

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE SIDE JURISDICTION  
PUBLIC INTEREST LITIGATION NO.155 OF 2011

M/s.Suswarajya Foundation, Satara and Anr. .. Petitioners  
Vs  
The Collector, Satara and Others .. Respondents.

—  
Shri Uday P. Warunjikar for the petitioners.  
Shri A.B. Vagyani, Government Pleader along with Shri Manish Pabale,  
AGP for the Respondent No.1.  
Shri Mahesh Rawool i/by Mr. P.B. Shah for the Respondent No.2.  
Shri Vaibhav Patankar for the Respondent No.3.  
Shri Aniruddha A.Garge for the Respondent No.4 and 69.  
Shri A.Y.Sakhare, Senior Advocate alongwith Shri J.F.Reis, Senior  
Advocate and Ms. Trupti Puranik for the Respondent No.5.-BMC.  
Shri Abhijit P. Kulkarni for the Respondent No.6.  
Shri Pramod Gokul Kathane for the Respondent No.7.  
Mr Rathesh Dube i/by Mrs Rutuja A. Ambekar for the Respondent No.8.  
Shri N.R.Bubna for the Respondent No.9 and 17.  
Mr Shriram S. Kulkarni for the Respondent No.10.  
Shri A.S. Rao for the Respondent No.11.  
Mr Sameer Kumbhakoni for the Respondent No.13.  
Mr G.H.Keluskar for the Respondent No.16.  
Ms.Shruti Kandoi i/b Shri Umesh Mankapure for the Respondent No.15.  
Shri S.R. Ganbavale along with Ms. Pooja Joshi for the Respondent  
No.21.  
Shri Ajit Hon i/b Shri Ashwin V. Hon for the Respondent No.23.  
Shri Yuvraj P. Narvankar for the Respondent No.25.  
Shri Sandesh Patil i/b Shri Anil D. Yadav for the Respondent No.27.  
Shri Atul G. Damle, Senior Advocate along with Shri Sandeep Aole, Shri  
Sujit Chakrabarti and Shri Vishesh Kalra i/b M/s.Vidhii Partners for the  
Respondent No.31.  
Shri Dinesh Pandurang Adgule for the Badlapur Municipal Corporation.  
Shri V.P. Sawant along with Shri P.M. Jadhav for Shiv Sena Party.

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WITH  
WRIT PETITION NO.2628 OF 2016

Solutions Advertising,  
Through its Proprietor Mr.Pravin Solanki. .. Petitioner  
Vs  
Thane Municipal Corporation and Others. .. Respondents  
—

Shri Prashant D. Jadhav i/b Ms. Aparna Bhosale for the Petitioner.  
Shri A.B. Vagyani, Government Pleader along with Shri Manish Pabale,  
AGP for the Respondent State.  
Shri N.R.Bubna for the Respondent No.3.  
—

WITH  
PUBLIC INTEREST LITIGATION No. 25 of 2013

Mayur Mahesh Pathak .. Petitioner  
Vs  
Maharashtra State Environment Authority  
& Others .. Respondents.  
—

None for the Petitioner.  
Shri A.B. Vagyani, Government Pleader along with Shri Manish Pabale,  
AGP for the Respondent No.1.  
Shri Pushkal Mishra i/b M/s. M.V. Kini & Co for the Respondent No.2.  
—

WITH  
PUBLIC INTEREST LITIGATION No. 45 of 2009

Milan Vasant Mhatre .. Petitioner.  
Vs  
The State of Maharashtra and others. .. Respondents.  
—

None for the Petitioner  
Shri A.B. Vagyani, Government Pleader along with Shri Manish Pabale,  
AGP for the Respondent Nos.1, 3 and 4 State.  
Shri N.R. Bubna for the Respondent No.2.  
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WITH  
PUBLIC INTEREST LITIGATION NO.77 OF 2014

Ratan Soli Luth. .. Petitioner  
Vs  
State of Maharashtra and Others. .. Respondents

—  
None for the Petitioner.  
Shri A.B. Vagyani, Government Pleader along with Shri Manish Pabale,  
AGP for the Respondent Nos.1, 5 and 7.  
Shri Vaibhav Patankar for the Respondent Nos.2 and 3.  
Ms. Shriya Jadhav i/b Shri S.B. Shetye for the Respondent No.6.

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WITH  
PUBLIC INTEREST LITIGATION NO.78 OF 2008

Janhit Manch and Others. .. Petitioners  
Vs  
State of Maharashtra and Others. .. Respondents

—  
None for the Petitioners.  
Shri A.B. Vagyani, Government Pleader along with Shri Manish Pabale,  
AGP for the Respondent Nos.1, 2 and 9.  
Shri A.A. Garge for the Respondent No.6.  
Shri M.S. Bhardwaj and Ms.S.V.Bharucha for the Respondent No.10  
UOI.

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WITH  
PUBLIC INTEREST LITIGATION No.136 OF 2009

Prabhakar V. Chaudhary .. Petitioner  
Vs  
Thane Municipal Corporation and Another .. Respondents

—  
Shri Sagar Joshi for the Petitioner.  
Shri N.R. Bubna for the Respondent No.1.  
Shri A.B. Vagyani, Government Pleader along with Shri Manish Pabale,  
AGP for the Respondent State.

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WITH  
PUBLIC INTEREST LITIGATION NO.249 OF 2014

Qaneez-e-Fatemah Sukhrani and Another. .. Petitioners  
Vs  
The Pune Municipal Corporation,  
Through its Commissioner, Pune and Others. .. Respondents  
—

Shri Ravindra S. Pachundkar for the Petitioner.  
Shri Abhijit Purushottam Kulkarni for the Respondent No.1.  
Shri A.B. Vagyani, Government Pleader along with Shri Manish Pabale,  
AGP for the Respondent State.  
—

CORAM : A.S. OKA & A.A. SAYED, JJ

DATE ON WHICH SUBMISSIONS WERE HEARD : 15TH OCTOBER 2016

DATE ON WHICH JUDGMENT IS PRONOUNCED: 31ST JANUARY 2017

JUDGMENT ( PER A.S. OKA, J)

**OVERVIEW**

1. This group of Public Interest Litigations/Writ Petitions raises important issues which concern practically every town and city in the State of Maharashtra. The issue is of display of illegal hoardings, banners, arches, posters, advertisements on roads, foot ways/footpaths, road dividers and poles as well as on public and private properties which are visible from the roads/streets. There are large number of affidavits/reports filed on record which will show that it is the political class which is mainly responsible for the said illegalities. Large number

of illegal hoardings, banners, posters, arches, advertisements are being illegally displayed by the leaders and workers of various political parties. The members of the political parties or political leaders are displaying such hoardings, banners, arches etc for welcoming their political bosses or leaders to a particular city or town, for wishing the political leaders on their birthdays or birth anniversaries, for offering good wishes to the members of the public on account of various religious festivals such as Ganpati Festival, Navratri Festival, Christmas, Eid, New Year, etc. They also indulge in displaying such illegal hoardings for congratulating political leaders on their so called achievements. Even the social/religious organizations are not far behind. Some such organizations also indulge in such illegalities while celebrating festivals like Ganapati, Navratri, Dahihandi. Hoardings, banners, arches, posters, especially the advertisements are displayed on or nearby pandals, stages or places where festivals or functions are held. Such hoardings are displayed even on traffic islands thereby distracting the drivers of motor vehicles. Notwithstanding the large number of orders passed by this Court from time to time in this group of Public Interest Litigations/Writ Petitions as well as by the Benches at Aurangabad and Nagpur, the illegality still continues in the State. There were contempt notices issued to the political leaders/political workers. An apology was tendered and assurances were given by the political leaders/political workers. However, situation has not improved. This

may be mainly because the top political leaders have not intervened and have failed to prevent party workers and party followers from indulging in such illegalities. Had they issued strict a warning and taken drastic action against the party workers/leaders who indulge in such illegalities, the party workers would not have dared to continue with there illegal activities. There is a competition amongst the political parties when it comes to size of the sky-signs displaying photographs of their prominent leaders. Sometimes the competition is also in terms of number of sky-signs. Notwithstanding the assurances given to this Court, none of the political parties have taken any serious action against its workers who indulged in the illegalities. The involvement of political class makes the job of the Municipal Officers and Police very difficult when it comes to taking an action against the illegal sky-signs and setting the criminal law in motion against wrongdoers.

2. It appears from the various affidavits on record that the organizations which celebrate Ganpati Festival, Navratri Festival, Dahihandi and other religious festivals are under an impression that they have a license to display such illegal hoardings and banners provided by their sponsors and advertisers without obtaining requisite permissions.

3. To sum up, notwithstanding several orders passed by this Court and notwithstanding the actions initiated for committing Contempt, rampant display of illegal hoardings, banners, arches, etc continues unabated in the State. All this results into a defacement of the properties in our cities and towns . The declaration of making our cities “smart cities” has remained on paper. In fact there are photographs placed on record to show that for congratulating or welcoming our leaders who gave assurances to set up “smart cities, illegal hoardings were displayed. When we claim that the State of Maharashtra is one of the most progressive States, an occasion for passing large number of orders dealing with illegal hoardings should not have arisen.

RELEVANT PROVISIONS OF MUNICIPAL LAW AND ITS  
INTERPRETATION

4. Before we make a reference to the various orders passed by this Court from time to time, we must make a note of various provisions of the Municipal Laws which govern the field. The first enactment is the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of 1949”). Sections 244 and 245 thereof deal with the sky-signs and advertisements. Rule 1 of Chapter XI which is a part of the Schedule D to the said Act of 1949 containing the Rules, defines the term “sky-sign”, which reads thus:

1.(1) For the purposes of section 244 the expression "sky-sign" means 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 frame-work 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. It 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.

(2) A sky-sign 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 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 administration, and placed wholly upon or over any railway, railway station, yard, platform or station approach belonging to a railway administration 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.”

5. Sub-section (1) of Section 244 of the said Act of 1949 lays down that no person is entitled to erect, fix or retain any sky-signs of the kind prescribed by the aforesaid Rule 1(1) without written permission of the Commissioner of the concerned Municipal Corporation. Section 244 reads thus:

“244. Sky-signs and Advertisements.

(1) No person shall, without the written permission of the Commissioner, erect, fix or retain any sky-sign of the kind prescribed by rules whether existing on the appointed day or not. [Where a sky-sign is a poster depicting any scence 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. A permission under this section] [may be granted or renewed for a period not exceeding two years] from the date of each such permission or renewal, subject to the condition that such permission shall be deemed to be void if—

- (a) any addition is made to the sky-sign except for the purpose of making it secure under the direction of the City Engineer;
- (b) any change is made in the sky-sign, or any part thereof;
- (c) the sky-sign or any part thereof fall either through accident, decay or any other cause;
- (d) any addition or alteration is made to, or in, the building or structure upon or over which the sky-sign is erected, fixed or retained, involving

the disturbance of the sky-sign or any part thereof;

- (e) the building or structure upon or over which the sky-sign is erected, fixed or retained becomes unoccupied or be demolished or destroyed.

(2) Where any sky-sign shall be erected, fixed or retained after the appointed day upon or over any land, building or structure, save and except as permitted as hereinbefore provided, the owner or person in occupation of such land, building or structure shall be deemed to be the person who has erected, fixed or retained such sky-sign in contravention of the provisions of this section, unless he proves that such contravention was committed by a person not in his employment or under his control, or was committed without his connivance.

(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.”

Section 245 thereof deals with regulation and control of advertisement which reads thus:

“245.(1) The Commissioner may, by notice in writing, require the owner or the person in occupation of any land, building, wall, hoarding or structure to take down or remove, within such period as is specified in the notice, any advertisement upon such land, building, wall, hoarding or structure.

(2) If the advertisement is not taken down or removed within such period, the Commissioner may cause it to be taken down or removed, and the expenses reasonably incurred on the taking down or removal thereof shall be paid by such owner or person.

(3) [Except in case of posters depicting any scene from a cinematographic film, stage play or other stage performance, the provisions of this section] shall not apply to any advertisement 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;
- (c) relates to the business of any railway administration;
- (d) is exhibited within any railway station or upon any wall or other property of a railway administration, except any portion of the surface of such wall or property fronting any street. Dangerous places and places where some work affecting human safety or convenience is carried on.”

