

Bombay High Court

Prochy Numazar Mehta vs The Municipal Corporation Of ... on 19 April, 2003

Equivalent citations: 2003 (5) BomCR 71

Author: D Chandrachud

Bench: C Thakker, D Chandrachud

JUDGMENT D.Y. Chandrachud, J.

1. Rule, Learned Counsel for the respondents waive service. By consent, taken up for hearing and final disposal forthwith. We have heard all the learned counsel at considerable length including the counsel on behalf of the Interveners and the Bombay Hoarding Owners Association.

The Petition filed before this Court in the Public Interest.

2. On 16th April, 2002, a petition under Article 226 of the Constitution of India was filed in this Court in the public interest seeking, inter alia, the issuance of appropriate writs, orders or directions to the Municipal Corporation of Greater Mumbai for the purpose of securing the removal of hoardings which continued to be erected and displayed unlawfully in Mumbai. The grievance of the Petitioner was that there was a complete failure on the part of the law enforcing agencies, statutorily vested with regulatory powers to discharge their duties in accordance with law. The Petitioner highlighted before the Court the serious environmental concern arising out of the rampant cutting of trees with a view to ensure an unhindered and unobstructed view of hoardings displaying advertisements in the City. Guidelines had been framed by the Municipal Corporation of Greater Mumbai on the grant of permission for the display of sky-signs and advertisements under Sections 328 and 328A of the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as "the Act"). The contention of the Petitioner was that even these guidelines were not being enforced. In moving this Court, the Petitioner in the aforesaid Writ Petition (Writ Petition No. 1132 of 2002), who is a qualified medical professional working as a Lecturer in the Department of Obstetrics and Gynaecology at the LTMMC and LTMGH Hospital, Sion, stated that in her capacity as a citizen, a resident and out of her "concern about the destruction of flora and fauna and the environment of Mumbai, the beautiful heritage buildings in the City as also the prejudice being caused to the safety of pedestrians and motorists in Mumbai", she was seeking appropriate directions in regard to the enforcement of the law in relation to hoarding and sky-signs.

The Orders passed by this Court.

17th April, 2002.

3. The Petition came to before a Division Bench of this Court on 17th April, 2002. While issuing notice, this Court having regard to the provisions of Sections 328 and 328A of the Act, the provisions of the guidelines framed by the Municipal Corporation and the judgments of the Supreme Court in *M.C. Mehta v. Union of India*, reported respectively in and , restrained the Respondent-authorities from granting or renewing any permission for placing of sky-signs boards or hoardings in the city of Mumbai, without the prior permission of the Court. That order came to be reiterated on 24th April, 2002, since the Municipal Corporation had not appeared before the Court

and a grievance was made that hoardings had been permitted in defiance of the orders passed by the Court. This Court also directed that no further hoardings shall be erected even on roadside properties and no further cutting or felling of trees would be allowed.

3rd May, 2002.

4. The Petition was admitted on 3rd May, 2002 by a Division Bench consisting of one of us (C.K. Thakker, C.J.) and S. Radhakrishnan, J. This Court then issued the following directions.

"The respondent-authorities shall not permit hoardings, advertisements and boards except strictly in consonance with the provisions of the Mumbai Municipal Corporation Act, 1888, Motor Vehicles Act, 1988 and the Guidelines issued by the Municipal Corporation, and if any of the hoardings and advertisements are found to be contravening the above provisions and Guidelines, the concerned licences shall be revoked and such hoardings and advertisements be removed forthwith."

In order to ensure a strict compliance with the provisions of law and of the Guidelines framed by the Municipal Corporation, the Court appointed an Expert Committee consisting of (i) Mr. Himanshu Roy, Deputy Commissioner of Police, Traffic Control Branch, (ii) Mr. Shiraj Rustomjee, Advocate, (iii) Mr. Rahul Mehrotra, or failing him, Ms. Brinda Somaiya and (iv) Mr. Alyque Padamsee. Mr. Padamsee has since expressed his inability to serve as a Member of the Committee. At this stage, it may be material to note that Mr. Rahul Mehrotra and Ms. Brinda Somaiya, who were requested to associate themselves with the Expert Committee are noted Conservation Architects. The Committee was directed to monitor observance of the provisions of law and to report to this Court. The Court directed that it should be open to the Committee to invite suggestions from all concerned persons.

2nd September, 2002.

5. The Writ Petition thereafter came up for hearing before a Division Bench of this Court on 2nd September, 2002. One of the issues which was dealt within the order of this Court related to the hoardings which had been put up on Heritage structures. This, it was contended, was in violation of Clause 16(g) of the Guidelines as well as Rules 48(3) and 67 of the Development Control Regulations for Greater Bombay, 1991. This Court noted that almost all permission had been granted prior to the enforcement of the Heritage Regulations for Greater Mumbai, 1995 and no review of the old permission granted in violation of the Regulations had been undertaken by the Municipal Corporation. In that context, this Court arrived at the following prima facie conclusion in the interim order of 2nd September, 2002.

"On a bare reading of the D.C. Regulations quoted above it is clearly seen that no permission to put up hoardings/advertisements on heritage buildings could be granted unless such proposal is cleared by the Heritage Committee and the Municipal Commissioner."

In that view of the matter, this Court issued the following directions to the Municipal Commissioner.

"We direct the Municipal Commissioner to revoke forthwith all permission granted in respect of hoardings/advertisements on heritage buildings and compounds of such buildings. The concerned advertisers /hoardings who are permitted to put their hoardings in violation of D.C.Regulations 48(3) and 67 are given two months to remove their hoardings. If the hoardings are not removed within the said period the Corporation shall deface those advertisements/hoardings and take further action for removal of such illegal hoardings. The Corporation shall ensure that all such advertisements/hoardings are removed from the heritage buildings and compounds within a period of four weeks from expiry of the period of two months."

1st October, 2002

6. By a further order dated 1st October, 2002, the Division Bench directed that it will not be sufficient to merely revoke the licences and permissions granted in respect of Heritage buildings or in violation of the CRZ notification but, the Municipal and Railway authorities were to take further steps to remove the structures on which the hoardings or advertisements were displayed and to recover the cost of removal thereof from the concerned licensees. The Court noted that the Committee which had been appointed by the Court had furnished a list of 185 cases of hoardings or advertisements continued in violation of the guidelines framed by the Municipal Corporation. Since the Court had directed that permission in respect of these hoardings shall not be renewed without the prior permission of the Court, it was noted that the Corporation had communicated the order of the Court to the concerned licensees and advertisers. In that context, the Court issued the following directions:-

"If the Corporation concurs with the findings of the Committee permissions in respect of such hoardings/advertisements shall not be renewed after expiry of the period under existing licence. However, before taking any decision in that behalf, the Corporation shall consider the representation, if any, made by the concerned licensees/advertisers. As indicted earlier, the Committees findings are already communicated to the concerned licensees and advertisers. They are free to submit their representation to the Corporation and if such representation is already made the same will be considered by the Corporation before taking final decision as above. The Municipal Authorities shall indicate to the Committee as to which hoardings/advertisements they propose to remove as per the Committee's report. The Municipal Corporation shall also supply the information to the Committee regarding the duration of licenses and expiry date in respect of these 185 cases, we direct the Corporation to complete this process, within a period of four months from today and make a report to this Court.

