

IN THE HIGH COURT OF DELHI AT NEW DELHI

**CM(M) No.837/2007**

# National Highways Authority of India .... Petitioner  
! through: Mr.Rajiv Nayyar, Sr. Adv. with  
Ms.Divya Jain, Adv.

VERSUS

\$ Shri Sudhir Haryal .... Respondent  
^ through: Mr.Sanjay Jain, Sr. Adv. with  
Mr.Sanjiv Bahl, Adv. and  
Mr.Arjun Mitra, Adv.

% **DATE OF DECISION:** 20-06-2007

**CORAM:**

\* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J.**

1. Petitioner NHAI is aggrieved by the order dated 30.5.2007 followed by the order dated 2.6.2007 passed by Shri Sanatan Prasad, Senior Civil Judge, Delhi.

2. The said 2 orders have been passed by the learned Judge in a suit filed by the respondent seeking a decree for permanent injunction against the petitioner restraining petitioner from taking possession of bus shelters, toilet blocks etc. right whereon for displaying advertisements was vested in the respondent under the agreement dated 31.12.2001.

3. Vide order dated 30.5.2007, at the preliminary hearing of the suit an ex-parte ad interim injunction was issued against the petitioner. Further, respondent's application under Section 80(2) of the Code of Civil Procedure was allowed.

4. Vide order dated 2.6.2006, petitioner's request to vacate the injunction was declined on the ground that unless a formal application under Order 39 Rule 4 of the Code of Civil Procedure was filed, there was no question of even considering a request for vacating the injunction.

5. Relevant backdrop facts are that along National Highway No.2 between milestone No.9 and 36, NHAI identified sites for bus shelters, toilet blocks, kiosks etc. It also proposed to erect tree guards for protection of plants. NHAI intended

that the sites be taken on a license and the licensee, with its own funds, would erect the bus shelters, toilet blocks etc. and to earn profits as also recover the capital cost would be permitted to display hoardings containing advertisements on the structures erected.

6. Respondent was a successful tenderer and on 31.12.2001 a formal licence deed was executed. Duration of the licence was 5 years for sites excluding toilet blocks. Duration of the licence for toilet blocks was 9 years.

7. The licence deed envisaged an extension of the licence on mutually agreed terms. It contains an arbitration clause if there was any dispute between the parties.

8. Pertaining to sites other than toilet blocks, period of licence being over, petitioner intended to resume possession of the licensed sites save and except toilet blocks. Respondent filed a suit for permanent injunction.

9. In paras 17, 21 and 22 of the plaint following averments have been made:-

“17. That the plaintiff suffered huge financial losses in terms of money and time

during this period for no fault of his own. Plaintiff further submits that the licence agreement dated 31.12.2001 could not be executed in its entirety due to the disputes being raised by the MCD regarding the said sites and future by the DTC. The plaintiff has been pursuing the same with the defendant, MCD and the DTC for sorting out the said matter almost for the period of two years and has been running around from pillar to post.

xxx xxx xxx xxx

21. That the plaintiff submits that he has spent around Rs.2.5 crores towards designing, construction, fabrication and erection of the work already carried out from and out of his own personal funds and resources besides having taken a loan from the State Bank of India for the said purposes. The plaintiff has also entered into various commitments with its clients for display of their advertisements on the sites so constructed and has also taken advances for the purposes in as much as such agreements/arrangements for display of advertisements have to be made in advance.

22. That the plaintiff has spent huge amount in the designing, construction and erection of bus shelters, (with coffee kiosks and STD booths), toilet blocks, tree guards and over head directional road signages etc. with the expectation that he would continue to display commercial advertisement on the same uninterruptedly at least till the period of five years from the date of actual taking over of the possession and further would be able to get the renewal of the licence agreement dated

31.12.2001 for another term as per the performance of the plaintiff which has remained very position so far. The plaintiff has been regularly paying the licence fee to the defendant as agreed under the licence agreement dated 31.12.2001 and the defendant has accepted the same till date without any objection.”

10. While granting ex-parte ad interim injunction on 30.5.2007, learned Senior Civil Judge, Delhi has recorded as under:-

“Heard. Learned counsel has drawn my attention to the copy of agreement dated 31.12.2001 also to the copies of order dated 17.9.02 also 24.3.03, passed in suit No.1454/03, and his submission is that interim order passed in respect of the defendant No.1, i.e. MCD, is still continuing as of today and now the suit is presently pending in the Court of Shri V.K.Yadav, learned ADJ, Delhi, his further submission is that the period stipulated under the agreement dated 31.12.01 is still to expire, in respect of toilet blocks, in numbers 20 and though the period of five years have elapsed as per clause 12 of the agreement in respect of bus shelters, yet the plaintiff had received the possession of respective sites after a delay of two years and this fact has been found to be reasonably by the project director of the defendant and a copy of letter dated 16.5.06 is relied on in this respect. Under the circumstance, the application moved under Section 80(2) CPC is allowed on the ground of urgency and the defendant is restrained from taking the possession of bus shelter/toilet blocks etc. covered under the terms of the agreement dated 31.12.01.”

11. Being served with summons in the suit, petitioner filed an application under Section 8 of the Arbitration and Conciliation Act 1996 and simultaneously prayed that in respect of the licensed sites save and except toilet blocks, since period of licence has expired, ex-parte injunction be effected. As noted herein above, vide order dated 2.6.2007 request for vacation of the ex-parte ad interim injunction granted was declined holding that till application under Order 39 Rule 4 CPC was filed, said request could not be considered.

12. Shri Sanjay Jain, learned senior counsel for the respondent urged that till the Court decides on petitioner's application under Section 8 of the Arbitration and Conciliation Act 1996, it was fully empowered to take a decision on an interim measure in the suit filed by the respondent. Counsel further urged that in view of the fact that possession of certain sites was handed over late, 5 years period was not over. Thus, counsel urged that there was a strong prima facie case in favour of the respondent.

13. I have perused the plaint. There is no averment in

the plaint as to possession of which site was handed over late. There are no averments stating the dates with reference to the site in respect whereof possession being handed over belatedly is being urged. On the contrary, the foundation of the suit are the averments in paras 17, 21 and 22, contents whereof have been noted in para 9 above. Case made out by the plaintiff i.e. the respondent is that he has not been able to recoup his investment.

14. Prima facie, reasons recorded by the learned Senior Civil Judge to sustain the finding of a prima facie case in favour of the respondent is contrary to the pleadings made by the respondent in the plaint.

15. As noted above, I fail to note any averment in the plaint with sufficient particulars disclosing as to what site was given possession of on a particular date and with reference thereto I find no pleading that 5 years period of licence has yet to expire.

16. Prima facie findings have to be returned with reference to the case pleaded and not otherwise.

17. Be that as it may, it is not the case pleaded by the respondent that possession of all sites was handed belatedly. I fail to appreciate as to how an omnibus injunction order could have been issued.

18. Further, if petitioner is found to be in breach of contract, damages would be sufficient recompense to the respondent.

19. Sine qua non for grant of an injunction is that injury caused to the plaintiff if injunction is not granted is not capable of being recompensed with monetary compensation.

20. The petition stands disposed of vacating the ex-parte ad interim injunction granted vide order dated 30.5.2007 in favour of the respondent and against the petitioner.

21. No costs.

20<sup>th</sup> June, 2007  
dk

(PRADEEP NANDRAJOG)  
VACATION JUDGE