6. On this aspect, we may note here that the Bombay Provincial Municipal Corporation (Control of Advertising and Hoarding) Rules, 2003 ( for short “the said Rules of 2003”) have been framed in exercise of the Rule making power under the said Act of 1949. Rules 2 and 4 which are material for our consideration read thus:-

"2. Definitions.-

- (1) In these rules, unless the context otherwise requires, -
- (2) **"advertisement" means and includes any representation in any manner such as announcement or direction by words, letters,**

**models, signs by means of any device or posters, hoardings boards, banners, temporary arches, illuminated signs, name boards, direction boards, small advertisement boards on existing poles, balloons, etc.; and the term "advertising" shall be construed accordingly ;**

- (6) **"banner" means cloth or any other material, which contains an advertisement ;**
- (7) **"building line" means the line up to which the plinth of a building adjoining a street or an extension of a street or future street may lawfully extend and shall include the line prescribed, if any, in any scheme or development plan, or under any other law, for the time being in force ;**
- (9) **"Commissioner" means a Municipal Commissioner or any officer of the Municipal Corporation duly authorised by him ;**
- (13) **"guard rail" means fence of rails support bars by means of metal or other material like fibre, etc. which is fixed on road, or as the case may be long median footpath, bridges etc., for guiding movement of traffic and pedestrians ;**
- (14) **"hoarding" means any surface of structure erected on ground or any portion of a roof of a building at, on or above the parapet, with characters, letters or illustrations applied thereto and displayed in any manner whatsoever, for purpose of advertising ;**
- (15) **"poster" means a sheet of paper or any other material used to advertise in a public place ;**
- (19) **"temporary arches" means temporary structures erected across the road for greeting of personalities or for display of an advertisement."**

(emphasis added)

"4. Procedure for obtaining permission and renewal of permission.--

- (1) **No agency shall put up an advertisement without permission in writing from the Commissioner.**
- (2) Any agency intending to erect any type of hoarding, or an advertisement on rotaries and traffic island, guard rails, tree guards or sky-signs or balloons, shall make an application in the Form "A" or in case of renewal of permission in Form "B", in duplicate, together with such fees as may be determined by the Commissioner from time to time.
- (3) The application shall be accompanied by the following documents, namely :-
  - (i) written permission of the owner of the land, where the land on which the hoarding is to be erected ;
  - (ii) three copies of site plan showing location of advertisement or hoarding proposed to be erected ;
  - (iii) design of the advertisement by a structural engineer except advertisement in case of banners or posters or balloons ;
  - (iv) the No Objection Certificate from the Traffic Department of local Police shall be called by the Commissioner, if necessary ;
- (4) An applicant shall conform to the general guidelines described in Appendix 1.
- (5) A separate application shall be necessary for each location and type of advertisement specified in Appendix 2.
- (6) Every application received as per provisions of sub-rules (3) to (5), shall be acknowledged and the decision thereon shall be communicated by the Commissioner to the applicant in writing, within 45 days from the date of receipt of the application. If the decision on such application is not communicated to the applicant within the specified period, the permission shall be deemed to have been granted:

Provided that, while deciding the application the Commissioner shall be bound by the guidelines specified in Appendix 2.

- (7) On the permission being granted or deemed to have been granted under sub-rule (6), the agency shall, within fifteen days thereof, pay the rent and or, as the case may be, the fees, or both. If the agency fails to pay the same, the permission shall stand cancelled after the expiry of the period of said fifteen days.
- (8) On the permission being granted the Commissioner shall issue the licence in Form-C.
- (9) A permission for advertisement at a particular location may be granted for a period not exceeding two years. The rental charges and or fees shall be collected from the agency as per the rate decided by the Commissioner, from time to time, and shall be binding on the agency. The rent or fees shall be paid by the agency to the Corporation, in advance for six months as advance to the Corporation."

(emphasis added)

7. Under the said Rules of 2003 which are framed under the provisions of the said Act of 1949, the term "advertisement" is defined in Sub-rule (2) of Rule 2 which we have quoted above. The definition of advertisement is very wide. It includes any representation in any manner such as announcement or direction by words, letters, models, signs by means of any device or posters, hoardings boards, banners, temporary arches, illuminated signs, name boards, direction boards, small advertisement boards on lands, structures, walls, existing poles, balloons, etc. The term "banner" is defined to mean cloth or any other material which contains an advertisement. The advertisement includes

advertisement boards displayed on existing poles. Sub-rule (1) of Rule 4 provides that no agency shall put up an advertisement without permission in writing from the Commissioner. Elaborate procedure of making an Application and grant of permission has been provided. Rule 5 of the said Rules 2003 provides that it is an obligation of the Commissioner to remove or demolish the hoardings, banners or posters, which have been put up without prior written permission as required by Rule 4 or in contravention of Sub-rules (1) to (5) of Rule 4. In fact, it is the bounden duty of the Municipal Corporation to remove or demolish the same.

8. The provisions in relation to sky-signs under the said Act of 1949 are *pari materia* with the relevant provisions under the Mumbai Municipal Corporation Act, 1888 ( for short “the said Act of 1888”). Section 328 of the said Act 1888 deals with the regulation as to sky-signs, which reads thus:

“328. Regulations as to sky signs.

- (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 sectional] shall be granted, or renewed, for any period exceeding two years from the date of each such permission or renewal:

Provided that in any of the following cases a written permission or renewal by Commissioner under this section shall become void, namely: -

- (a) if any addition to the sky-sign be made except for the purpose of making it secure under the direction of the municipal [city engineer];
  - (b) if any change be made in the sky-sign, or any part thereof;
  - (c) if the sky-sign or any part thereof fall either through accident, decay or any other cause ;
  - (d) if any addition or alteration be made to, or in, the building or structure upon or over which the sky-sign is erected, fixed or retained, if such addition or alteration involves the disturbance of the sky-sign or any part thereof;
  - (e) if the building or structure upon or over which the sky-sign is erected, fixed or retained become unoccupied or be demolished or destroyed.
- (2) Where any sky-sign shall be erected, fixed or retained after the [coming into force of this section in the city or in the suburbs after the coming into force of the Bombay Municipal (Extension of Limits) Act, 1950,] [or in the extended suburbs after the coming into force of the Bombay Municipal [Further Extension of Limits and Schedule BBA (Amendment)] Act, 1956,] upon or over any land, building or structure, save and except as permitted as hereinbefore provided, the owner or person in occupation of such land, building or structure shall be deemed to be the person who has erected, fixed or retained, such sky-sign in contravention of the provisions of this



section, unless he proves that such contravention was committed by a person not in his employment or under his control, or was committed without his connivance.

- (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 frame-work 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 frame-work 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 buildings].”

9. Section 328A under the said Act of 1888 which deals with the advertisements reads 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 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 tram-car, 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 any portion of the surface of such wall or properly fronting any street: .

[Provided also that such permission shall not be necessary for a period of three years—

- (i) after the coming into force of the Bombay Municipal (Extension of Limits) Act, 1950, in respect of advertisements upon a site in the suburbs which was occupied by advertisements on the first day of January 1950 ;
  - (ii) after the coming into force of the Bombay Municipal [Further Extension of Limits and Schedule BBA (Amendment)] Act, 1956 in respect, of advertisements upon a site in the extended suburbs which was occupied by advertisement' on the first day of January 1956.]
- (2) Where any advertisement shall be erected, exhibited, fixed or retained after three months from the enactment of this section [or, as the case may be, the coming into force of the Bombay Municipal (Extension of Limits) Act, 1950] [or the coming into force of the Bombay Municipal [Further Extension of Limits and Schedule BBA (Amendment)] Act, 1956] upon any land, building,

wall, hoarding or structure save and except as permitted or exempted from permission as herein before provided, the owner or person in occupation of such land, building, wall, hoarding or structure shall; be deemed to be the person who has erected, exhibited, fixed or retained such advertisement in contravention of the provisions of this section, unless he proves that such contravention was committed by a person not in his employment or under his control or was committed without his connivance.

- (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.
- (4) [(a)] The word “structure” in this section shall include [a tram-car, omnibus and any other vehicle and any moveable board] used primarily as an advertisement or an advertising medium ; [and
- (b) the expression "illuminated advertisement" in this section shall not include an illuminated display of goods, if such display—
  - (i) is of goods merely bearing labels showing the name of the article or of its manufacturer or of both, and
  - (ii) is made by lighting which is not, in the opinion of the Commissioner, more than is necessary to make the goods and labels visible at night.]”

10. Thus, the definitions of sky-signs under both the Acts of 1888 and 1949 are more or less similar. The definition are very wide.

It means any word, letter, model, sign, device or representation in the nature of an advertisement, announcement or direction which is supported on or attached to any post, pole, standard frame-work or other support wholly or in part upon or over any land, building or structure which or any part of which sky-sign, is visible against the sky from some point in any street and includes all and every part of any such post, pole, standard frame-work or other support. Under the said Act of 1888, the word “advertisement” is defined. However, no sky-sign or advertisement can be erected, exhibited, fixed or retained without written permission of the Municipal Commissioner. Obtaining written permission is a condition precedent.

11. Thus, even if a poster, hoarding, banner, arch, name board, direction board etc are not covered by definition of sky-signs under both the enactments on the ground that no part of it is visible against sky, it will be covered by the definition of “advertisement” under both the enactments and/or the Rules framed thereunder. Thus, it can be safely concluded that any representation in any manner such as announcement or direction by the words, letters, models, signs, by means of any devices or posters, hoardings, boards, banners, temporary arches, illuminated signs, name boards, direction boards, small advertisement boards on lands, structures, walls, existing poles, balloons, parachute etc. will be covered by the term “advertisement”

and, therefore, no such thing can be displayed without permission of the Municipal Commissioner. Therefore, the Municipal Commissioners and the Municipal Corporations are under an obligation to remove sky-signs and/or advertisements which are displayed, erected, fixed or retained in contravention of the said provisions of law. The said provisions of law are Sections 244 and 245 of the said Act of 1949 and the said Rules of 2003 as well as Sections 328 and 328A of the said Act of 1888.

12. Under the said Act of 1949 and the said Act of 1888, there are powers vesting in the Commissioner of permitting erection of temporary booths or similar temporary structures on any street on the occasions of ceremonies and festivals. Relevant Section is 234 of the said Act of 1949, which reads thus:

“234. [With the concurrence, in any area for which a Commissioner of Police has been appointed, of the Commissioner of Police or any officer nominated by him and elsewhere, of the District Magistrate or any officer nominated by him,] the Commissioner may grant a written permission for the temporary erection of a booth and any other such structure on any street on occasions of ceremonies and festivals.

Provisions concerning Execution of Works in or near to Streets.”

13. The *pari materia* Section under the said Act of 1888 is Section 317, which reads thus:

“317. Commissioner may permit booths, etc., to be erected on streets on festivals.

With the concurrence of the Police Commissioner, the Commissioner may grant a written permission for the temporary erection of a booth and any other such structure on any street on occasions of ceremonies and festivals.”

14. The power under both the Sections is confined only to grant of a written permission for temporary erection of a booth or any other such structure on any street on occasions of ceremonies and festivals. These two Sections have been interpreted by this Court in the case of *Dr. Mahesh Vijay Bedekar v. The State of Maharashtra and Others*<sup>1</sup>. In Paragraph 38 of the said decision in the case of *Dr. Mahesh Vijay Bedekar*, a Division Bench of this Court held that even if the permissions are granted under Section 234 of the said Act of 1949 and Section 317 of the said Act of 1888 to erect temporary booths or the like structures for celebrating festivals and ceremonies, unless permissions are obtained for display of sky-signs or advertisements, no such display can be made on the temporary booths or structures or in nearby places. Paragraph 38 of the said decision in the case of *Dr. Mahesh Vijay Bedekar* reads thus:

“38 There is one more aspect of the matter which is reflected from the photographs produced on record in PIL 173 of 2010. **The photographs show that on the pandals or temporary booths which may have**

1 Decided on 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 16<sup>th</sup> August 2016 in PIL No.173 of 2010 along with connected matters.

been constructed for celebrating religious or other festivals after obtaining permissions, there is a display of hoardings/ banners/ advertisements/ flexes etc. Even in the open spaces and on the portion of streets or foot-way around the said public booths or temporary structures, hoardings, advertisements, photographs, etc are very often displayed. Under both the enactments, there are specific powers regulating and controlling advertisements, sky signs etc. Under the said Act of 1949, relevant provisions are Sections 244 and 245. Under Section 244, no person without permission of the Commissioner is entitled to erect, fix, retain any sky sign. There are similar provisions under the said Act of 1888 in the form of Sections 328 and 328A which require that no sky sign or advertisement can be displayed without previous permission in writing of the Municipal Commissioner. **Therefore, grant of permissions either under section 234 of the said Act of 1949 or under Section 317 of the said Act of 1888 will not enable the person holding permissions to make digging work on street or footway and to display advertisement/ hoardings on or in the vicinity of pandal or temporary booths without obtaining statutory permissions in writing of the Municipal Corporations.** In fact, while granting permissions under both the Sections 234 or 317, the Commissioner will have to impose a condition that the person holding a permission to erect pandal or temporary booth shall not damage the road or footway by digging thereon or otherwise without obtaining specific permission of the Municipal Corporation **and no sky signs or advertisements shall be displayed either on the pandals or booths or in the vicinity thereof without obtaining specific permissions under the statutory provisions.** Similarly, a condition should be imposed of not using loud-speakers/public address systems etc without obtaining the permission of the concerned Authority. Another condition should be of maintaining ambient quality standards in respect of the noise by setting out the Schedule under the said Act.”

(emphasis added)



The above decision and directions contained therein continue to bind the Municipal Corporations. As of today, the said decision has become final.