In addition, since the attention of the Court was drawn to the fact that certain areas had been declared as Heritage precincts by the Heritage Committee wherein the erection of hoardings and advertisements would violate the Development Control Regulations, the Prothonotary and Senior Master was directed to issue a notice to the Chairman of the Heritage Committee to state his views in writing on the display of hoardings in Heritage precincts identified by the Heritage Committee. The Court was informed that the Expert Committee was in the process of submitting another list of offending hoardings and it was accordingly directed that the directions contained in the earlier order dated 2nd September, 2002 and in the order dated 1st October, 2002 shall apply mutatis

mutandis to the second list submitted by the Committee.

The challenge in the present batch of matters.

7. The Court is now moved in this batch of matters by hoarding owners, or as the case may be by persons claiming to be entitled to assert a right to display advertisements erected on hoarding structures on heritage buildings. Broadly speaking, the contention of these persons is that the hoardings in question have been erected prior to the enforcement of the Heritage Regulations in 1995: the hoardings and the structures on which they are erected must be regarded as having become part of the buildings to which they are affixed; the Heritage Regulations cannot be considered to have a retrospective effect and that, in the circumstances, the orders of this Court passed in Writ Petition No. 1132 of 2002 will have to be modified so as to exclude from their scope, purview and operation hoardings which were in existence prior to 1995. We have taken up for consideration the question of hoardings and advertisements on heritage buildings and precincts. That is the issue which is addressed in this order.

8. We have heard all the learned Counsel who have appeared before us in the batch of matters. Since there is a considerable degree commonality in the submissions which have been urged by the learned Counsel, those submissions may briefly be summarised. Written submissions have also been submitted before this Court and we have perused the submissions as well while extracting the salient aspects of the submissions which require consideration.

The submissions of Counsel

9. Mr. N.A. Mody, learned Senior Counsel appearing on behalf of the Petitioners in a batch of matters has urged the following submissions:-

(i) The expression "development" in the Development Control Regulations of 1991 has a statutory definition under Section 2(7) of the Maharashtra Regional and Town Planning Act, 1966 and that consequently it would be impermissible to consider its general or dictionary meaning;

(ii) This is especially so when the definition of the expression "development" under Section 2(7) has used the word "means" which would exclude any other meaning;

(iii) Section 2(7) and the Development Control Regulations should be interpreted as they are and no words should be added or deleted, if the literal reading produces an intelligible result;

(iv) a hoarding once erected becomes a part of a building;

(v) the renewal of permits under Sections 328 and 328A is a matter of right if fees are paid and the hoardings present no public safety or danger;

(vi) If the advertiser has paid licence fees, and has to do nothing more, advertising without the advertiser having a permit under Section 328 is not an offence;

(vii) while interpreting statutory language which is capable of more than one construction, provisions of hardship, inconvenience and injustice are irrelevant. Reliance was, inter alia, placed by learned Counsel on the definition of the expression "building" in DCR 2 (11) and the provisions for exclusion contained in DCR 3 (5). These submissions on law have been supplemented by the other learned Counsel.

10. Mr. N.G. Thakker, learned Senior Counsel appearing on behalf of the Petitioners in a group of matters, submitted that (i) sufficient provisions have been made in the Act and in the D.C.Regulations to control advertisements and hoardings, (ii) the grievance in the petition is essentially against the cutting of trees, (iii) that there is no absolute bar in putting up hoardings or for granting licences, (iv) renewals were granted from time to time in the past and the authorities are bound to grant a renewal of licenses to hoarding owners and advertisers subject to the payment of dues; (v) Regulation 67 would not have a retrospective effect and the D.C.Regulations cannot undo the effect of what has happened earlier and (vi) the power to revoke a license is a drastic power.

11. On behalf of the Bombay Hoarding Owners Association, Ms. Rajni Iyer submitted that a whole industry is dependent upon hoardings in the city of Mumbai and the workers who are dependent thereon would be seriously affected. Learned Counsel submitted that no representative interest in regard to the claims and rights of the hoarding owners was impleaded to the earlier Writ Petition.

12. Shri K.R. Bulchandani has in his submissions sought to urge that in view of the provisions of DCR 2 (3) (4) and 2 (3) (11) the structure on which a hoarding is erected cannot be segregated from the building. Moreover, reliance was sought to be placed on the provisions contained in DCR 3 (5) and DCR 13 (1)(a) to contend that the law does not mandate the removal of hoardings which have been lawfully erected. Learned Counsel submitted that the Petitioner in Writ Petition No. 1132 of 2002 in fact seeks orders which direct the Municipal Corporation to act contrary to the statutory provisions and legal mandate; that enactment of law is a prerogative of the Legislature and the Court cannot act contrary to the legislative mandate and that the petition is not filed in the public interest.

13. The submissions have been supplemented by Mr. Navin Parekh, Learned Counsel appearing on behalf of the Petitioners who has urged submissions of fact relating to Writ Petition No. 96 of 2003 where a hoarding has been erected in the compound of Wilson College which is a Heritage building. Learned Counsel submitted that it is a well settled principle that in the interpretation of statutes, the plain and grammatical meaning has to be adopted by the Court. There was, in the submission of the learned Counsel, no provision in the law for the removal of hoardings which had been lawfully erected.

14. Mr. S.C. Naidu, Learned Counsel urged before the Court that while Section 328 deals with sky-signs, Section 328A deals with the regulation and control of advertisements. Whereas a sky-sign has a fixed duration of two years and there is a provision for renewal, thereafter for a period not exceeding two years, there is no limit as to duration in regard to advertisements under Section 328A. Learned Counsel adverted to the procedure which is followed by the Municipal Corporation in

issuing permissions under Section 328A and the charges and fees which have been collected by the Municipal Corporation. The submission was that once a permission is granted under Section 328A, the advertiser acting thereon has a licence to execute work of a permanent character in which case the licence is irrevocable under Section 60 of the Easements Act. Counsel urged that a licence once granted cannot be withdrawn on the ground that it is a privilege and any withdrawal of the licence would have to be in conformity with Articles 14 and 19(1)(g) of the Constitution of India.

15. These submissions have been reiterated by Shri B.B. Bahal, Advocate, who has also filed written submissions.

The Maharashtra Regional and Town Planning Act, 1966

16. The Maharashtra Regional and Town Planning Act, 1966, is "an Act to make provision for planning the development and use of land in Regions established for that purpose; to make better provisions for the preparation of development plans with a view to ensuring that town planning schemes are made in a proper manner and their execution is made effective". Section 2(7) of the Act defines the expression "development" as follows:

"development" with its grammatical variations means the carrying out of buildings, engineering, mining or other operations in, or over, or under, land or the making of any material change, in any building or land or in the use of any building or land or any material structural change in any heritage building or its precincts and includes demolition of any existing building, structure or erection or part of such building, structure and erection, reclamation, redevelopment and lay-out and sub-division of any land; and "to develop" shall be construed accordingly".

