

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF NOVEMBER, 2019

PRESENT

THE HON'BLE MR.ABHAY S. OKA, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE PRADEEP SINGH YERUR

WRIT APPEAL NO.2747 OF 2019 (LB-BMP)

BETWEEN:

THE BRUHAT BENGALURU
MAHANAGARA PALIKE
CORPORATION OFFICES
NR SQUARE, J.C. ROAD
BENGALURU – 560 002
REPRESENTED BY ITS
COMMISSIONER

...APPELLANT

(BY SRI H. DEVENDRAPPA, ADVOCATE)

AND:

1. M/S. POPULAR ADVERTISERS
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN
2. M/S. THE BANGALORE OUTDOORS
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY

HAVING ITS OFFICE AT
NO.32, AECS LAYOUT, 2ND STAGE
2ND CROSS, SANJAYNAGAR
RMV 2ND STAGE
BENGALURU – 560 094
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN

3. M/S. PRACHAR OUTDOOR ADVERTISING
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN
4. M/S. SAGAR MARKETING CORPORATION
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN
5. M/S. SHRI POOJA MARKETING
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN

6. M/S. LAKSHMI MARKETING
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN
7. M/S. GALAXY MARKETING AND SALES CO.
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN
8. M/S. LOTUS INFRASTRUCTURE
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN
9. M/S. SHRI SAI MARKETING
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN

10. M/S. SFX OUTDOOR MEDIA
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN
11. M/S. APOLLO INFRASTRUCTURE
A PROPRIETARY BUSINESS
CONCERN IN OUTDOOR
ADVERTISEMENT AGENCY
HAVING ITS OFFICE AT
NO.400, ROYAL CORNER NO.1 & 2
LALBAGH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS PROPRIETOR
MR. MANMOHAN SINGH MAAN

...RESPONDENTS

(BY SRI V.B. SHIVA KUMAR, ADVOCATE
FOR R-1 TO R-11)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF
THE KARNATAKA HIGH COURT ACT, PRAYING TO SET
ASIDE THE ORDER DATED 12.07.2019 PASSED ON THE
INTERLOCUTORY APPLICATION FILED IN W.P.
NO.36773/2018 BY THE HON'BLE SINGLE JUDGE OF THIS
HON'BLE COURT.

THIS APPEAL COMING ON FOR ORDERS THIS DAY,
CHIEF JUSTICE, DELIVERED THE FOLLOWING:

JUDGEMENT

This appeal is preferred by the BBMP challenging the order dated 12th July 2019. We find that impugned order is an interim order. By the said order, firstly, the operation of resolution dated 6th August 2018 was stayed. It is not in dispute that the said resolution was to operate only for one year. Hence, the said resolution is no longer operative. Therefore, it is not necessary to entertain the appeal against an order staying the said resolution.

2. By second part of the impugned order, which stays the so called adjudication made under Section 138 of the Karnataka Municipal Corporations Act, 1976 (for short 'the said Act of 1976'), we have observed in a separate order passed today in Writ Petitions that under Section 138 of the Act of 1976, a power is vesting in Commissioner to remove the advertisements displayed or erected without obtaining permission under Section 135 of the Act of 1976. Under Section 136 of the Act of 1976, it is provided that in certain cases, the permissions granted under Section 135 of the Act of 1976 shall become void. Once a permission granted under Section 135 of the Act of 1976 becomes

void, Section 138 of the Act of 1976 will squarely apply as the permission will cease to exist. As observed in the separate order passed today in Writ Petitions, action under Section 138 of the Act of 1976 can be taken only after giving show cause notice to the Offender and a notice contemplated under Section 138 of the Act of 1976 can be issued only after an opportunity is granted to the Offender to reply to the show cause notice and after considering the reply to the show cause notice along with documents, if any. With regard to the illegal structures on which hoardings, banners, etc., are displayed, the action will have to be taken under Section 321 of the Act of 1976.

3. It was pointed out to us that in this appeal, the challenge to the order dated 12th July 2019 is only to the extent of stay granted to the resolution. In any case, now the issue of resolution has become academic. Moreover, in this case injunction has been granted by the Courts restraining the BBMP from enforcing the orders under Section 138 of the Act of 1976. By approaching the concerned Courts, the BBMP can always seek a leave to issue a show cause notice as held in the separate order passed today.

4. In this view of the matter, it is not necessary to interfere with the impugned order dated 12th July 2019. The impugned order is an interim order and therefore, the findings recorded therein are always tentative and prima facie findings. While deciding the writ petition, the Court will have to decide the petition independently of the said findings.

5. The appeal is not entertained for the reasons stated earlier and is disposed of.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

VK