15. In this group of Petitions, there are large number of photographs produced on record showing that on and around such temporary booths allowed to be erected for celebrating religious ceremonies and festivals, sky-signs or advertisements are being displayed without obtaining permission from the concerned authorities. On or around pandals or booths, there are large number of advertisements or sky-signs displayed by the political leaders/workers and social workers for giving their good wishes on account of religious ceremonies and festivals. Illegal sky-signs are also displayed on or around such pandals or booths by various sponsors. Advertisements of manufacturers of products who sponsor the festivals also appear in similar manner.

16. Now, we turn to the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 ( for short “the said Act of 1965”). On perusal of the provisions of the said Act of 1965, we find that the said Act of 1965 does not specifically deal with the issue of display of sky-signs or advertisements.

However, there is a penal provision in the form of Section 196 which reads thus:

“196. Any person—

- (a) who, without the consent of the owner or occupier, and in the case of municipal property without the permission in writing of the Chief Officer, affixes any posting bill, playcard or other paper or means of advertisement against or upon any building, wall, board, fence, pole, post, lamp-post or the like; or
- (b) who, without such consent or permission, as aforesaid, writes upon, soils, defaces or marks any such building, wall, board, fence pole, post, lamp-post or the like, with chalk or paint or in any other way whatsoever, shall, on conviction, be punished with fine which may extend to 1[five hundred rupees].”

17. Under the Rule making power under said Act of 1965, the Maharashtra Municipalities (Advertisements Tax) Rules, 1970 have been framed. The relevant provisions thereof read thus:

- “5. Prohibition of advertisement.- (1) **No advertisement shall be displayed in any municipal area, unless the tax in respect of such advertisement is first paid.**
- 6. Liability to pay the tax and exemptions.-- Every person, who erects, exhibits, fixes or retains upon or over any land, building, wall, hoarding or structure any advertisement or who displays any advertisement to public view in any place in the municipal area in any manner whatsoever, shall pay, in respect of each such advertisement, the tax calculated at the rate and in the manner determined by the Council:

Provided that, no tax shall be levied on any advertisement or a notice-

- (a) of a public meeting;
- (b) of any election to Parliament or State Legislature or local authority;
- (c) of a candidature in respect of any such election;
- (d) of Government administration (including local Government administration) displayed on lands or buildings belonging to Government or in the occupation of Government;
- (e) of family planning wherever displayed in any municipal area;
- (f) which relates to the business of any Railway administration;
- (g) which relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building:

Provided further that, no tax shall be levied on any advertisement which is not 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 or over 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 land or building.

Explanation 1.-- For the purposes of this rule, “sky-sign” means any advertisement supported on or attached to any post, pole, standard, framework or other support wholly or in part upon or over any land, building, wall, hoarding or structure which, or any part of which, sky-sign shall be visible against the sky from some point in any public place and includes all and every part of any such post, pole standard, frame work or other support; and also includes any balloon, parachute or other similar device employed wholly or in part for the purposes of any advertisement upon or over any land, building or structure or upon or over any public place, but does not include--

- (a) any flagstaff, pole, vane or weather-cock, unless adapted or used wholly or I part for the purpose of any advertisement;
- (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 does not extend in height more than one metre above any part of the wall or parapet or ridge to, against or on which it is fixed or supported;

- (c) any notice of land or building to be sold or let, placed upon such land or building.

Explanation 2.-- For the purposes of this rule, “public place” means any place which is open to the sue and enjoyment of the public, whether it is actually used or enjoyed by the public or not.”

- 8. **Removal of unauthorised advertisement.-- If any advertisement be erected, exhibited, fixed or retained contrary to the provisions of rule 6, the Chief Officer may, by notice in writing,**

**require the owner or occupier of the land, building, wall, hoarding or structure upon or over which the same is erected, exhibited, fixed or retained to take down or remove such advertisement on or before such date, as may be specified in the notice and on his failure to do so, may enter any land, building or structure and have the advertisement removed.”**

(emphasis added)

Thus, there is a complete ban on displaying advertisements in any municipal areas unless the tax in respect of such advertisement is paid in advance. If these Rules are read together, it will apply to the advertisements as well as sky-signs. If any advertisements or sky-signs are exhibited, fixed or retained in breach of the aforesaid Rules, it is an obligation of the Chief Officer to remove the same after giving a notice.

### DEFACEMENT ACT

18. Now, we turn to the provisions of the Maharashtra Prevention of Defacement of Property Act, 1995 (for short “Defacement Act”). Sections 2 to 5 of the Defacement Act are material for our consideration, which read thus:-

“2. In this Act, unless the context otherwise requires,-

(a) “advertisement” means any printed, cyclostyled, typed or written notice document, paper or any other thing containing any letter, work, picture, sign or visible representation.

(b) “defacement” includes impairing or interfering with the appearance or beauty,

**damaging, disfiguring, spoiling or injuring in any way whatsoever and the word “deface” shall be construed accordingly.**

- (c) **“place open to public view” includes any private place or building, monument statue, post, wall, fence, tree or contrivance visible to a person being in or passing along, any public place.**
- (d) **“public place” means any place (including a road, street or way whether a thoroughfare or not and a landing place) to which the public are granted access or have a right to resort or over which they have a right to pass.**

**3. Whoever by himself or through any other person defaces any place open to public view shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both:**

**Provided that nothing in this section shall apply to any advertisement which,-**

- (i) **is exhibited with the written permission of the local authority having jurisdiction over such area in this behalf;**
- (ii) **is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building; or**
- (iii) **relates to the trade, profession or business carried on within the land or building upon or over 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 on or upon or in the same; or**
- (iv) **relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building; or**

(v) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration.

4. An offence punishable under this Act shall be cognizable.

5. Without prejudice to the provisions of section 3, it shall be competent for the State Government to take such steps as may be necessary for freeing from any defacement, erasing any writing or removing any erection or fixation from, any place open to public view. The expenditure incurred for such removal of defacement or for erasing any writing, or removing any erection or fixation, incurred by the State Government shall be recoverable from the person guilty of such offence under section 3 and if not paid, shall be recovered from such person as arrears of land revenue under the provisions of the Maharashtra Land Revenue Code, 1966.”

(emphasis added)

19. In the decision in the case of ***Sunil Pandharinath Jadhav v. State of Maharashtra and Others***<sup>2</sup>, in paragraphs 5 and 6, a Division Bench of this Court at Aurangabad held thus:

“5. Besides the permission from the Competent Authority of the Corporation required under the Act of 1949, it is necessary to obtain permission of the appropriate authority as per the Rules framed or Order passed in exercise of powers under Section 33 (1) (db) of the Bombay Police Act, 1951 (hereinafter referred to as "the Act of 1951" for the sake of brevity). Clause (db) of Section 33 (1) relates to licensing, controlling or prohibiting the erection, exhibition, fixation or retention of any sign, device or presentation for the purpose of advertisements, which is visible against the sky from some point in any street and is hoisted or held a loft over any land, building or structure at such heights as (regard being had to the traffic in the vicinity, and the likelihood of such sign,

<sup>2</sup> (2010)5 Mah LJ 588

device or presentation at that height being a distraction or causing obstruction to such traffic ) to be specified in the Rule or order to be passed in exercise of Section 33(1) of the Act of 1951. This provision presuppose that the place specified by the appropriate authority while granting permission in exercise of powers under the Act of 1949, should necessarily be in conformity with the location to be approved by the Appropriate Authority under the provisions of the Act of 1951; who in turn, besides other things, have to keep in mind that no distraction or obstruction is caused to the traffic in the vicinity. However, no Rule or Order issued in exercise of powers under Section 33 (1) (db) of the Act of 1951, has been brought to our notice during the hearing. Nevertheless, it will be useful to advert to the provisions of the Maharashtra Prevention of Defacement of Property Act, 1995 ( hereinafter referred to as "the Act of 1995" for the sake of brevity ). The said Act purports to provide for prevention of defacement of property and for matters connected therewith or incidental thereto. The said enactment was introduced by way of Ordinance in January, 1995, which later on became the Act of 1995. The term "Advertisement" has been defined in Section 2(a) to mean any printed, cyclostyled, typed or written notice, document, paper or any other thing containing any letter, word, picture, sign or visible representation. The definition of advertisement is very wide. **The term "Defacement" is also defined in the Act. Section 2(b) stipulates that the defacement includes impairing or interfering with the appearance or beauty, damaging, disfiguring, spoiling or injuring in anyway whatsoever and the word "deface" shall be construed accordingly. Display of any poster/ banner/ hoarding which does not cohere with the surrounding, is bound to have bearing on the appearance or beauty of the public place or public property as the case may be.** The Act of 1995 also defines the term "place open to public view", which includes any private place or building monument, statute, post, wall, fence, tree or contrivance visible to a person being in, or passing along, any public place. This definition is found in Section 2(c) of the Act. Section 2(d) of the Act defines term "public place" to mean any place (including a



road, street or way whether a thoroughfare or not and a landing place) to which the public are granted access or have a right to resort or over which they have a right to pass. Section 3 of the Act of 1995 provides for penalty for defacement, the same reads thus:

"3. Penalty for defacement.- Whoever by himself or through any other person defaces any place open to public view shall, on conviction, be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both :

Provided that nothing in this section shall apply to any advertisement which, ---

- (i) is exhibited with the written permission of the local authority having jurisdiction over such area in his behalf ;
- (ii) is exhibited within the window of any building if the advertisement relates to the trade, profession or business carried on in that building ; or
- (iii) relates to the trade, profession or business carried on within the land or building upon or over 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 on or upon or in the same; or
- (iv) relates to the name of the land or building upon or over which the advertisement is exhibited, or to the name of the owner or occupier of such land or building ; or
- (v) relates to the business of a railway administration and is exhibited within any railway station or upon any wall or other property of a railway administration."

6. Significantly, the offence punishable under the Act of 1995 have been made cognizable offence by virtue of the Section 4 of the said Act. Section 5 of the

said Act authorizes the State Government to take such steps as may be necessary for freeing from any defacement, erasing any writing or removing any erection or fixation from, any place open to public view. Section 5 of the Act reads thus :

"5. Power of State Government to erase writings, etc. - Without prejudice to the provisions of section 3, it shall be competent for the State Government to take such steps as may be necessary for freeing from any defacement, erasing any writing or removing any erection or fixation from, any place open to public view. The expenditure incurred for such removal of defacement or for erasing any writing, or removing any erection or fixation, incurred by the State Government shall be recoverable from the person guilty of such offence under section 3 and if not paid, shall be recovered from such person as arrears of land revenue under the provisions of the Maharashtra Land Revenue Code, 1966, Mah. XLI of 1966)."

(emphasis added)

20. Under Section 3 of Defacement Act, a person who defaces any place open to the public view is made liable for conviction with punishment for a term which may extend to three months, or with fine which may extend to Rs.2,000/- or with both. Section 4 makes the offence cognizable. Therefore, the Police are under an obligation to register a First Information Report(for short "FIR") on receiving information about the commission of an offence under Section 3. When information is received by the Police which discloses commission of a cognizable offence, the Police have no choice. Sub-section (1) of Section 154 of the code of Criminal Procedure, 1973 mandates that the Police are under an obligation to register FIR. Proviso to Section 3

makes it clear that the offence is not attracted when an advertisement is displayed with the permission of the concerned local authority. Clause (b) of Section 2 provides for a wide definition of the word defacement” which is not an exhaustive definition. It includes impairing or interfering with the appearance or beauty, disfiguring, spoiling or injuring in any way whatsoever. Section 3 is applicable when the defacement is of any place open to the public view. The term “place open to public view” is defined in Clause (c) of Section 2. Such place includes any private place or building, monument statute, post, wall, fence, tree or contrivance visible to a person being in or passing along any public place. The term “public place” is defined in Clause (d) of Section 2. The public place means any place to which members public are granted access or have right to resort or over which they have a right to pass. A road, street or thoroughfare is included in the definition of public place. Thus, on conjoint reading of Clauses (b), (c) and (d) of Section 2 of Defacement Act, we find that if anything is done which impairs or interferes with the appearance or beauty or which damages, disfigures, spoils or injures in any way whatsoever, any place open to the public view, it amounts to a defacement of a place provided the place is visible to a person being in or passing along any public place. Therefore, if any sky-sign or advertisement within the meaning of the Municipal Laws is displayed or posted or erected without permission of the Competent Authority on a private or public building, its compound

or fencing which is visible from a road or street or foot way/footpath, it will naturally amount to interference with the appearance of the building, its compound wall, fence, etc. It will also amount to disfiguring or spoiling such building, compound wall or fence. Even if such illegal sky-signs or advertisements are displayed on a tree or monument statute or a pole which is visible to a person being in or passing along any public place or street or road or foot way/footpath, it will amount to a defacement. Considering the use of the words “private place or building, monument statute, post, wall or fence” in the Clause (c) of Section 2 of the said Act 1995, when illegal advertisements or sky-signs are displayed, fixed, erected or retained do not fall in the five exceptions to Section 3 of Defacement Act, on a private place or a building, monument statute, post, wall or fence which is visible from a street, it will amount to a defacement which is prohibited under Defacement Act. The applicability of the Defacement Act is not restricted only to the Municipal areas. The Defacement Act applies to the entire State.