The definition of the expression "Heritage building" was inserted in Clause (13B) of Section 2 by Amending Act 39 of 1994. A 'heritage building' is defined to mean a building possessing architectural, aesthetic, historical or cultural value which is declared as a heritage building by the Planning Authority in whose jurisdiction such building is situated. Similarly, Clause (13C) of Section 2 defines a "Heritage precinct" as an area comprising a heritage building or heritage buildings and precincts thereof or related places. Section 22 specifies the contents of a Development Plan and, inter alia, provides that a development plan shall generally provide the manner in which the use of land in the area of the Planning Authority shall be regulated and the manner in which the development of land therein shall be carried out. Clause (i) of Section 22 specifies that the development plan shall provide, in so far as may be necessary, for the preservation of features, structures of places of historical, natural, architectural and scientific interest and educational value and of Heritage buildings and Heritage precincts. The Development Control Regulations which are framed by the planning authorities, it is well settled, are relatable to the provisions of Section 22 (m) of the Act.

Sections 328 and 328A of the Mumbai Municipal Corporation Act, 1888.

17. Section 328 of the Bombay Municipal Corporation Act, 1888, provides for the regulation of sky-signs. Sub-section (1) of Section 328 provides as follows:

"(1) No person shall, without the written permission of the Commissioner erect, fix or retain any sky-sign, whether now existing or not. Where a sky-sign is a poster depicting any scene from a cinematographic film, stage play or other stage performance, such permission shall not be granted, unless prior scrutiny of such poster is made by the Commissioner and he is satisfied that the erection or fixing of such poster is not likely to offend against decency or morality. No permission under this section shall 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 is material for the present controversy and provides thus:

"(3) If any sky-sign be erected, fixed or retained contrary to the provisions of this section, or after permission for the erection, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by written notice, require the owner or occupier of the land, building or structure, upon or over which the sky-sign is erected, fixed or retained to take down and remove such sky-sign.

The expression "sky-sign" shall in this section mean any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole, standard framework or other support wholly or in part upon or over any land, building or structure which, or any part of which sky-sign, shall be visible against the sky from some point in any street and includes all and every part of any such post, pole, standard framework or other support. The expression "sky-sign" shall also include any balloon, parachute, or other similar device employed wholly or in part for the purposes of any advertisement, announcement or direction upon or over any land, building or structure or upon or over any street, but shall not include-

(a) any flagstaff, pole, vane or weathercock, unless adapted or used wholly or in part for the purpose of any advertisement, announcement or direction;

(b) any sign, or any board, frame or other contrivance securely fixed to or on the top of the wall or parapet of any building or on the cornice or blocking course of any wall, or to the ridge of a roof;

Provided that such board, frame or other contrivance be of one continuous face and not open work, and do not extend in height more than three feet above any part of the wall, or parapet or ridge to, against, or on which it is fixed or supported;

(c) any word, letter, model, sign, device or representation as aforesaid, relating exclusively to the business of a railway company, and placed wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway company, and so placed that it cannot fall into any street or public place;

(d) any notice of land or buildings to be sold, or let, placed upon such land or buildings."

Section 328A of the Act deals with the regulation and control of advertisements. The relevant provisions of the Section are thus:

328A. Regulation and control of advertisements. (1) No person shall, without the written permission of the Commissioner, erect, exhibit, fix or retain any advertisement whether now existing or not, upon any land, building, wall, hoarding or structure. Where an advertisement depicts any scene from a cinematographic film, stage play or other stage performance, such permission shall not be granted, unless prior scrutiny of such advertisement is made by the Commissioner and he is satisfied that the erection or exhibition of such advertisement is not likely to offend against decency or morality.

Provided that, the power of the Commissioner under this sub-section shall be subject to the regulations framed in this behalf.

Provided always that any permission under this section shall not be necessary in respect of any advertisement which is not an illuminated advertisement nor a sky-sign and which-

(a) is exhibited within the window of any building;

(b) relates to the trade or business carried on within the land or building upon which such advertisement is exhibited or to any sale or letting of such land or building or any effects therein, or to any sale, entertainment or meeting to be held upon or in the same or to the trade or business carried on by the owner of any tramcar, omnibus or other vehicle upon which such advertisement is exhibited;

(c) relates to the business of any railway company;

(d) is exhibited within any railway station or upon any wall or other property of a railway company, except and portion of the surface of such wall or property fronting any streets;

(3) If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of this section after the written permission for the erection, exhibition, fixing or retention thereof for any period shall have expired or become void, the Commissioner may, by notice in writing, require the owner or occupier of the land, building, wall, hoarding or structure upon which the same is erected, exhibited, fixed or retained, to take down or remove such advertisement."

Interpreting Sections 328 and 328A

18. Now, a perusal of the provisions of Section 328 would show that there is an absolute prohibition on the erection, fixing or retention of a sky-sign without the written permission of the Municipal Commissioner. The statute provides that no permission can be granted or renewed for a period exceeding two years from the date of each such permission or renewal. Under Sub-section (3) of Section 328 of the Act, the statute has provided for the consequence of the erection, fixing or retention of a sky-sign contrary to the provisions of Sub-section (1) or after the permission which

had been granted has expired or has become void. In such a case, the Commissioner is, by a written notice, to require the owner or the occupier of the land, building or structure, upon or over which the sky-sign is erected, fixed or retained to take down and remove the sky-sign. Sub-section (3) of Section 328 defines what is meant by the expression "sky-sign". Essentially, a sky-sign is a sign or representation in the nature of an advertisement, announcement or direction, supported on or attached to any post, pole, framework or other support in, upon or over any land, building or structure where any part of the sky-sign is visible against the sky from some point in any street. The definition of the expression "sky-sign" also includes all and every part of any such post, pole, standard framework or other support. The Legislature has defined the expression with reference to a "means and includes" formulation. The definition has thus to be regarded as exhaustive, having regard to the well settled principle of statutory interpretation. The Legislature has also specified as to what shall not be included in the definition of a "sky-sign".

