motor Vehicles Act, 1988, who are competent to deal with the same.

38. The High Court, in our view, in its anxiety to ensure the free movement of traffic and the safety of both motorists and pedestrians and to avert any untoward incident, has proceeded to question the decision taken by the competent authorities without having proper material before

it to do so. Contrary to the authority vested in the State Government and the local authority under the provisions of Section 117 of the Motor Vehicles Act, 1988 and Sections 328 and 328-A of the 1888 Act, the High Court has given directions which, in our view, are beyond the scope of the writ petition.

37

39. We, accordingly, allow the appeal and set aside the judgment of the High Court impugned in this appeal and the directions contained therein, but we also make it clear that this will not prevent the respondent No.1 from moving the appropriate authorities regarding the modification of vehicles as Mobile Hoarding Vans. We also make

it clear that we have not expressed any opinion as far as the said issue is concerned and it will be within the domain of the Motor Vehicles authorities to take such decision in the matter as appears to them to be fit and proper.

40. Having regard to the nature of the case the parties shall bear their own costs in the appeal.

.....J.  
(ALTAMAS KABIR)

.....J.  
(G.S. SINGHVI)

New Delhi  
Dated: 02.09.2008