21. Section 5 of the Defacement Act is also a salutary provision. It empowers the Government to take such steps as may be necessary for freeing from any defacement, erasing any writing or removing any erection or fixation from any place open to public view. There is a power to recover expenditure incurred from the person guilty of offence

under Section 3 of Defacement Act. Therefore, in our view, it is an obligation of the State Government to exercise the power under Section 5 when the officers of the State Government notice defacement of the property and, therefore, the responsibility of removing illegal sky-signs or advertisements is not confined to the Municipal Corporations or the Municipal Councils or other local authorities. In case of defacement, it is the responsibility and the obligation of the State Government not only to prosecute the person for the offence punishable under Section 3 of Defacement Act, but also to take steps in accordance with Section 5 of thereof. Perusal of the material on record shows that the State Government has not taken any steps to implement the provisions of the Defacement Act. We propose to direct the State to strictly implement the Defacement Act. The District Administration and Police will have to establish special cells to do so.

DEFACEMENT AMOUNTS TO VIOLATION OF  
FUNDAMENTAL RIGHT UNDER ARTICLE 21 OF THE  
CONSTITUTION OF INDIA.

22. At this stage, we must consider the decision of a Division Bench of this Court at Aurangabad Bench in the case of **Sunil Pandharinath Jadhav**. The Division Bench of this Court at Aurangabad considered the same issue which arises for our consideration. Paragraph 15 of the said decision reads thus:-

“15. The existing legal provisions are sufficient to protect and preserve the beauty of any place open to public view. We cannot be oblivious of the fact that the city of Aurangabad is acclaimed world over as a historical place and a tourist city. It is, therefore, imperative that there should be zero tolerance level regarding the display of illegal hoardings /banners/ posters etc. Moreso because, such display results in causing obstruction to the public road or traffic and also defacement of the place open to public view. The overwhelming number of such illegal posters/ banners/hoardings seen hanging around the entire city has the inevitable effect of causing public nuisance. **It is an eyesore to the viewers. The viewers can certainly claim that their fundamental rights including guaranteed by [Article 21](#) of the Constitution of India, are violated, by robbing them of clean and beautiful environment and surrounding free from any defacement. In a given case, the effect of displaying large number of illegal hoardings / banners / posters can have the effect of causing damage to public property.** That mischief may be covered by the Prevention of Damage to Public Property Act, 1984. The said Act defines the expression mischief as having the same meaning as in [Section 425](#) of the Indian Penal Code. The term "public property" has also been defined to mean any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of the specified Authority. The mischief of causing damage to public property, as referred to in Sub-Section (2) of [Section 3](#) of that Act, it has been made punishable with a term not less than six months, but may extend to five years and with fine. The provisions of this Act came up for consideration before the Apex Court in the case of In Re Destruction of Public and Private Properties Vs. State of Andhra Pradesh and others reported in (2009) 5 SCC 212, when the Apex Court has made recommendation for amending the said Act to incorporate for drawing a rebuttable presumption of mischief against accused persons and accused leaders and other matters. The Apex Court has formulated guidelines to make the enforcement of the said enactment more meaningful and effective.”

23. We have already referred to the definition of defacement under Clause (b) of Section 2 of Defacement Act. Illegal display of sky-signs or advertisements becomes an offence when it impairs or interferes with the appearance or beauty of any place open to public view. If the defacement of private or public buildings, its walls, fences as well as monument statutes or trees is visible to a person being in or passing along any road, street or public thoroughfare, it becomes an offence. As held by the Division Bench of this Court at Aurangabad, the defacement spoils the environment. It pollutes the environment around the citizens thereby violating fundamental right under Article 21 of the Constitution of India.

24. The photographs produced on record in this group of Petitions show that in many cities, the citizens have to pass through the streets, roads, thoroughfares on both the sides of which there is a display of illegal sky-signs or advertisements, etc. These illegal sky-signs or advertisements cause defacement thereby spoiling the entire environment around the streets. It is also a kind of pollution of environment. A citizen has right to lead meaningful life in healthy and pollution free surroundings. That is the right conferred by Article 21 of the Constitution of India. Such right is taken away when there is a display of illegal sky-signs and advertisements causing defacement. That is how the Division Bench at Aurangabad observed that display of

illegal hoardings amounts to robbing the citizens of clean and beautiful environment and surroundings free from any defacement and that is why the failure of the municipal authorities and the State Government to take any action against the illegal acts of defacement will amount to a violation of fundamental rights of the citizens guaranteed under Article 21 of the Constitution of India. Therefore, in a given case, a citizen can claim compensation from the State for violation of his fundamental right.

#### CONCLUSION ON LEGAL PROVISIONS

25. Thus, it can be said that the entire legal frame-work for dealing with the mischief of display, exhibition or erection of such illegal sky-signs or advertisements is in existence. There are powers vesting in the Municipal Corporations, the Municipal Councils and the State Government to remove such illegal signs or advertisements. Even the persons responsible for the illegalities can be punished by setting the criminal law in motion either under the Municipal Laws or under the Defacement Act. In fact, the Division Bench of this Court at Aurangabad in the case of ***Sunil Pandurang Jadhav*** came to the conclusion that in a given case, such activities may amount to a public nuisance as defined in Section 268 of the Indian Penal Code. In fact, in the same decision, it is observed that the existing legal provisions are



sufficient to protect and preserve the beauty of any place which is open to public view.

26. What is brought on record by this group of Public Interest Litigations/Writ Petitions and what can be inferred from various orders passed by this Court from time to time and the affidavits on record is that the legal frame-work and the legal provisions have remained only on paper and no law enforcing agency has effectively discharged its duty presumably because of the involvement of the political leaders/political parties/activists.

27. Before we deal with the issue of implementation of the legal provisions, it will be necessary to refer to the factual aspects and the material placed on record in each of the Public Interest Litigations/Writ Petitions.

PUBLIC INTEREST LITIGATION NO.155 OF 2011

28. This PIL is filed by M/s. Suswarajya Foundation, a Society registered under the Societies Registration Act, 1860. The prayer in this Petition for issuing a writ of mandamus for taking action against the illegal hoardings was initially only in respect of the city of Satara. Thereafter, the Petitioner was permitted to amend the Petition and implead the Municipal Corporations constituted under the said Act of

1949 and the Mumbai Municipal Corporation constituted under the said Act of 1888. The Indian National Congress, Shiv Sena, Bhartiya Janata Party, Maharashtra Navnirman Sena, Bahujan Samaj Party and Republican Party of India were permitted to be added as Party Respondents to this PIL. Compliance affidavits have been filed from time to time in this PIL.

PUBLIC INTEREST LITIGATION NO.25 OF 2013

29. This PIL has been filed by one Shri Mayur Mahesh Pathak by which the attention of the Court is invited to the hoardings displayed at a place on the Western Express Highway near Banjara Dhaba at Vasai. It is contended that after cutting several trees, several hoardings have been illegally constructed. Though notices were not issued in this PIL to various Respondents, the same can be disposed of by directing the concerned authorities to take action.

WRIT PETITION NO.2628 OF 2016

30. This Writ Petition has been filed by an advertising agency. Reliance is placed on the Agreement dated 10<sup>th</sup> June 2013 between the Petitioner and the Municipal Transport of the Municipal Corporation of City of Thane by which the Petitioner has been granted a contract to

erect new bus stops and to display advertisements thereon on “build, operate and transfer” basis. The specifications of the bus stops to be erected by the Petitioner have been incorporated in the Agreement. The period of Agreement is eleven years and two months. Under the said Agreement, a right has been conferred on the Petitioner to display advertisements on the bus stops erected by it. There is a provision that the advertisements/hoardings will be removed within a period of 15 days on expiry of the term of the Agreement. The grievance made in this Petition under Article 226 of the Constitution of India is that many persons are indulging in illegal display of hoardings/banners on the bus stops/bus shelters erected by the Petitioner as per the said Agreement. Instead of taking action on the basis of the complaints made by the Petitioner, the officers of the Municipal Corporation have contended that it is the responsibility of the Petitioner to take steps to remove the illegal sky signs or advertisements. It is alleged that even the police have not taken any action. Compilation has been filed on record giving the particulars and photographs of the advertisements illegally displayed at the bus stops/bus shelters erected by the Petitioner. The contention is that the municipal authorities are committing gross breach of the terms and conditions of the said Agreement and, therefore, a writ of mandamus be issued against the said Authorities to take action.

PUBLIC INTEREST LITIGATION NO.45 OF 2009

31. This PIL has been preferred by one Shri Milan Vasant Mhatre inviting the attention of the Court to the fact that within the limits of Mira-Bhayander Municipal Corporation, several illegal hoardings have been erected and the municipal authorities have failed to take action.

PUBLIC INTEREST LITIGATION NO.77 OF 2014

32. This PIL has been preferred by a citizen of Nashik raising similar issues in respect of illegal hoardings erected by the political parties within the city of Nashik. The attention of the Court is invited to the Circular dated 7<sup>th</sup> October 2008 issued by the Election Commission of India to all the Chief Secretaries of various States in connection with the prevention of defacement of the properties . It is pointed out in the Petition that no action has been taken by any authorities. Another allegation is about the failure to implement the Defacement Act.

PUBLIC INTEREST LITIGATION NO.78 OF 2008

33. This PIL has been preferred by Janhit Manch and Others raising similar issues. In addition, it is contended that permission should not be granted to erect hoardings/banners/flags/advertisements/posters on any public places, streets, footpaths/traffic

junctions/gardens etc. The challenge in the Petition is to a clause in the policy guidelines of the Mumbai Municipal Corporation. In this Petition, even the Election Commission of India is a party. In this Petition, none has appeared for the Petitioners at the time of final hearing.

PUBLIC INTEREST LITIGATION NO.136 OF 2009

34. This PIL has been preferred by a citizen of Thane making a grievance regarding the failure of the Municipal Corporation to take action against all illegal hoardings, arches, banners, etc. Various instances of display of illegal hoardings are set out in the Petition. A compilation of photographs of illegal hoardings is also produced.

PUBLIC INTEREST LITIGATION NO.249 OF 2014

35. This PIL has been preferred by two citizens of Pune, again inviting the attention of the Court to an inaction on the part of the authorities to take action against the illegal hoardings/banners/advertisements/flexes, etc. Their contention is that such illegalities violate the fundamental rights of the citizens. Additional affidavit has been filed by the Petitioners in the said Petition pointing out several illegalities. It is pointed out as to how the municipal officers are afraid of taking action.

INTERIM ORDERS PASSED FROM TIME TO TIME

36. In this group of PILs/WPs, several interim directions were issued by this Court from time to time. We are only reproducing the interim directions which are relevant. The interim directions issued under the order dated 6<sup>th</sup> August 2014 in PIL No.155 of 2011 read as under:-

“28. Considering the above discussion, we issue the following interim directions:

- (a) In case of Satara Municipal Council, the Municipal Corporation of Greater Mumbai and other Municipal Corporations in the State, the implementation of the provisions of the Municipal Laws shall be made at ward levels. In case of the Mumbai Municipal Corporation, the Senior Inspector of Licence of every Ward shall be responsible for the implementation of provisions of section 328 and 328A of the said Act of 1888 along with corresponding penal provisions. In case of other Municipal Corporations, the Ward Officers in-charge of every Ward or any other officer who is In-charge of the Ward shall be responsible for implementation of the provisions of Section 244 and 245 of the said Act of 1949 read with Rule 1 of the Chapter XI of the Rules in Schedule D as well as the provisions of said Rules. In case of the Satara Municipal Council, the Officers already nominated/the committees already formed in charge of every Ward shall be responsible for implementation of the provisions of section 196 of the said Act of 1965. The Officers or the Committees, as the case may be, shall be responsible for expeditious removal of illegal hoardings, banners, flexes, temporary arches, posters etc. The Municipal Commissioners shall appoint a Deputy Commissioner to supervise the work of the Municipal Officers ;

- (b) Whenever an action is proposed to be taken by the Officers as stated above, the Senior Inspector of Police or the Officer In-charge of the concerned local police station shall extend adequate police protection and police help to the Municipal staff and Municipal officials while taking action of removal of the illegal hoardings, banners etc. Minimum two armed constables shall accompany the municipal officials and the staff at the time of removal of illegal hoardings, banners, flexes, temporary arches, posters etc;
- (c) On the Municipal Officers conveying even an oral information about the commission of an offence punishable under the Defacement Act, the Officer in-charge of the concerned Police Station or the Senior Inspector of Police of the concerned police station shall be under an obligation to register an offence and to expeditiously take further steps in accordance with law in as much as the offence punishable under the Defacement Act is a cognizable offence. The Municipal Officers specified in clause 1 above shall be duty bound to furnish information about the commission of an offence punishable under the Defacement Act to the Officer in-charge of the Police Station or the Senior Inspector of Police of the concerned police station;
- (d) In case of those Municipal areas where there is a Commissioner of Police, he shall nominate one or more Senior Officers not below the rank of Deputy Commissioner of Police to act as Nodal Officers to oversee the performance of duties of the Senior Inspectors of Police or Officers In-charge of the concerned Local Police Stations. In the large cities like Mumbai and Pune, more than one such Officers shall be appointed. In case of those Municipal Areas where there is no office of the Commissioner of the Police, the District Superintendent of the Police shall appoint a Nodal Officer not below the rank of the Deputy Superintendent of Police. In the event the Municipal Officers find that the concerned officers of the local Police Stations are not

responding to their requisitions, they will be entitled to make a written complaint to the Nodal Police Officers who shall take immediate remedial measures;