19. The provisions of Section 328 of the Act have been construed in a recent judgment of the Supreme Court in *Municipal Corporation of Greater Bombay v. Bharat Petroleum Corporation Limited* (2002) 4 SCC 219. Adverting to the provisions of Sections 328 and 328-A of the Act, a Bench of two learned Judges of the Supreme Court held as follows:

"The main and salutary purpose of Sections 328/328A is to regulate the installation/construction of signboards of the nature defined and envisaged therein to keep road margins and space above such margins not indiscriminately meddled with so as to affect the free movement and free flow of traffic, preserve the ecology and environment by averting and regulation to the extent required, ensuring, in public interest, adverse physiological and psychological impacts either directly or indirectly due to the use of neon lights/illumination used for the installations. The provision of licensing is incidental and necessarily required to properly and effectively enforce the regulations and the levy and collection of fee also ultimately seem to achieve the same purpose. The statutory provisions seem to have been thus enacted with a laudable public purpose and the definition is also not only inclusive in nature but the enumeration of the various nature of fixtures, the manner and methods adopted therefor, as also the obvious and ostensible object of such fixtures/installations found specified therein, under the scheme of things, are found to be with the intention of making the provision an all-inclusive one to cover or rope in all possible things and not to operate in a manner to bring about any limitation on their scope, and that too to render the very provision otiose, redundant and meaningless."

No vested right to a renewal in perpetuity.

20. In interpreting the provisions of Sections 328 and 328A of the Act, this Court must, therefore, be guided by the salutary public purpose underlying these regulatory provisions which was emphasised in the judgment of the Supreme Court. The Supreme Court has emphasised the fact that the provision for licensing is incidental and, is necessarily required to properly and effectively enforce the Regulations. The levy and collection of a fee is with the object of achieving the same purpose. In so far as Section 328A of the Act is concerned, the embargo there is on the erection, exhibition, fixing or retention of any advertisement without the written permission of the Commissioner. The essential test of a sky-sign under Section 328 of the Act is as to whether it is in the nature of a

representation containing an advertisement, announcement or direction, supported by or attached to a post, pole, standard framework or other support, such that it is visible against the sky from some point in any street. The definition includes every part of such post, pole, standard framework or other support. In other words, in the case of a sky-sign the sky has to be visible as it were in the background of the hoarding from any point in the street. A sky-sign cannot be erected without the permission of the Commissioner in writing. No person can be given such permission for a period in excess of two years. No renewal can be for a period in excess of two years. The hoardings which are involved in the present case clearly fall within the definition of the expression "sky-sign" in Section 328 of the Act. These are all hoardings which contain representations as regards advertisement, announcements or directions within the meaning of those expressions in Sub-section (3) of Section 328 of the Act. They are admittedly erected from posts, poles, standard framework or other support in or upon lands, buildings or structures. They are visible against the sky from some point in the street. Therefore, in the very nature of things, the statute has mandated that permissions for such sky-signs, whether in the original or in exercise of the power of renewal, can be issued for a period not exceeding two years. Upon the expiry of the period of the permission, the sky-sign has to be removed unless the permission is renewed. The law as it obtains on the date of the renewal must apply to and govern the application for renewal. There can, in such a case, be absolutely no occasion for a hoarding owner or an advertiser to plead or contend that a permission which is once granted to him is a permission in perpetuity. A plain reading of the statute mandates against the claim of a permanent entitlement. The entitlement is for the period of the permission which in no case can extend beyond two years. Alternatively, even under the provisions of Section 328A, the statute mandates that no advertisement can be erected, exhibited, fixed or retained without the written permission of the Commissioner. Therefore, even on the assumption that there is an advertisement which is sought to be exhibited, the written permission of the Commissioner is required for every such advertisement and on every occasion that a fresh advertisement is sought to be exhibited. The only reason why no specified period is prescribed by Section 328A is because in the very nature of things, advertisements are transitory. The display of advertisements periodically changes for that is the very essence of an advertisement. The permission which is required under Section 328A is hence required to be taken on every occasion that an advertisement is sought to be exhibited. Therefore, whether the matter is looked at from the perspective of Section 328 or, in the alternative, from the standpoint of Section 328A of the Act, the plain language of the statute militates against the assumption of the petitioners that the permission which has been granted is a permission in perpetuity.

21. Once the basic position is clear, which is that no permission which is granted either under Section 328 or under Section 328A is a permission in perpetuity, the law as it governs on the date of the application for renewal must apply to the grant of the permission of the Municipal Commissioner on the application in the original or by way of renewal. There can be no doubt about the principle of law that a hoarding owner or an advertiser has a fundamental right to carry on his business in view of the provisions of Article 19(1)(g) of the Constitution. Equally, there could be no gain-saying the fact that the power to revoke a licence is a drastic power, as held by the Supreme Court in *Narayanan Sankaran Mooss v. State of Kerala*, . Consequently in *Raj Restaurant and Anr. v. Municipal Corporation of Delhi*, , the Supreme Court held that where in order to carry on a business, a licence is required, a refusal to renew a licence or cancellation or revocation of a licence would visit

the person concerned with civil consequences. The Court, therefore, held that a compliance with the principles of natural justice would be mandated and a notice or opportunity to represent one's case would be necessary. These principles have also been elaborated upon in various judgments of this Court which were adverted to on behalf of the Petitioners: (i) V.K. Aboobkar v. M.G. Mugwe, Commissioner of Police and Ors., ILR 1997 Bom. 1341, (ii) Harish Mahadeo v. State of Maharashtra 1983 Mah. Law Journal 30, (iii) Dashrath Muktaji Budhwant v. Municipal Corporation of Greater Bombay and Anr., 1995 (1) Mh.LJ 729 and (iv) Ratanshaw Nusserwanji Todiwalla v. Geoffrey William McELHINNY, 43 Bom. Law Reporter 896).

22. Once, however, the Court comes to the conclusion that the provisions contained in Sections 328 and 328A of the Act do not contemplate or warrant a licence or permission in perpetuity, the plain consequence would be that the law as it obtains on the date when a licence or permission comes up for renewal must necessarily govern. In a decision rendered in 1936 by a learned Single Judge of this Court in Fakir Mahomed Malang v. The Municipal Commissioner of Bombay, Vol. XXXIX BLR 536, the Municipal Corporation resolved not to renew the license of a butcher within a certain distance from a market which the Corporation had set up. Referring to the provisions of Section 411 of the Bombay Municipal Corporation Act, 1888, Mr. Justice Kania (as the Learned Chief Justice then was) held that since the power to grant a licence was vested in the Municipal Commissioner, it followed that the power to refuse the license must also be vested in the same authority. The learned Judge held that to consider otherwise would mean that there was an obligation on the Commissioner to grant a licence and that he had no jurisdiction to refuse the same. The Court held that there appeared in the Act no words to justify such a conclusion. The Learned Judge held that so long as the discretion was exercised for the proper municipal administration of the area under the control of the Commissioner and from no other motive, the exercise of the power would not be regarded as arbitrary or unlawful.