- (e) While we are dictating this order, the learned AGP appearing in the Original Side Public Interest Litigation No. 37 of 2010 has tendered across the bar communication dated 6<sup>th</sup> August, 2014 which records that a Deputy Commissioner of Police shall be appointed as a Nodal Officer in the Commissionerate area and in other areas, it will be a Deputy Superintendent of Police;
- (f) The Nodal Police Officers so appointed shall take immediate action on the complaints received from the Municipal Officers regarding non co-operation by officers attached to the concerned Local Police Station;
- (g) The Commissioner of police or the Superintendent of Police, as the case may be, shall issue directions to the concerned Police staff entrusted with the job of night patrolling including the beat marshals to keep a constant vigil for preventing the activity of erection/display of illegal hoardings, banners, flexes, temporary arches, posters etc during night time. Instructions shall be given to the said police officials to immediately register offences under the Defacement Act;
- (h) In case of breaches of the provisions of the said Act of 1988, the said Act of 1949 and the said Rules as well as the said Act of 1965, the Municipal Officials, as stated above, shall be under an obligation to take action against the illegality notwithstanding the fact that the illegalities are also covered by the Defacement Act. It will be their obligation to give information about the commission of an offence under the Defacement Act to the Officer In-charge of the concerned Police Station, who shall act on the information as directed above;



- (i) In the event, the Municipal officials come across the cases of breaches not attracting any of the municipal laws but which are covered by the Defacement Act, the Municipal Officers shall forthwith report to the District Collector or the Nodal Revenue Officers nominated by the District Collector about the breaches of the provisions of the Defacement Act. On such information being received by the Collector or the Nodal Officer appointed by the Collector, an action of removal of defacement shall be taken by the said Officers. The District Collector shall nominate Revenue Officers for each Municipal Corporation area and Satara Municipal area as Nodal Officers who shall not be below the rank of an Assistant Collector who shall be entrusted with the power to take action of removal of defacement in accordance with the Defacement Act;
- (j) The action of appointing Nodal Officers of the Police, Municipal Corporations as well as the Revenue Department shall be taken within a period of one month from today. Adequate publicity shall be given to such appointments in the media as well as on web sites;
- (k) We direct the Satara Municipal Council and other Municipal Corporations who are parties to the petition as well as District Collectors to create a facility of at least two toll free telephone numbers on which complaints can be received from the Citizens regarding putting up of illegal hoardings, banners, flexes, temporary arches, etc. We are informed that the Municipal Corporation of Greater Mumbai has already provided one toll free Number. The toll free numbers shall be made available within a period of one month from today and the Municipal Corporations and the Municipal Council as well as the District Collectors shall give wide publicity to the toll free numbers in the leading newspapers as well as in the Electronic Media. Notifications to that effect shall also be published on the website of the Municipal Authorities, if same are available;

- (l) Even anonymous complaints shall be entertained on the toll free numbers and action shall be taken on the basis of such complaints. If the Citizens find that no action is being taken on the basis of the complaints made on toll free numbers, it will be open for them to make a complaint in writing to the Nodal Officers of the Municipal Authorities as well as the Nodal Revenue Officers of the State Government who shall take action on the basis of such complaints;
- (m) We make it clear that even the petitioners in Public Interest Litigations will be free to submit complaints to the Municipal/Nodal Officers by pointing out specific instances of illegalities. The Municipal Corporation and the Municipal Councils who are parties to the petition shall consider of constituting committees of Citizens at Ward levels. The Committees shall be constituted so that the members of the Committees can keep a vigil and point out illegalities to the Municipal officers as well as the officials of the State. The Citizens' Committees shall be also entrusted with the job of starting awareness programmes;
- (n) The Municipal Corporation of Greater Mumbai has a policy for grant of permissions to display hoardings, banners, flexes etc. All other Municipal Corporations shall formulate exhaustive policies within a period of four months from today;
- (o) While granting permissions, The Municipal Corporations/Satara Municipal Council shall incorporate a condition of prominently displaying the permission number and its duration on the hoardings, banners, flexes, temporary arches etc;
- (p) Before taking action of removal of illegal hoardings, banners, etc., the concerned Municipal Officials shall take digital photographs thereof which shall be preserved on record and copies thereof shall be made available to the

police authorities. If necessary, the Municipal Officers shall draw a panchanama;

- (q) If illegal hoardings, banners, flexes, temporary arches are displayed on special occasions such as the birthdays of the leaders or religious festivals, the same shall be promptly removed by the Municipal Officers before the birthday or the date of festival;
- (r) We direct the Registry to issue notice of rule and rule on interim relief to all concerned respondents who are not represented before this Court. The notice issued to the political parties and/or political leaders shall call upon them to state whether the said political parties/leaders are willing to file undertakings in terms of the undertaking filed by Shri Mukund Kulkarni and Shri Shivaji Garje. The notices are made returnable on 30<sup>th</sup> September, 2014;
- (s) Compliance affidavit shall be filed by the Municipal Officers as well as the Police and Revenue Officers of the State Government on or before 26<sup>th</sup> September, 2014;
- (t) The Municipal Commissioners and/or Deputy Municipal Commissioners/Chief Officer, the Revenue Nodal Officers and the Nodal Officers of police shall file affidavits in this Court after every four months setting out particulars of the action taken. First such affidavits shall be filed on or before 30<sup>th</sup> September 2014;
- (u) The Original side Contempt Petition No. 82 of 2010 shall be listed on the next date along with Original Side Public Interest Litigation No. 37 of 2009;
- (v) The PILs shall be listed under the caption of hearing as to interim relief;
- (w) Intervention Applications, if any, shall be heard along with the main petition;
- (x) All parties to act upon an authenticated copy of this order;

- (y) The Registry is directed to send a copy of this order to the Election Commission of India who shall file its response on or before 26<sup>th</sup> September, 2014. The Election Commission of India to State whether any action can be taken against the political parties indulging in such illegalities;
- (z) These directions will not apply to the Municipal Corporations of Nagpur and Aurangabad which will be governed by the directions already issued by the respective Benches.”

It appears from the record that there was no response from the Election Commission of India. Further interim directions were issued under Paragraph 11 of the order dated 30<sup>th</sup> September 2014 which read thus:-

“11. Hence, we issue further interim directions as under:-

- (a) The compliance affidavits/ additional affidavits shall be filed by all the Municipal Corporations and Municipal Councils who are bound by the orders dated 6<sup>th</sup> August, 2014 on or before 10<sup>th</sup> November, 2014. The affidavits shall be detailed affidavits disclosing the compliance with each and every direction issued by this Court including the direction issued under this order. The affidavits shall also incorporate the details of the action taken of removal of illegal hoardings, banners, posters and arches etc. erected by the political parties/ political leaders as well as others. The details regarding the complaints received through toll free numbers and the action taken on such complaints shall also be incorporated in the affidavits. We make it clear that in the event this Court finds non-compliance of any of the material directions contained in the orders, appropriate action will be initiated against the concerned Municipal Authorities;

- (b) We direct the Principal Secretary of Urban Development Department to nominate an Officer of the State Government not below the rank of a Deputy Secretary as a Nodal Officer of the State. The appointment shall be made within a period of two weeks from today. The compliance reports be filed by all the officers of the State alongwith the necessary data be submitted to the Nodal Officer. The Nodal Officer after compiling all the data and after collecting all the necessary documents, shall file a compliance affidavit in this Court on or before 10<sup>th</sup> November,2014;
- (c) We direct all the Municipal Corporations and Municipal Councils to whom directions have been issued on 6<sup>th</sup> August,2014 to provide facility of receiving the complaints by SMS as done by the Bhiwandi Nizampur Municipal Corporation;
- (d) We direct all the Municipal Corporations and Municipal Councils to whom directions have been issued on 6<sup>th</sup> August,2014 to provide complaint numbers to the complainants who make the complaints on the toll free numbers or by way of SMS. The Municipal Authorities shall also maintain a register of such complaints received on toll free numbers or by SMS including anonymous complaints containing particulars such as date and time of the complaints and the action taken on the said complaints with the brief particulars of the action taken;
- (e) This Court has already issued a direction to all the concerned Municipal Corporations and Municipal Councils that while issuing permission for displaying of hoardings, banners etc., a condition shall be imposed of prominently displaying the permission number and its duration on the hoardings, banners, posters, arches etc. We direct that all the Municipal Corporation and Municipal Councils shall remove the illegal hoardings, banners, posters, arches etc. which do not mention or display the permission number and its duration;

- (f) We direct all the concerned Municipal Authorities to conduct a special drive of removal of illegal hoardings, banners, posters, arches etc. to ensure that a large number of illegal hoardings, banners, posters, arches etc. erected / displayed on account of Vidhansabha elections are immediately pulled down. The special drive shall continue for a period of ten days after the date of declaration of result of Vidhansabha election. The Municipal Authorities shall inform about the illegalities committed by the Political Parties to the State Election Commission;
- (g) As far as the recovery of expenses incurred for removal of illegal hoardings, banners, posters, arches etc. and the cost incurred for repairing roads and footpaths is concerned, appropriate directions will be issued on the next date;
- (h) The copies of all the affidavits filed by the Municipal Corporations and the Municipal Councils as well as the State shall be furnished to the Advocate for the petitioners in P.I.L.No.155 of 2011, who shall examine the said affidavits and prepare a chart for the benefit of the Court incorporating the details of the compliances made. The chart shall also indicate the directions which have not been complied;
- (i) Place the PILs for 'Direction' on 24<sup>th</sup> November,2014;
- (j) The Registrar Judicial-I shall ensure that all the affidavits properly paginated are placed on files of each petition before the next date. Copies of common order passed shall be also properly placed on the farad sheets of each petition. Endorsement of service reports shall be also made. Registrar (O.S.) shall ensure compliance in O.S. Public Interest Litigation.”

Interim directions were again issued under Paragraph 9 of the order dated 19<sup>th</sup> December 2014 which read thus:-

“9. Hence, we issue further interim directions as follows :

- (i) For considering the compliance by the State Government and the Municipal Councils are concerned, we direct that the Petitions shall be listed on 23<sup>rd</sup> January, 2015. If any further affidavits are required to be filed by the State, the same shall be filed on or before 14<sup>th</sup> January, 2015 and copies thereof shall be supplied to the advocate for the Petitioner in PIL 155 of 2011 on the same day to enable him to prepare a chart and produce it before the Court;
- (ii) As far as the Municipal Corporations are concerned, we grant time to all the Municipal Corporations till 27<sup>th</sup> February, 2015 to comply with all the directions issued by this Court. We, however, make it clear that no further extension shall be granted and the non-compliance will be viewed seriously;
- (iii) We direct the Municipal Corporations to once again give publicity to the toll free numbers as well as the numbers on which complaints can be filed by way of SMS. The publicity shall be given in relevant newspapers having wide circulation over the municipal area as well as on local cable channels. The publicity shall be given by placing all the details on the website of the relevant Municipal Corporations. The Municipal Corporations shall prominently display the telephone numbers in every ward office and every municipal office with an information that anonymous complaints will be entertained on the said numbers on the basis of which action will be taken;
- (iv) As soon as citizens' committees are formed, the names and contact numbers of the citizens' committees shall be displayed on the websites of the Municipal Corporations and an endeavour shall be made to give wide publicity to the names and telephone numbers of the members of the citizens' committees through local newspapers;

- (v) This action in terms of clause (iii) and (iv) above shall be taken by all the Municipal Corporations within a period of one month from today;
- (vi) It will be open for the Petitioners in PIL No.155 of 2011 to get in touch with the members of the citizens' committees and help them in discharging their duties;
- (vii) We appoint the advocates mentioned in list marked as 'Z-1' as Court Commissioners. The list of Commissioners and the cities for which they are appointed appears in paragraph 6 above. The Court Commissioners shall frequently visit various parts of the cities for which they are appointed and shall prepare a list of illegal hoardings, banners etc. noticed by them with all the particulars. It will be open for the Court Commissioners to communicate the details of the illegal hoardings, banners, flexes etc. to the Commissioners of the respective Municipal Corporations. The Court Commissioners appointed shall submit a report to this Court on or before 25<sup>th</sup> February, 2015. While submitting the reports, the Court Commissioners will also state where the hoardings about which reports have been submitted by them have been removed by the Municipal Authorities;
- (viii) As far as the Municipal Corporation of Greater Mumbai is concerned, considering the stand taken in the affidavit, for the time being, we direct that the facility of receiving complaints by SMS need not be provided;
- (ix) We must make it clear that the municipal officials shall ensure that identity of none of the complainants is disclosed and confidentiality is maintained;
- (x) While granting permissions for erecting hoardings/ banners/flexes etc. the Municipal Authorities apart from incorporating conditions as directed earlier shall incorporate the precise location for which the permission is granted;



- (xi) For considering the compliance report by the Municipal Corporations, the Petitions shall be listed on 6<sup>th</sup> March, 2015 under the caption of “Directions”;
- (xii) As far as Original Side PIL No.37 of 2010 is concerned, in the event the Second Petitioner appearing in person is seeking directions in addition to the directions which are already issued, it will be open for him to move this Court;
- (xiii) The advocate appearing for the Petitioners in PIL No.155 of 2011 shall provide authenticated copies of this order to the advocates who are appointed as the Court Commissioners, who will be entitled to act on the basis of an authenticated copy of this order.”