23. The Supreme Court had occasion to consider the question as regards the renewal of a lease granted under the Gujarat Minor Mineral Rules, 1966 after the coming into force of the Forest (Conservation) Act, 1980. In Ambica Quarries v. State of Gujarat, , the Supreme Court held that the Act of 1980 was in recognition of the awareness of the ecological imbalance resulting upon de-forestation. The submission before the Supreme Court was that the lessees had invested large sums of money in mining operations, that they were not guilty of any breach of the terms of the grant and there was no factor disentitling them to such renewal. The Court held that in such a case the primary duty was that which was owned to the community and that duty took precedence. The obligation to the society must, it was held, predominate over the obligation to the individual. The matter was considered in a later judgment of three learned Judges of the Supreme Court in Gajraj Singh and Ors. v. State Transport Appellate Tribunal and Ors., which arose under the Motor Vehicles Act, 1988. The Supreme Court held that the grant of a renewal is a fresh grant though it breathes life into the operation of the previous lease or licence granted "as per existing appropriate provisions of the Act, rules or orders or acts intra vires or as per the law in operation as on the date of renewal". The Court held that the right to get a renewal of a permit is not a vested right but a privilege subject to the fulfilment of the conditions precedent. The right is not an accrued right and was held to be a privilege to obtain a renewal according to the law in operation and after due compliance with the pre-conditions set out in the legislation. The principles which have been laid

down in these judgments must govern the present proceedings. True it is that the permission which the hoarding owner or advertiser seeks, is connected with the fundamental right to carry on a business under Article 19(1)(g). The Legislature has, however, regulated that right under Sections 328 and 328A of the Act. There is no absolute or unconditional right to the renewal of a permission. The law has not provided for a permission in perpetuity. The renewal of every permission must, therefore, abide by the law in existence on the date of the renewal.

The 'Heritage Regulations' of 1995.

24. That takes us to the question relating to the notification of the State Government dated 21st April, 1995 by which Development Control Regulation 67 was sanctioned by the Government to come into force with effect from 1st June, 1995 ("the Heritage Regulations, 1995"). The draft of the Regulation was published on 20th February, 1991 and was notified after following the statutory procedure of inviting suggestions and objections. Sub-Regulation (1) of Regulation 67 provides for the applicability of the Regulation, and is as follows:

"1. Applicability- This regulation will apply to those buildings, artefacts, structures and/or precincts of historical and/or aesthetical and/or architectural and/or cultural value (hereinafter referred to as Listed Buildings/Heritage Buildings and Listed precincts/Heritage precincts) which will be listed in notification(s) to the issued by the Government.

Sub-Regulation (2) of Regulation 62 provides for restrictions, inter alia, on the development, re-development, repairs, alteration and renovation of listed Heritage builders and precincts. Sub-Regulation (2) provides as follows:

"2. Restriction on Development/Redevelopment/Repairs, etc.- (i) No development or redevelopment or engineering operation or additions alterations, repairs, renovation including the painting of builders, replacement of special features or demolition of the whole or any part thereof no plastering of said listed/heritage builders or listed/Heritage precincts shall be allowed except with the prior written permission of the Commissioner. The Commissioner shall act on the advice of/in consultation with the Heritage Conservation Committee to be appointed by Government (hereinafter called "the said Heritage Conservation Committee"):

Provided that in exceptional cases for reasons to be recorded in writing the Commissioner may overrule the recommendation of the Heritage Conservation Committee:

Provided that the power to overrule the recommendations of the Heritage Conservation Committee shall not be delegated by the Commissioner to any other officer."

25. Under Sub-Regulation (4), the Municipal Commissioner has been empowered to alter, modify or relax the other provisions of the Development Control Regulations of Greater Bombay, 1991 with the approval of the Government and after consultation with the Heritage Conservation Committee, if it is needed for the conservation, preservation or retention of the historical, aesthetical, cultural or architectural quality of any listed buildings/Heritage buildings or listed precincts/Heritage

precincts. The said Regulation provides that buildings included in the listed Heritage precincts shall maintain the sky-line in the precincts as may be existing in the surrounding area so as not to diminish or destroy the value and beauty of a listed Heritage building or precinct.

26. Heritage buildings and precincts have been classified into three categories viz. Grades-I, II and III. Grade-I consists of buildings and precincts of national or historical importance, embodying excellence in architectural style, design, technology and material usage. These may be associated with a great historical event, personality, movement or institution. They have been and are the prime landmarks of the City, Grade-II buildings and precincts are of regional or local importance, possessing special architectural or aesthetical merit, cultural or historical value, though of a lower scale than in Heritage Grade-I. These are local landmarks, contributing to the image and identity of the City. Grade-III structures are important for the town scape; they evoke architectural aesthetic or sociological interest, though not as much as in Grade-II. These contribute to determine the character of the locality, and can be representative of the life style of a particular community or region and, may also be distinguished by setting on a streetline or special character of the facade and uniformity of height, width and scale.

27. The Heritage Regulations also define the underlying objectives. Grade-I structures, it has been stated "richly deserve a careful preservation". Those in Grade-II "deserve intelligent conservation". Those in Grade-III "deserve protection of unique features and attributes". The scope for changes is also specified. In so far as Grade-I structures are concerned, no interventions are permitted either on the exterior or interior unless it is necessary in the interest of strengthening and prolonging the life of the buildings or precincts or any part or feature thereof. Absolutely essential or minimal changes are allowed and those must be in accordance with the original. In so far as Grade-II structures and precincts are concerned, these have been divided into two categories. Internal changes and adaptive reuse is allowed generally in Grade-II (A), but external changes are subject to scrutiny. Care is to be taken to ensure the conservation of all special aspects for which it is included in Heritage Grade-II. In the case of Grade-II (B) structures and precincts, an extension of or additional buildings is permissible in certain circumstances provided it is in harmony and does not detract from the existing heritage building or precinct. In the case of Grade-III structures and precincts, external and internal changes are allowed. However, it has been specified that extensions of additional buildings should be in harmony with and should not detract from the existing Heritage building or precinct in terms of height or facade. Reconstruction is permissible only where the building is structurally weak. However, it has been provided that unless absolutely essential, nothing should spoil or destroy and special features or attributes for which it is placed in the Heritage list.

28. In accordance with the provisions of the Heritage Regulations, a list of Heritage buildings and Conservation areas has been notified. The list which has been notified has 633 entries. Each of the notified buildings or precincts has as explanatory statement relating to location, ownership, usage, special feature, date, classification, grade and state of preservation. The criteria which have been followed for classification include such aspects, as (i) the value of a building or precinct for architectural, historical or cultural reasons, (ii) the date, period, design or unique use thereof, (iii) the relevance to social or economic history, (iv) association with well known persons or events, (v) a

group of buildings or areas with a distinct architectural design or style relating to a historical period or way of life having sociological interest and/or community value. (vi) the position of a building as part of a chain of architectural development that would be broken if it were lost of (vii) its value as a part of a group of buildings. The classification also deals with vistas of natural or scenic beauty or interest including water-front areas, distinctive or planned lines of sight, streetline, skyline or topographical and open spaces integrally planned with their associated areas having a distinctive way of life and which have the potential to be areas of recreation. These facets are of relevance to the present judgment because they emphasise the underlying object, the purpose and the unique effort in the city of Mumbai to conserve and protect listed Heritage buildings and precincts. The exercise of conservation and protection is envisaged within the statutory framework of the Development Plan. The Court is, therefore, not in an uncharted area of policy but one that is structured by a framework that has the force of law.

29. These provisions of the Heritage Regulations provide a significant attempt to preserve, protect and conserve the rich socio-economic and cultural heritage of the city of Mumbai. A city which is known for its history, its cosmopolitan character and the fusion of diverse cultures, communities and life styles has made a concerted effort in the form of the Heritage regulations to preserve the structures and precincts which have given to the city its unique position and status. The march of urbanisation was liable to convert Mumbai from the unique position which it held in terms of its history, culture and life style into an urban metropolis with its attendant concrete jungle. The policy makers ought to avoid the consequence of unrestricted urban growth by providing for a classification of Heritage structures and precincts, which buildings and areas would require protection and conservation.

Purposive interpretation

30. While interpreting the provisions of the Heritage Regulations, 1995, the Court must be guided by a purposive interpretation that would implement and further the underlying object and purpose of the Regulations. Interpretation must do no harm to the language of the regulations, for the duty of the Court is to interpret the ordinary and, as it is often said, the plain, natural or grammatical meaning of words. The preservation of the environment, the maintenance of the balance between ecology and economic development and the conservation of a rich Heritage has not merely a statutory dimension but raises constitutional issues as well. Almost fourteen years ago, in *Ramsharan Autyanuprasi and Anr. v. Union of India and Ors.* 1989 Supp (1) SCC 251. Sabyasachi Mukharji, J. (as the learned Chief Justice then was), speaking for a Bench of the Supreme Court held that "life in its expanded horizons today includes all that gives meaning to a man's life including his tradition, culture and heritage and protection of the heritage in its full measure would certainly come within the compass of an expanded concept of Article 21 of the Constitution." Article 48-A of the Constitution, which is a part of the Directive Principles of State Policy, mandates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. The dimensions of the environment, for the purposes of Article 48-A must be informed by a broad construction of that expression. Under Article 51A(f), it is the duty of every citizen of India to value and preserve the rich heritage of our composite culture. These abiding constitutional principles must inform and animate the construction to be placed by the Court on provisions such as

those involved in the present case which have been enacted or, as the case may be, made in public interest. Statutory interpretation in such a case must be such as would further the underlying object and purpose of the provisions which has been made in the enactment or the Rules. Undoubtedly, it is not for the Judge to make law or to strain the words of the statute to include a meaning that does not fall within the compass of the natural grammatical or literal meaning. That question does not arise in the present case because the plain meaning that can be ascribed to the provisions of Section 328 and 328A of the Act and to the provisions of Regulation 67 militate against the acceptance of the argument of the Petitioners who assert an accrued right in perpetuity to display their advertisement and hoardings.

The submission on retrospectivity

31. A considerable effort has been made on the part of the Petitioners to submit that statutory provisions creating substantive rights or taking away substantive rights are ordinarily prospective and they are retrospective only if by express words or necessary implication the legislature has made them retrospective. (*Mahadev Lal Kanoida v. Administrator of West Bengal*,). There can be no dispute about this proposition. Neither the provisions of Regulation 67 nor indeed the provisions of Sections 328 and 328A are retrospective in nature or character, nor are they sought to be applied retrospectively. All that the Petitioners and other hoarding owners are told is that with the enforcement of the Heritage Regulations, 1995, every application for the grant of a permission or for the renewal of an existing permission must be governed by the provisions of the law as they stand on the date of the application. This does not involve a retrospective operation of the law but on the contrary involves the application of the well settled principle that where the law prescribes a licence or permission to carry on a business, the grant of a licence or permission, whether for the first time or for renewal, must be in consonance with the law as it stands when the application is made or is required to be made. There is absolutely no merit in the submission that there is a retrospective application of law to the Petitioners.

The Development Control Regulations, 1991.

32. D.C. Regulation 67 was introduced by way of an amendment on 21st April, 1995. Prior thereto, the Development Control Regulations for Greater Bombay were brought into force on 20th February, 1991. D.C.Regulation 2 (3) (4) defines "Advertising sign" as follows:-

"Advertising sign" means any surface or structure with characters, letter or illustrations applied thereto and displayed in any manner whatsoever out of doors for the purpose of advertising or giving information regarding or to attract the public to any place, person, public performance, article or merchandise, and which surface or structure is attached to, forms part of, or is connected with any building, or is fixed to a tree or to the ground or to any pole, screen, fence or hoarding or displayed in space, or in or over any water body included in the limits or Greater Bombay i.e. City, suburbs or extended suburbs as defined in Section 3 of the Bombay Municipal Corporation Act, 1888, and area specified in Part II to IV of Schedule "A" to the Greater Bombay Laws and Bombay High Court (Declaration of Limits) Act, 1945.

Similarly, the expression "Building" is defined by Section 2 (3) (11) to mean a structure, constructed with any materials whatsoever for any purpose, whether used for human habitation or not, and to include, inter alia, any wall enclosing or intended to enclose any land or space, signs and outdoor display structures. The submission of the Petitioners is that a building which is constructed prior to the enforcement of the D.C. Regulations in 1991 in pursuance of a lawful authority or permission granted by the Planning Authority is not rendered unlawful upon the enforcement of the Regulations. Undoubtedly, it cannot be argued with any measure of justification that buildings which have been lawful constructed and occupied pursuant to permissions granted by the Planning Authority prior to the enforcement of the D.C.Regulations would be rendered unlawful as a result of the enforcement of the Regulations. The Regulations themselves contain provisions so as to protect buildings which had been constructed lawfully prior thereto. A provision for that is expressly made in Regulation 3. Clause (1) of Regulation 3 provides that except as otherwise provided, the Regulation shall apply to all development, re-development, erection and/or re-erection of a building, change of user etc. as well as to the design, construction or reconstruction of, and additions and alterations to a building. Clause (5) of Regulation 3 then specifies that nothing in the Regulations shall require the removal, alteration or abandonment or prevent the continuance of the lawfully established use or occupancy of an existing building or its use unless, in the opinion of the Commissioner, such a building is unsafe or constitutes a hazard to the safety of adjacent property. The Regulations provides that they shall apply to building activity and development work in areas under the jurisdiction of the Municipal Corporation of Greater Bombay and that they shall come into force on 24th March, 1991. Regulation 13 stipulates in Clause (1)(a) that any lawful use of land or of building premises existing before the coming into force of the Regulations may continue even if it does not conform to the use provisions of the Regulations provided such non conforming use is not extended or enlarged except as provided in these Regulations. These provisions, therefore, protect lawfully constructed buildings which bear an antiquity prior to the enforcement of the Regulations of 1991. The existing uses are protected to the extent contemplated.