Paragraph No.36 of the Order dated 26<sup>th</sup> November 2015

contains the following interim directions:-

“36. In addition to the interim directions issued by this Court, we issue further interim directions:

- (a) In addition to the Grievance Redressal mechanism which is already made available by the Municipal Corporations and by the State Government, all Municipal Corporations shall provide a facility of lodging complaints regarding illegal hoardings by uploading photographs of the illegal hoardings on the dedicated websites of the respective Municipal Corporation;
- (b) A provision should also be made available for ensuring that the responses/Action Taken Reports of the Municipal Authority are uploaded on the very websites within the stipulated time, not later than a period of seven days from the date of receipt of the complaint.

- (c) We grant time to all the Municipal Corporations to provide this facility till 8th January 2016;
- (d) We direct all the Municipal Corporations to give wide publicity of the details of the Grievance Redressal Mechanism already made available and the mechanism proposed to be made available. The publicity shall be given in leading newspapers as well as on television channels. They shall endeavour to give publicity in cinema houses as well as on various FM channels. This direction shall also be complied with on or before 8th January 2016.
- (e) We direct the Commissioner of Police, Mumbai to make available services of two armed constables every day to the concerned Nodal Officer of every Ward in the City of Mumbai. The armed police constables shall be instructed to accompany the Municipal team which starts work of removal of illegal hoardings at 8.00 a.m. every day;
- (f) We make it clear that the directions issued by this Court from time to time are also applicable to the hoardings displayed without permission on temporary booths/pandals permitted to be erected by the Municipal Corporations for celebrating all religious festivals, including Ganapati and Navratri. The orders also apply to illegal hoardings erected within the vicinity of such temporary booths/pandals. While granting permission to erect such temporary booths/pandals, a condition shall be incorporated by all the Municipal Corporations that the permission holder shall not display any illegal hoarding on or in the vicinity of such temporary booth or pandal and that any such illegal hoarding found will be removed or taken down without notice. Moreover, the permissions are liable to be cancelled on account of such breaches;
- (g) If the Municipal Commissioners or the Municipal Officers who are empowered to exercise powers under Sections 328 and 328A of the said Act of 1888 and Sections 244 and 245 of the said Act of

1949 hereafter find that the workers/office bearers of any particular political party has indulged in display of illegal hoardings, they shall exercise their discretion under the aforesaid provisions by refusing to grant permission under the aforesaid statutory provisions to such political parties or to the leaders or workers of political parties to erect hoardings in the particular city;

- (h) We direct the Municipal Authorities to ensure that the complaints made by the Court Commissioners appointed by this Court are attended to promptly and within 72 hours from the time of which the complaints are received. We direct the Municipal Authorities to ensure that a reply issued to the Court Commissioner containing action taken report which can be sent by way of written communication or by email. We make it clear that failure of the Municipal Authorities to act upon the complaints/report submitted by the Court Commissioner will amount to gross breach of the orders passed by this Court from time to time;
- (i) We direct all the Municipal Corporations to conduct a special drive and campaign for removal of illegal hoardings within their jurisdiction. The special drive shall commence from Saturday 5th December 2015 and, for the present, continue till 26th January 2016. The object of the special drive is to ensure that by 26<sup>th</sup> January 2016 all Corporation areas are entirely free of illegal hoardings. We expect that all the Municipal Authorities shall ensure that there is no occasion to remove illegal hoarding as on 26th January 2016. We, however, hasten to add that though the period of special drive shall end on 26th January 2016, even thereafter all the Municipal Authorities are bound to implement the directions of this Court thereafter regularly and scrupulously;
- (j) In the event the Municipal Corporations find that they need adequate police support for implementation of the special drive, they are free to move the Court for seeking appropriate directions;

- (k) For considering the show-cause notices issued and for considering compliances to be made by the political parties as well as for considering compliances made by the Municipal Corporations, the Petition shall be listed on 8<sup>th</sup> January 2016. Compliance Affidavit shall be filed by the Municipal Corporations on or before 6<sup>th</sup> January 2016;
- (l) As directed earlier, the Director of the Municipal Administration of the State Government shall issue appropriate directions to all the Municipal Councils in the State in terms of these interim directions issued by this Court;

#### SUBMISSIONS IN BRIEF

37. Various submissions have been made by the Petitioners in this group of PILs/WPs. In PIL No.155 of 2011, the learned counsel appearing for the Petitioners after inviting our attention to the various orders passed by this Court from time to time submitted that various compliance reports and compliance affidavits filed on record indicate that there is hardly any compliance with the orders of this Court. He submitted that notwithstanding the assurances/undertakings which are on record filed by the political parties, hardly any action has been taken by any of the political parties. He invited our attention to the fact that there has been a gross breach of the orders passed by this Court from time to time as the local authorities as well as the State Government have completely ignored the orders of this Court passed from time to time. He made extensive reference to the reports of the members of the bar who have been appointed by the Court Commissioners. He

pointed out the instances where the Court Commissioners were threatened by wrong doers. He invited our attention to Delhi Outdoor Advertisement Policy, 2008. The said policy has been finalised by the Environment Pollution (Prevention and Control) Authority under the directions of the Apex Court. He pointed out that this policy takes care of roadside advertisements with reference to the road safety. It also deals with the contents of the outdoor advertisement. He also invited our attention to the Municipal Corporation of Jalandhar Outdoor Advertisement Bye-laws 2014. He submitted that similar policy needs to be adopted in the State of Maharashtra. By way of illustration, he made a reference to some of the reports of the Court Commissioners. He pointed out an instance where Senior Inspector of Police of Powai Police Station did not register a complaint filed by an Inspector of the Mumbai Municipal Corporation. Not only that the complaint was not registered, but the Assistant Inspector of Police Shri More made the said Inspector of Mumbai Municipal Corporation talk on his cell phone to one ex-Municipal Councillor, who abused him. In fact, on 1<sup>st</sup> April 2016, the statement of the said Inspector was recorded as regards assault on him when he was tried to remove the illegal hoardings. The learned counsel appearing for the Petitioners also invited our attention to various photographs produced on record by the Court Commissioners.

38. The learned senior counsel appearing for the Mumbai Municipal Corporation has placed on record various charts showing the action taken by the Mumbai Municipal Corporation. There are charts filed on record by other Municipal Corporations as well. The learned senior counsel appearing for the Mumbai Municipal Corporation pointed out that compliance is not made by the police as armed constables were not provided to the squad appointed by the Mumbai Municipal Corporation. He submitted that if appropriate directions are issued to the police to provide police protection and to set criminal law in motion, the Municipal Corporation will be able to discharge its obligations more effectively.

39. Some of the political parties, such as Shiv Sena, Maharashtra Navnirman Sena and Nationalist Congress Party have claimed that they have taken several steps to prevent the menace of illegal hoardings. Shri Shivaji Garje, General Secretary of the Nationalist Congress Party has filed an affidavit dated 14<sup>th</sup> October 2016 claiming that certain members of the his political party were suspended for a period of 30 days on the ground that they indulged in display of illegal hoardings. The political parties have claimed that repeatedly they have published notices in the daily news papers appealing to their workers not to indulge in the illegalities.

40. Our attention is invited to a decision of the Division Bench of Chennai High Court in the case of *K. Kanagaraj v. District Collector, Chennai and Others*<sup>3</sup>. The said decision deals with the erection of hoardings at public places. The Division Bench was dealing with the statutory rules which imposed restrictions on the display of hoardings, restriction of size of hoardings, etc. The Division Bench upheld the validity of the Rules. The Division Bench issued various directions on the issue including a direction to remove illegal hoardings.

#### DISCUSSION AND CONCLUSION

41. To summarize the legal position which we have considered earlier, within the limits of the Municipal Corporations constituted under the said Act of 1888 and the said Act of 1949, no sky sign or advertisements can be erected or displayed without the written permission of the Municipal Commissioners. In case of Municipal Councils under the said Act of 1965, no sky-signs or advertisements can be erected without paying tax. But, it will attract penal provisions of the Defacement Act if it is done without permission of the municipality. Even elsewhere, if such sky-signs or advertisements are erected, displayed or fixed without permission of the local authorities, it will attract the penal provisions of the Defacement Act. From the affidavits on record and the reports of the Court Commissioners, it is apparent

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<sup>3</sup> 2006(4)MLJ 1033

that throughout the State, illegal sky-signs and advertisements are being displayed with the impunity in breach of the municipal laws as well as the law relating to the defacement of the public properties. Now, the question is what is the solution. It goes without saying that all the concerned authorities are under an obligation to remove the illegal sky-signs and advertisements very promptly as soon as the information regarding its display is received. Failure to do so will be violation of the fundamental rights of the citizens under Article 21 of the Constitution of India apart from the violation of Municipal laws and the Defacement Act. To enable the municipal authorities and the State Government to do so, there is a need to create a Grievances Redressal Mechanism to enable the citizens to lodge complaints about the illegalities. It will serve two purposes. Firstly, the Municipal Authorities or the State Government, as the case may be, will get information about the display or fixing or erection of illegal hoardings and sky-signs. Secondly, it will give an opportunity to the citizens whose fundamental rights are affected to make complaints and to participate in the process of enforcing the law.

42. Unless the arms of all the authorities empowered to take action of removal of sky-signs and advertisements are strengthened, they will not be in position to remove the illegal sky-signs and advertisements and set the criminal law in motion against the



wrongdoers. For that purpose, the Municipal and other authorities will have to be supported with adequate police force including armed Constables. It is high time that the Political Parties and especially their leaders and workers do not adopt arm twisting tactics and take recourse to pressurizing the Municipal and Police Officers.

43. Some priority will have to be given by the Criminal Courts where criminal law is set in motion under the provisions of the Defacement Act. The Registrar General should consider of issuing a circular in this behalf by inviting attention of the Courts to this Judgment.

44. There is one more issue which is raised in one of the Petitions. There is a need to have a Policy for granting permissions to erect or display sky signs or advertisements. Permission cannot be granted to erect or display sky signs or advertisements in such manner or as such places which will distract the drivers of motor vehicles and even the pedestrians when they walk on foot ways/footpaths or when they cross the roads. There is need to maintain aesthetics of buildings, monuments and statues. There is need to preserve the trees and ensure that no sky-signs or advertisements are displayed on the trees. Some of the Municipal corporations including the Mumbai Municipal Corporations have such policies. But there is a need for the State

Government to frame a uniform policy and direct all the Local Authorities to adopt the same.

45. We have quoted the interim orders passed from time to time by this Court on the subject matter of challenge. The interim orders show that the Grievances Redressal Mechanism is in place. The citizens can lodge complaints and the Authorities get information about the illegalities. By and large, it can be observed that the directions of this Court regarding setting up the Grievance Redressal Mechanism have been implemented, but there is a failure on the part of all the Authorities to take prompt action for removal of illegal sky-signs and advertisements. Either no action is taken or an action is taken belatedly which serves no purpose. If illegal sky-signs and advertisements are displayed during the festivals, or on special occasions, no purpose is served by removing the same after the festival is over. There is a complete failure on the part of the State administration as well as the Police machinery in setting the criminal law in motion. The issue of developing awareness is not addressed. There is a need to educate the children in schools and colleges to ensure that they do not indulge in such illegalities. No steps have been taken to constitute Citizens' Committees at Ward levels.

46. Considering the very nature of illegalities, it will not be always possible for the Courts to effectively monitor the implementation of the laws as well as the directions issued by this Court. Under the orders of this Court, a machinery has been set up at the Government level to ensure that action is taken for preventing illegal destruction of mangroves in Navi Mumbai. A Committee has been set up under the Chairmanship of the Divisional Commissioner to monitor the implementation of the orders of this Court. The orders passed in the said PIL show that when the Government Officers are armed with the orders of this Court, they are more effective when it comes to the performance of their duties.