33. A Division Bench of this Court in *Dr. P. Navin Kumar and Ors. v. The Bombay Municipal Corporation and Ors.* [1997 (2) ALL MR 135] dealt with a situation where the construction of a public toilet which was contended to have been constructed in violation of the Heritage Regulations, 1995, had been challenged. This Court held that the Municipal Commissioner had taken a decision to construct the toilet block in 1991 and the construction was duly completed prior to the coming into force of the Regulations. In that view of the matter, the Court held that it would be difficult to hold that the development or construction of the toilet block by the Municipal Corporation was in violation of Regulation 67 of the Heritage Regulations for Greater Bombay, 1995. This was, therefore, a building which had been lawfully constructed prior to the enforcement of the Heritage Regulations, 1995. The fallacy, however, in the submission of the Petitioners, lies in equating a lawfully constructed building with hoardings, or advertisements and the structures or frameworks upon which they are displayed or exhibited. Sections 328 and 328A of the Act provide a clear answer to the submissions of the Petitioners. Section 328 clearly provides that a sky-sign which is exhaustively defined to be inclusive of the post, pole, standard framework or support in which the advertisement is displayed cannot be exhibited without written permission or after the permission expired. In the alternative, under Section 328A, the exhibition or display of every advertisement requires the permission of the Municipal Commissioner. Therefore, there is no accrued right in

favour of a hoarding owner or advertiser to display an advertisement in perpetuity. The statute in its plain meaning militates against the existence of a vested right in perpetuity of the nature that is claimed by the Petitioners. There can be no question of a licence in such cases becoming irrevocable. In the face of clear statutory provisions which restrict the duration of a permission, no advertiser or hoarding owner can claim that acting on the permission, he has erected a hoarding of a permanent nature. Least of all, can there be in such circumstances a legitimate expectation to continue an exhibition or display in perpetuity. Be that as it may, even if there were to be a legitimate expectation that must necessarily give way to law made in the public interest.

34. Learned Counsel appearing on behalf of the Petitioners sought to rely upon the judgment of the Supreme Court in *Motichand Hirchand and Ors. v. Bombay Municipal Corporation*, . The Supreme Court held that in determining the rateable value of a building, the assessing authority under Section 154(1) of the Bombay Municipal Corporation Act, 1888, can take into consideration the income derived by the owner under an agreement entitling an advertisement hoarding to be put upon the roof of such building. This judgment does not assist the case of the petitioners. Undoubtedly, in determining the rateable value, if a building or a part of it yields an extra income over and above the actual rent derived from it, the Supreme Court held that such income on the terms of Section 154 (1) of the Act could be taken into consideration by the Assessing Authority while determining the annual rent on the ground that a hypothetical tenant would take such extra income into account while considering what rent he can afford to offer for such building. The issue was, therefore, completely different. From the position as it obtains in regard to determining the rateable value of a building, it cannot be concluded that for all intents and purposes the hoarding constitutes a part of the building.

The Role and Position of the Heritage Conservation Committee.

35. The Heritage Committee has been constituted under the provisions of Regulation 67 as an expert body. The Committee is in fact styled in sub-Regulation (2) of Regulation 67 as the Heritage Conservation Committee. A notification dated 25th April, 1995 issued by the State Government lays down the composition of the Committee. The Committee which is to be chaired by a Retired Municipal Commissioner of the Corporation or a retired Secretary to the Government of Maharashtra comprises of experts drawn in diverse fields: (i) two members are to consist of Structural Engineers with an experience of ten years in the field: (ii) two members are to be qualified Architects with like experience, one of whom shall be an Urban Designer and a second a Heritage Conservation Architect: (iii) The Director of the Prince of Wales Museum is a member of the Committee and (iv) the other members of the Committee include an environmentalist with an in-depth knowledge and experience of ten years of the subject matter, a City historian with 10 years experience in the field and the Director of Municipal Engineering and Services. The notification specifies the terms of reference of the Committee as consisting, inter alia: (i) To recommend to the Municipal Commissioner, whether development permission should be granted under Regulation 67 and the conditions thereof: (ii) To prepare a supplementary list of buildings, precincts, areas, artefacts and structures of historical, asthetical, architectural of cultural value: (iii) To advise whether any modification or relaxation in the Regulation is called for under Regulation 67(4) in the interest of conservation, preservation or retention of heritage structures or, as the case may be,

areas; (iv) To advise the Municipal Commissioner in the operation of Regulation 48 to regulate or eliminate the erection of outside advertisements or bill boards on the facade and to recommend to the Municipal Commissioner guidelines to be adopted by private parties who sponsor beautification schemes at public intersections: and (v) To frame special Regulations for heritage precincts and to advise the Municipal Commissioner regarding the same.

36. Under Regulation 67, no development, re-development, engineering operation, additions, alterations, repairs, renovation including the painting of buildings, replacement of special features or demolition of the whole or any part thereof or even plastering is to take place of Heritage buildings and precincts except with the prior written permission of the Commissioner. Sub-Regulation (2) stipulates that the Commissioner "shall act on the advice of/in consultation with" the Heritage Conservation Committee appointed by the Government. The proviso to sub-regulation (2) lays down that in exceptional cases, for reasons to be recorded in writing, the Commissioner may overrule the recommendation of the Heritage Conservation Committee. Under the second proviso, it has been stipulated that the power to overrule the recommendations of the Heritage Conservation Committee shall not be delegated by the Commissioner to any other Officer.

37. These provisions emphasise the vital role which is played by the Committee and the significant status which is conferred upon the Committee and its recommendations. The Committee is an expert body composed of persons who possess wide experience in the field of conservation and preservation of the environment. Engineers, Architects, Historians and Environmentalists who serve on the Committee are expected to discharge the salutary public functions which the Rules require them to perform. Therefore it is that sub-regulation (2) provides that the Commissioner shall act on the advice of/in consultation with the Heritage Conservation Committee. The Commissioner cannot ignore at will or act contrary to the advice which has been tendered by the Heritage Conservation Committee, as it is said in law, at his own sweet will and fancy. Though the Commissioner has been empowered in exceptional cases to overrule the recommendation of the Committee, this power cannot be exercised capriciously. This is a power to overrule, in exceptional cases, for reasons in writing. The Commissioner cannot do so as a matter of course merely because he prefers another view, or because another view is possible. If the Commissioner were permitted to do so, that would render the provisions contained in the Regulations nugatory. The Commissioner must not only ordinarily but also invariably act in accordance with the advice of a High Powered Expert Committee - the Heritage Conservation Committee - which is to assist him. The Regulation has stated that in exceptional cases the Commissioner may overrule the recommendation of the Committee. This has been subjected to the safeguard that it must be for reasons to be recorded in writing. The reasons to be recorded in writing must be reasons of an exceptional nature where, in occasional cases, the Commissioner may overrule the Committee. The importance of the advice of the Committee is made clear by the provision that even the power to overrule the Committee must be exercised by the Municipal Commissioner personally and not by any delegate of the Municipal Commissioner. In the circumstances, it is only to be expected that save and except where truly exceptional reasons have been made out, the advice which is tendered by the Heritage Conservation Committee must invariably be acted upon by the Commissioner. In an isolated case, where there has been a clear and patent error on the part of the Committee, the Commissioner is not powerless to intervene in the matter. For instance, in one of the cases it has been sought to be contended by Mr.

Bulchandani, learned counsel appearing on behalf of the Petitioners (Chamber Summons No. 287 of 2002) that the building in question on which the hoarding stands is not a Heritage Building. We decline to make any comment on the factual correctness of the grievance in view of the ultimate directions which we propose to issue, but we are emphasising this as one possible illustration wherein the Commissioner may conceivably intervene if the grievance were to be found to be factually correct. Exceptional powers have to be exercised in exceptional cases.

D.C. Regulation 48(3)

38. D.C. Regulation 67 (which was issued in its final and effective form on 21st April, 1995) was notified in a draft form on 20th February, 1991 by the State Government for inviting suggestions and objections of the public. The Development Control Regulations for Greater Bombay, 1991 were simultaneously sanctioned in terms of a Government Resolution also dated 20th February, 1991. Regulation 48 of the Regulations provide for signs and outdoor display structures. Clause (3) of Regulation 48 provide as follows:

"3. Prohibition of advertising signs and outdoor display structures in certain cases: Notwithstanding the provisions of sub-regulations (1) and (2), no advertising sign or outdoor display structure shall be permitted on buildings of architectural, aesthetical, historical or heritage importance as may be decided by the Commissioner, or on Government buildings, save that in the case of Government buildings only advertising signs or outdoor display structures may be permitted if they relate to the activities for the said buildings own purposes or related programmes."

At the stage, since the draft Heritage Regulation had only been notified for inviting the suggestions and objections of the public, Clause (3) of Regulation 48 provided for a prohibition on advertising signs and outdoor display structures on buildings of architectural, aesthetical, historical or heritage importance as may be decided by the Commissioner. These buildings have now been specifically listed out after the notification of the Heritage Regulations in 1995. Consistent with the Provisions of Regulation 48, Guidelines framed by the Municipal Commissioner stipulate that no hoarding shall be permitted on buildings of archaeological, architectural, aesthetical, historical or heritage importance as per DCR Rule 48(3). A harmonious construction must be given to the provisions of DCR 48(3) and DCR 67. The prohibition specifically made in Regulation 48(3) is with a view to conserve and protect buildings of architectural, aesthetical, historical or heritage importance. Guideline 16(g) is in implementation of the mandate and an administrative direction which is consistent with the D.C. Regulations. The D.C. Regulations, as already noted, are part of the Development Plan under Section 22(m) of the Maharashtra Regional and Town Planning Act, 1966.

39. In our view, after the enforcement of the Heritage Regulations of 1995, it would be clearly impermissible on the part of the Municipal Corporation to grant or renew any permission for the erection of any hoarding, sky-sign or associated display structure, on listed heritage buildings or precincts, save and except with the prior written permission of the Municipal Commissioner acting on the advice of the Heritage Conservation Committee. Under Regulation 67(2) the manner in which the Municipal Commissioner shall regard and proceed on the basis of the advice tendered by the heritage Committee, is already elucidated in the earlier part of the judgment. Similarly, we are of the

view that every application for renewal of a permission must also necessarily abide by the discipline and conditions of the provisions contained in Regulation 67 of the Heritage Regulations, 1995. In the present cases, the Municipal Corporation has admittedly failed to follow any of the prescribed provisions contained in the law. On the contrary, we find it somewhat surprising that learned counsel appearing on behalf of the Municipal Corporation sought to support the submissions urged on behalf of the Petitioners before us.

DIRECTIONS

40. In view of the provisions of law which have been adverted to in the earlier part of the present judgment, we reject the submissions which have been urged on behalf of the Petitioners, of there being any accrued or vested right in perpetuity to exhibit those advertisements, hoardings and/or sky-signs which were constructed prior to the Heritage Regulations of 1995. The Expert Committee which has been appointed by this Court has investigated into the matter in considerable detail. In various orders which have been passed by this Court, as already noted earlier, directions were issued in the interests of fairness in order to furnish an opportunity to the advertisers and hoarding owners. While we are of the view that there is no merit in the legal submissions urged before this Court in these proceedings on behalf of the advertisers and hoarding owners, at the same time, it would be inappropriate for this Court in its jurisdiction under Article 226 to undertake the exercise of investigating into the individual facts of each case. Therefore, in the final operative order which we pass, we have left it to the Heritage Conservation Committee to consider individual cases of hoardings, advertisements and sky-signs on heritage structures and precincts and to submit a report to the Court. This will ensure that the principles of fairness are complied with and obviate any grievance of a breach of natural justice. The advertisers and hoarding owners will be allowed to submit their representations, if any, to the Heritage Conservation Committee. These will be duly taken into consideration by the Committee while submitting its report to this Court. The following directions shall meet the ends of justice, and are accordingly issued:

(i) The reports of the Expert Committee, constituted in pursuance of the order passed by this Court on 3rd May, 2002, in so far as they relate to Heritage structures and/or Heritage precincts shall be forwarded to the Heritage Conservation Committee Constituted under Regulation 57(2) of the Heritage Regulations for Greater Bombay, 1955;

(ii) The Heritage Conservation Committee is directed to inquire into the hoardings on listed Heritage structures and precincts and to submit a report to this Court with reference to each of the hoardings, specifying individually whether the same should be retained or removed;

(iii) Individual hoarding owners and advertisers will be at liberty to file written representations before the Heritage Conservation Committee within a period of three weeks from today. The Heritage Conservation Committee shall determine the question referred to it as aforesaid, after considering the representations, if any, submitted by the hoarding owners and advertisers. The Committee shall have due regard to the reports of the Expert Committee appointed by this Court to the relevant provisions of law and the observations in the judgment;

(iv) The Heritage Conservation Committee is directed to complete its work and to submit a report to this Court expeditiously and, in any event within a period of eight weeks;

(v) The Heritage Conservation Committee shall submit a copy of its report to the Municipal Commissioner who shall thereupon submit his findings to this Court within a period of four weeks of the receipt of the report;

(vi) The Municipal Corporation shall take steps forthwith for removing the offending hoardings immediately upon and in the light of the decision of the Municipal Commissioner. The status quo shall, however, continue to be maintained in the meantime;

(vii) Any hoarding owner or advertiser who considers himself aggrieved by the report of the Heritage Conservation Committee and/or the decision taken by the Municipal Commissioner, will file his objections thereto in the proceedings before this Court in the main matter which is pending (Writ Petition No. 1132 of 2002) or by adopting appropriate proceedings which shall be dealt with and disposed of by the First Court hoarding matters relating to Public Interest Litigation;

(viii) The interim orders passed by this Court in Writ Petition No. 1132 of 2002 shall be subject to the further directions issued hereinabove in regard to advertisement, hoarding and sky-signs on Heritage structures and precincts;

(ix) The Writ Petition shall stand disposed of in terms of the aforesaid directions.

Rule discharged. No order as to costs.