47. Under Paragraph 8 of the said order, the same was ordered to be communicated to the Mayors and Municipal Commissioners of all the Municipal Corporations and the Presidents and Chief Executive Officers of all the Municipal Councils in Maharashtra. In the order dated 6<sup>th</sup> August 2014, this Court has considered the provisions of all the Municipal Laws and Defacement Act. The said order refers to the undertaking given by Shri Mukund Kulkarni on behalf of the Bharatiya Janta Party. The said order records that from January 2010 to June 2014, the Mumbai Municipal Corporation took the action against 3,44,695 hoardings, banners, posters, etc. out of which, 2,79,160 items were displayed by the political parties or their workers. 31,378 items

are found to be commercial in nature. Apart from the undertaking of Shri Mukund Kulkarni on behalf of the Bhartiya Janta Party and Shri Shivaji Garje, General Secretary (Maharashtra) of the Nationalist congress Party , some other parties have given undertakings. The said order records that at one stage, the learned counsel appearing for the Republican Party of India (Athawale Group) had also made a statement to give a similar undertakings but ultimately such undertakings were not given. Very extensive interim directions issued by this Court are contained in Paragraph 28 of the said order dated 6<sup>th</sup> August 2014 which we have quoted above. Clause (a) of Paragraph 28 of the said order shows that the Officers of the Municipal Corporations specified therein were made in charge and responsible for implementation of the provisions of the Statutes. As regards Satara Municipal Council, the Committees already constituted by the Councils were held responsible for the implementation. There were directions issued to the police. There were directions issued to set the criminal law in motion in case of offences under the Defacement Act. Elaborate directions were issued for the appointment of Nodal Officers of the Police, Municipal Corporations as well as the Revenue Department. Directions were issued to the Municipal Councils and all Municipal Corporations to create Grievance Redressal Mechanism as set out in Clause (k) onwards of Paragraph 28 of the said order. Conditions which should be imposed while granting permissions were also incorporated in the said order.

The elaborate directions issued under the said order continue to operate till today. In the further order dated 30<sup>th</sup> September 2014, further interim directions were issued for reporting compliance with the earlier orders. Under the order dated 19<sup>th</sup> December 2014, the members of the bar were appointed as the Court Commissioners. Various directions were issued regarding formation of Citizens' Committees. The directions were issued that while granting permission for erecting sky-signs and advertisements, apart from incorporating the conditions therein, the precise location shall be also incorporated for which permission has been granted. There are subsequent orders under which more members of the bar were appointed as the Court Commissioners. Paragraph 11 of the order dated 12<sup>th</sup> March 2015 contains a direction that if any obstruction is made by the political leaders or political parties or their workers in the matter of prevention of display of illegal sky-signs and advertisements or if there is an apprehension that such obstruction is likely to be created, a liberty was granted to the Municipal Officers to seek appropriate directions from this Court in that behalf. The directions issued earlier for grant of police protection were reiterated. The order dated 26<sup>th</sup> November 2015 refers to the undertakings given by Bhartiya Janta Party, Maharashtra Navnirman Sena and Nationalist Congress Party. A circular issued by the Bharatiya Janta Party on 25<sup>th</sup> July 2014 was also placed on record. This order records that contempt notices issued to various political

parties were discharged. Under the said order, contempt notices were ordered to be issued to 18 political leaders/political workers. In addition to the earlier interim directions, it was directed that the Municipal Corporations and the State Government shall provide facilities of lodging complaints of illegal hoardings by uploading photographs on the dedicated websites. A direction was also issued to upload the action taken reports on the websites. Directions were issued to give wide publicity to the availability of Grievance Redressal Mechanism. The contempt notices were issued under the order dated 15<sup>th</sup> January 2016 to the Commissioners of various Municipal Corporations.

48. There are affidavits filed on record accompanying the charts and other documents by various Municipal Corporations. Actions taken against the illegal sky-signs/advertisements have been set out. It is reflected from the said affidavits that for various reasons, the nuisance created by the illegal sky-signs and advertisements continues. Not only the private properties but the public properties such as public buildings, streets, footpaths, etc. have not been spared. Under Clause (i) of Article 51A of the Constitution of India, it is the fundamental duty of every citizen to safeguard the public property. However, those who are indulging in the illegalities, fail to perform their fundamental duty under Clause (i) of Article 51A of the Constitution of India.

49. Under the interim orders, the Municipal Officers at Ward Level have been made responsible for removal of illegal sky-signs and advertisements. However, the Executive Heads of the Municipal Corporations and Municipal Councils viz. Commissioners and Chief Officers are also responsible not only for removal of illegal sky-signs and advertisements or hoardings, but also for taking preventive measures. We propose to issue direction directing the Commissioners and the Chief Officers to hold regular meetings for the purposes of monitoring the work of removal of illegal hoardings and sky-signs and the work of prevention of illegalities. We propose to issue a similar directions to the District Collector. The Commissioners and/or Chief Officers and/or Collectors, as the case may be, will have to submit monthly reports to a Secretary in the Department of Urban Development of the State Government who shall be nominated by the Chief Secretary of the State Government to monitor the exercise throughout the State.

50. The Nodal Officers of the Police have been already ordered to be appointed for the Municipal Corporation and Municipal Council areas. Notwithstanding providing for the said set up, we find that hardly any offences have been registered under the Defacement Act. We, therefore, propose to direct the Police Commissioners and where

there are no Police Commissioners, the District Superintendents of Police shall monitor the entire exercise throughout the State. The Director General of Police will have to issue Circulars across the State to ensure that the Police Officers do not refuse registration of the offences under the Defacement Act as the said offences are the cognizable offences. The attention of the Police Officers must be invited to the decision of a Constitution Bench of the Apex Court in the case of *Lalit Kumari vs State of UP*<sup>3</sup>. In paragraph 120, the Apex Court issued the following directions:

**“120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.**

.....

**120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence. “**

(emphasis added)

Hence, when an information is furnished to the Police of the commission of an offence punishable under Section 3 of the Defacement Act, the registration of the First Information Report and investigation on the basis thereof is mandatory. Failure to do so will invite action against the Police Officers.

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<sup>3</sup> (2014) 2 SCC 1



51. As far as the criminal liability is concerned, under the Municipal Laws, there are penal provisions. The breach of the provisions of Sections 328 and 328A under the said Act of 1888 is made an offence under Section 471 of the said Act of 1888. Even under the provisions of the said Act of 1949, Section 392 is relevant. Under the said Section read with Part-I of the Table in the Appendix II, contravention of Sections 244 and 245 is made an offence. Section 433 of the said Act of 1949 permits arrest in certain cases, which reads thus:

- “433. (1) Any police officer may arrest any person who commits in his view any offence against this Act or against any rule, regulation or by-law, if the name and address of such person be unknown to him, and if such person, on demand, declines to give his name and address or gives a name and address which such officer has reason to believe to be false.
- [(2) No person so arrested shall be detained in custody after his true name and address are ascertained or, without the order of the [nearest Judicial Magistrate], for a longer period than twenty-four hours from the time of arrest exclusive of the time necessary for the journey from the place of arrest to the Court of such Magistrate].”

We have already reproduced Section 196 of the said Act of 1965 which makes defacement of buildings an offence.

52. The offences under the Municipal Laws attract minimum penalty which is not at all deterrent. The State Government will have to examine the question of moving the State Legislature for providing more deterrent penalties.

53. Now, we come to the issue of action, if any, which can be taken against the political parties/political leaders/political workers who indulge in illegalities.

54. The Election Commission of India has issued a Model Code of Conduct and Guidelines for the political parties for ensuring that they do not indulge in defacement of properties during the elections. The Election Commission of India has issued guidelines on 7<sup>th</sup> October 2008 for prevention of defacement property during elections. Even the State Election Commission issues such Code of Conduct for the elections of the local authorities. The Election Commission of India will have to consider whether a Code of Conduct can be prescribed governing the political parties which are registered in accordance with Section 29A of the Representation of Peoples' Act, 1951 (for short "the said Act of 1951"). On conjoint reading of Sub-sections (5) and (7) of Section 29A of the said Act of 1951, it appears that no association or body can be registered as a political party unless the Rules and Regulations of such

association or body contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established. Under Section 169 of the said Act of 1951, a rule making power is conferred on the Central Government which is to be exercised after consulting the Election Commission of India. It will be necessary to consider whether a condition can be imposed on the association or body seeking registration as a political party providing in the Rules and Regulations a clause that they will not indulge in defacement of the property which is prohibited by the Defacement Act and other provisions of the Municipal Laws governing the display of sky-signs and advertisements. The other question is whether the Election Commission of India can issue necessary guidelines which will bind the registered political parties not only during elections, but all throughout. The question is whether the Election Commission of India or the State Election Commission can step in to ensure that the political parties and its workers remain within bounds. We, therefore, propose to issue a direction for forwarding a copy of this judgment and order to the Election Commission of India as well as the State Election Commission for considering the said issues and for taking necessary action.

55. We propose to continue all the interim directions which are in force till today subject to modifications which are made by the this

Judgment. We also make it clear that the entire machinery set up under the interim directions including the Grievance Redress Mechanism will continue to exist. We must record our appreciation for the services rendered by the Court Commissioners. We make it clear that though they will not continue as the Commissioners, they can continue to render service by taking tours of different areas and filing complainants about the illegal sky-signs and advertisements. We must also record our appreciation for the Petitioners in the PILs/WPs who have taken up the important issue.

56. We are of the view that the State Government will have to appoint a Secretary or Secretaries who are IAS officers to monitor and supervise the implementation of the directions issued under the orders of this Court as well as implementation of the provisions of the Municipal Laws as well as the Defacement Act. All Municipal Corporations/ Councils and District Collectors will have to submit regular reports of the actions taken to the said Secretary who can hold video conferencing meetings with all of them to ensure proper and effective implementation of the Directions of this Court. We propose to direct the Officer appointed by the State Government to provide copies of the reports received by him to the Petitioners in the Petitions or any other citizen on an Application made by them subject to payment of copying charges. We also propose to direct the State Government to

ensure that recovery of expenditure is made from the wrongdoers after taking the action of removal of defacement in terms of Section 5 of the Defacement Act.

57. In Writ Petition No. 2628 of 2016 which is filed by Solutions Advertising, a Contractor appointed by the Municipal Transport of the Thane Municipal Corporation. The grievance is that on the bus stops/bus shelters erected by the Petitioner under the Agreement on “built, operate and transport” basis, the illegal sky-signs and advertisements are being displayed. We have perused the Agreement executed between the Petitioner and the Municipal Transport of the Municipal Corporation of City of Thane. By no stretch of imagination, it can be said that the responsibility of removing the illegal sky-signs and advertisements is of the Petitioner. Therefore, the Municipal Corporation cannot avoid responsibility of removing illegal sky-signs and advertisements.

58. There are number of Contempt Notices issued and the Contempt Petitions which are pending. We are not dealing with those Contempt Notices and the Contempt Petitions which will be listed separately.

59. Accordingly, we dispose of the Petitions by passing the following order:-

ORDER:

- (a) This Judgment and order will bind all the Municipal Councils and Corporations in the State. The State Government shall communicate the directions issued under this Judgment to all the Municipal Councils and Corporations and District Collectors in the state within two weeks from today.;
- (b) In case of all the Municipal Councils, the Municipal Corporation of Greater Mumbai and all the Municipal Corporations in the State, the implementation of the provisions of the Municipal Laws shall be made at the level of every ward. In case of the Mumbai Municipal Corporation, the Senior Inspector of Licence of every Ward shall be responsible for the implementation of provisions of section 328 and 328A of the said Act of 1888. In case of all other Municipal Corporations, the Ward Officers in-charge of every Ward or any other officer

who is in-charge of the Ward shall be responsible for implementation of the provisions of Section 244 and 245 of the said Act of 1949 read with Rule 1 of the Chapter XI of the Rules in Schedule D as well as the provisions of said Rules of 2003. In case of all the Municipal Councils except Satara, the Ward Officers or the Officers in-charge of Wards of each Ward shall be the officers responsible for implementation of the provisions of section 196 of the said Act of 1965 as well as the Maharashtra Municipalities (Advertisements Tax) Rules, 1970. In case of the Satara Municipal Council, the Officers already nominated/the committees already formed in charge of every Ward shall be responsible for implementation of the provisions of section 196 of the said Act of 1965 as well as the Maharashtra Municipalities (Advertisements Tax) Rules, 1970. The aforesaid Officers or the Committees, as the case may be, shall be responsible for immediate removal of illegal sky-signs and advertisements. The aforesaid Officers or the Committees shall be also responsible for implementation of the directions issued under this Judgment. The Municipal

Commissioners of all the Municipal Corporations shall appoint one or more Nodal Officers of the rank of Deputy Commissioner to supervise the work of the Municipal Officers at ward level;

- (c) Whenever an action is proposed to be taken by the Municipal Officers of removal of illegal sky-signs or advertisements, the Senior Inspector of Police or the Officer In-charge of the concerned local police station shall extend adequate police protection and police help to the Municipal staff and Municipal officials while taking action of removal of the illegal sky-signs and advertisements. Such number of armed constables as may be necessary shall be deputed to accompany the municipal officials and the staff and shall protect the municipal officers and staff at the time of removal of illegal sky-signs and advertisements. Similar protection shall be extended to all the Officers of the State Government when they take action of removal of the defacement in accordance with the Defacement Act;



- (d) On the Municipal/Government Officers as well as any Citizen conveying written or oral information about the commission of an offence punishable under the Defacement Act, the Officer in-charge of the concerned Police Station or the Senior Inspector of Police of the concerned police station shall be under an obligation to register an offence in accordance with sub-section (1) of Section 154 of the Code of Criminal Procedure, 1973 and to expeditiously take further steps in accordance with law in as much as the offence punishable under the Defacement Act is a cognizable offence. The Municipal Officers specified in clause (b) above shall be duty bound to furnish information about the commission of an offence punishable under the Defacement Act to the Officer in-charge of the Police Station or the Senior Inspector of Police of the concerned police station. Against the Police Officers who fail to immediately register FIR on receipt of the written or oral information about the commission of an offence under the Defacement Act, appropriate proceedings shall be initiated as

directed by the Apex Court in the decision in the case of *Lalita Kumari*. A written order in terms of this direction shall be issued by the office of the Director General of Police to all concerned Police Stations within a period of six weeks from today;

- (e) In case of those Municipal areas where there is a Commissioner of Police, he shall nominate one or more Senior Officers not below the rank of Deputy Commissioner of Police to act as Nodal Officers to oversee the performance of duties of the Senior Inspectors of Police or Officers In-charge of the concerned Local Police Stations in the context of the directions issued under this Judgment and Order. In the large cities like Mumbai and Pune, more than one such Officers shall be appointed. In case of those Municipal Areas where there is no office of the Commissioner of Police, the District Superintendent of Police shall appoint a Nodal Officer not below the rank of the Deputy Superintendent of Police. The Nodal Officers who are already appointed shall continue to function. Where appointment of Nodal Officers is not made

till today, the same shall be made within a period of one month from today. In` the event the Municipal Officers or citizens find that the concerned officers of the local Police Stations are not responding to their complaints by registering FIR and taking further action thereon, they will be entitled to make a written complaint to the Nodal Police Officers who shall take immediate remedial measures.

- (f) The Nodal Police Officers so appointed shall take immediate action on the complaints received from the Municipal Officers regarding non co-operation by officers attached to the concerned Local Police Station;
- (g) The Commissioner of police or the Superintendent of Police, as the case may be, shall issue directions within a period of six weeks to the concerned Police staff entrusted with the job of night patrolling including the beat marshals to keep a constant vigil for preventing the activity of erection/display of illegal hoardings, banners, flexes, temporary arches, posters etc during night time. Instructions shall be

given to the said police officials to immediately register offences under the Defacement Act;

- (h) In case of breaches of the provisions of the said Act of 1988, the said Act of 1949 and the said Rules of 2003 as well as the said Act of 1965 and the Rules framed thereunder, the Municipal Officials, as stated above, shall be under an obligation to take action against the illegality notwithstanding the fact that the illegalities are also covered by the Defacement Act. It will be their obligation to give information about the commission of an offence under the Defacement Act to the Officer In-charge of the concerned Police Station, who shall act on the information as directed above;
- (i) The District Collectors shall be responsible for enforcement of the provisions of the Defacement Act within their respective jurisdictions. For the areas not included in Municipal limits, the Collectors shall appoint the Nodal Revenue Officers for various defined areas under their respective jurisdictions for taking action for the breaches of

the provisions of the Defacement Act. For revenue villages which are Taluka headquarters or the villages having large population, separate nodal Officers be appointed. On information being received by the Collector or the Nodal Officers appointed by the Collector of the Defacement covered by the Defacement Act, an immediate action of removal of defacement shall be taken by the said Officers. The action of recovery of expenses shall be also initiated in accordance with Section 5 of the Defacement Act. They shall also furnish information to the concerned local Police Stations which will take action as directed above of the registration of FIR. The District Collectors shall nominate Nodal Officers not below the level of Nayab Tahasildar in terms of this order within a period of two months from today throughout the state;

- (j) Adequate publicity shall be given to such appointments of Nodal Police Officers as well as Nodal Officers appointed by the Municipal Commissioners and Collectors in the leading as well

as local News Papers and television channels as well as on web sites of the Police, concerned Collectors, concerned Municipal Corporations and Municipality with material particulars such as their office addresses and their contact numbers. In all local ward offices, municipal offices, the offices of the Tahasildars and circle officers, the aforesaid information shall be prominently and permanently displayed. The publicity be given to the details as aforesaid in News Papers and television channels before every major religious festival such as Ganapati, Navaratri and Diwali etc ;

- (k) We direct all the Municipal Councils and other Municipal Corporations as well as all the District Collectors to create a facility of at least one toll free telephone number on which complaints can be received from the Citizens regarding putting up of illegal sky signs and advertisements. The toll free numbers shall be made available within a period of one month from today wherever the same are not available till today. Similarly, facility of lodging complaints by SMS and what's app messages shall

be made available within aforesaid time, if not already made available. Needless to add that facility of sending photographs of offending sky-signs or advertisement thorough what's app messages shall be also made available within the aforesaid time. The Municipal Corporations and Municipal Councils which have their own website shall make available the facility of uploading complaints with photographs within three months from today. The Municipal Corporations and the Municipal Councils as well as the District Collectors shall give wide publicity to the toll free numbers and cell phone numbers as well as other modes available in the leading newspapers as well as in the Electronic Media before every major religious festival in every calender year. Notices to that effect shall also be published on the websites of the Municipal Authorities and Collectors. Notices shall be prominently displayed at all the ward offices, Municipal offices and in the offices of the Collectors and Tahasildars ;

- (l) Even anonymous complaints shall be entertained on the toll free numbers and action shall be taken on the basis of such complaints. If the Citizens find that no action is being taken on the basis of the complaints made on toll free numbers, it will be open for them to make a complaint in writing to the Nodal Officers of the Municipal Authorities as well as the Nodal Revenue Officers of the State Government who shall take action on the basis of such complaints;
- (m) We make it clear that even the petitioners in Public Interest Litigations will be free to submit complaints to the Municipal/Nodal Officers by pointing out specific instances of illegalities. All the Municipal Corporations and the Municipal Councils shall constitute committees of Citizens at Ward levels. The Committees shall keep a vigil and point out illegalities to the Municipal officers. The Citizens' Committees shall be also entrusted with the job of starting awareness programmes;



- (n) The state Government shall formulate a policy for the guidance of the Municipal Councils and Corporations dealing with the grant of permissions to display of sky-signs and advertisements. The policy shall provide that permissions should not be granted to display sky-signs and advertisements in such a manner which will distract drivers of motor vehicles and the pedestrian crossing the roads. The State Government shall complete this exercise within a period of three months from today and direct all the Municipal Corporations/Councils to formulate exhaustive policies or to amend the existing policies within a time frame in the light of the Policy of the State Government;
- (o) While granting permissions for display or erecting sky-signs or advertisements, the Municipal Corporations/Municipal Councils as well as other local authorities shall incorporate a condition of prominently displaying the permission number and its duration on the sky-signs and advertisements. The permissions shall mention the precise location

for which the same has been granted. We direct that all the Municipal Corporations and Municipal Councils as well of the Collectors shall immediately remove the sky-signs or advertisements which do not disclose the permission number and its duration;

- (p) Before taking action of removal of illegal sky-signs and advertisements, the concerned Municipal Officials or the Government Officers shall take digital photographs thereof which shall be preserved on record and copies thereof shall be made available to the police authorities. If necessary, the Officers shall draw a panchanama;
- (q) If illegal sky-signs are displayed on special occasions such as the birthdays of the leaders or religious festivals, the same shall be promptly removed by the Municipal Officers or Government Officers, as the case may be, before the birthday or the date of festival;

- (r) We direct all the Municipal Corporations and Municipal Councils and Collectors to provide complaint numbers to the complainants who make the complaints in writing, on the toll free numbers or by way of SMS or what's app messages or by uploading the same on websites. The Municipal Authorities shall also maintain a register of such complaints received including anonymous complaints containing particulars such as date and time of the complaints and the action taken on the said complaints with the brief particulars of the action taken;
- (s) We direct the Commissioner of Police, Mumbai shall make available services of two armed constables every day to the concerned Municipal Officers of every Ward in the City of Mumbai. The armed police constables shall be instructed to accompany the Municipal teams at Ward levels which start work of removal of illegal hoardings at 8.00 a.m. every day;

- (t) We make it clear that the directions issued by this Court shall also apply to the sky-signs/advertisements displayed without permission on temporary booths/pandals permitted to be erected by the Municipal Corporations for celebrating all religious festivals, including Ganapati and Navratri. The orders also apply to illegal sky-signs and advertisements displayed in the vicinity of such temporary booths/pandals. While granting permission to erect such temporary booths/pandals, a condition shall be incorporated by all the Municipal Corporations that the permission holder shall not display any sky-sign on or in the vicinity of such temporary booth or pandal without the specific permission of the Commissioner and that any such illegal sky-signs or advertisements will be removed or taken down without notice. Moreover, the permissions granted shall be liable to be cancelled on account of such breaches;
- (u) If the Municipal Commissioners or the Municipal Officers who are empowered to exercise powers

under Sections 328 and 328A of the said Act of 1888 and Sections 244 and 245 of the said Act of 1949 hereafter find that the workers/office bearers of any particular political party have indulged in display of illegal hoardings, they shall exercise their discretion under the aforesaid provisions by refusing to grant permission under the aforesaid statutory provisions to such political parties or to the leaders or workers of political parties to display sky-signs or advertisements in the particular city;

- (v) We direct that the orders passed in these PILs will govern the Municipal Corporations and the Municipal Councils in the State. Directions issued in these PILs/WPs shall also apply to the areas outside the Municipal Corporation and Municipal Council limits insofar as the implementation of the provisions of the Defacement Act is concerned;
- (w) The Municipal Commissioners and the Chief Officers of the Municipal Corporations shall be responsible for ensuring that the directions issued by this Court are implemented;

- (x) For that purpose, the Municipal Commissioners and the Chief Officers shall hold meetings with concerned officials including the Nodal Police Officers once in every month to take a review of the actions taken. During Ganpati, Navratri and other major festivals, meetings shall be held on weekly basis. Similar meetings shall be held by the Collectors of the Nodal Officers appointed by him;
- (y) The Director General of Police shall issue Circulars to all the Police Stations across the State for ensuring that the Police assistance is rendered to the Municipal and Government staffs while removing illegal sky-signs and advertisements. Directions shall be given by the Director General of Police to ensure that the Police Stations register First Information Reports for the offences punishable under the Defacement Act very promptly and without making the Municipal Officers to wait at the Police Stations for an inordinately long time;

- (z) The District Superintendents of Police and the Commissioners of Police shall appoint any Senior Officer not below the rank of Deputy Superintendent of Police or the Deputy Commissioner of Police, as the case may be, who shall be responsible for monitoring the registration of the offences under the Defacement Act. The Officers shall be nominated within a period of one month from today who shall hold monthly meetings of the Police Officers under their respective jurisdictions to monitor registration of the First Information Reports under the Defacement Act and the investigation thereon;
- (aa ) We direct the State Government to nominate two or three Officers not below the rank of Secretaries in the Urban Development Department and the Home Department to monitor the implementation of the provisions of law in terms of the directions issued by this Court under this Judgement.;

- (bb) The Committee of two Officers shall be constituted within a period of one month from today;
- (cc) The Municipal Commissioners, the Chief Officers, the District Collectors as well as the Nodal Officers nominated by the District Superintendent of Police as well as Commissioners of Police shall submit monthly reports to the aforesaid Officers appointed by the State Government incorporating the details of the actions taken for implementation of this Judgment and Order. They shall submit a report on implementation of the Directions under this Judgment before 19<sup>th</sup> April 2017. Thereafter, the said Officers shall keep on submitting quarterly Action Taken Reports to the said Officers. While submitting reports, details of the illegal sky-signs or advertisements displayed by political parties or its workers shall be incorporated by mentioning the names of the parties. The copies of the said reports shall be uploaded on the State Government web sites. The copies thereof shall be made available to the Petitioners subject to payment of copying charges;



(dd) We direct the Registrar (Judicial-I) to forward copies of this Judgment and Order to the Election Commission of India and the State Election Commission. Necessary decision shall be taken by the Election Commission in terms of Paragraph 54 of this Judgment and Order within a period of six months from today;

(ee) The Petitions are disposed of on above term.

(ff) All pending Civil Applications are disposed of;

(gg) For reporting compliance, the Petitions shall be kept on 3<sup>rd</sup> May 2017 under the caption of “Directions” along with pending contempt notices. Compliance affidavits shall be filed by the State Government before the said date.

( A.A. SAYED, J)

( A.S. OKA, J )