

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****REVIEW PETITION (L) No. 69 of 2013
IN
WRIT PETITION (L) NO. 3203 OF 2013**

M/s. Hotel Golden Crown ..Petitioner
VS.
The M.B.R. & R. Board & Ors. ..Respondents

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Mr. D. H. Mehta i/b. Mr. Y. R. Shah for Petitioner.
Mr. P. G. Lad – A.G.P. for Respondent Nos. 1, 2 and 4.
Mr. Chirag Balsara with Huda H. Diamondwala i/b. Divya Shah
Associates for Respondent No. 3.
Ms. J. K. Calcuttawalla – A.G.P. for Respondent No. 5.

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**CORAM : V. M. KANADE, AND
M. S. SONAK, JJ.**

DATE : DECEMBER 24, 2013

P. C.

1] The Petitioner has filed this review petition seeking review of the order dated 13.12.2013 and are also seeking order for relieving the Petitioner of the undertaking filed by them on 13.12.2013 to vacate the old premises till the Respondent No. 3 obtains necessary sanctions / permissions from the BMC for running a restaurant and bar in the new premises which are to be allotted to the Petitioner. It is submitted that pending hearing and final disposal

of the review petition the said order which is passed by this court on 13.12.2013 be stayed.

2] Few facts which are necessary for the purpose of deciding the review petition are as under:

The Petitioner had filed petition (I) no. 3202 of 2013 challenging the order passed by the Respondent no. 2 under section 95A of the MHAD Act 1974 dated 05.12.2013. The said matter was heard by us at length and we had intimated that we were not inclined to entertain the petition and were going to dismiss the petition by passing a reasoned order. However later on in the afternoon session when we wanted to dictate the order, we were informed that the parties had arrived at an amicable settlement and an undertaking was given by the Petitioner's partner Mr. Manohar Jaya Shetty that he would vacate the premises in respect of the said notice which was issued by the Respondent no. 2 dated 05.12.2013 within a period of 15 days. The said undertaking was given on the basis that the Respondent No.3 in the said petition would hand over possession of the new premises. Immediately on the said date i.e. 13.12.2013 in view of the undertaking which was given by the Petitioner to this court the Respondent No.3 handed over the keys of the premises to the Petitioner in the court itself.

3] Accordingly we passed the order dated 13.12.2013. We however also observed that in the event the Petitioner does not hand over the old premises as per the undertaking given by him then in that event an order passed under Section 95A would revive and the MHADA Authorities would be entitled to execute the order and if necessary by using police force.

4] The review petition is now filed seeking an order of this court that they should be relieved of the said undertaking which was given by the Petitioner in the writ petition till the Respondent no. 3 obtains necessary sanctions / permissions from the BMC for running a restaurant and bar.

5] Learned counsel appearing on behalf of the review petitioner has submitted that after the review Petitioner approached the BMC Authorities for transfer of licenses and permits required for continuation of the running the business of restaurant and bar, they were informed that in the sanctioned plan the user of the said premises was shown as commercial and no sanction has been taken by the Respondent no.3 for restaurant and bar. It was

submitted that the Petitioner therefore would not be in a position to carry on their business of restaurant and bar. It is contended that the Respondent – developer had not taken the specific permission. It is further submitted that in order to commence the business of restaurant and bar requisite norms in respect of storage of gas cylinder and fire safety as laid down by the BMC is to be adhered to and necessary permissions have to be taken. It is submitted that the review Petitioner has given an undertaking to this court reasonably believing that all necessary sanctions as required for running a bar had been obtained by the developer.

6] On the other hand learned counsel appearing on behalf of the Respondents has submitted that the internal plan and the final lay out was done as per the report submitted by the review Petitioner's Architect. It is also contended that same user was permitted under Regulation 33(7) and therefore the contention of the Review Petitioner that the plan did not mention the user of the restaurant and bar was not correct.

7] After we heard both the counsel at length, in our view, it is not open now for the Review Petitioner to seek a leave of this court to

relieve the Petitioner from the undertaking which was given by them to this court.

8] It has to be noted here that the Review Petitioner are carrying on business of restaurant and bar at the said address and had not shifted to temporary alternate accommodation when the said redevelopment had commenced. Since the Petitioner had refused to vacate the premises though permanent alternate accommodation was made available to them, proceedings had to be initiated under Section 95A of MHADA Act, it would be relevant to take into consideration the said provisions, which reads as under:

“95A. Summary eviction of occupiers in certain cases.

(1) Where the owner of a building or the members of the proposed co-operative housing society of the occupiers of the said building, submits a proposal to the Board for reconstruction of the building, after obtaining the written consent of not less than 70 per cent of the total occupiers of that building and a No Objection Certificate for such reconstruction of the building is issued by the Board to the owner or to the proposed co-operative housing society of the occupiers, as the case may be, then it shall be binding on all the occupiers to vacate the premises:

Provided that, it shall be incumbent upon the holder of such No Objection Certificate to make available to all the occupants of such building alternate temporary accommodation.

(2) On refusal by any of the occupant to vacate the premises as provided in sub-section (1), on being approached by the holder of such No Objection Certificate for eviction of such occupiers, it would be competent for the Board, notwithstanding anything contained in Chapters VI and VII of this Act, to effect summary eviction of such occupiers.

(3) Any person occupying any premises, land, building or structure of the Board unauthorisedly or without specific written permission of the Board in this behalf shall, notwithstanding anything contained in Chapters VI and VII of this Act, be liable for summary eviction.

(4) Any person who refuses to vacate such premises or obstructs such eviction shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both."

The MHADA Authorities therefore had initiated the said proceedings under Section 95A when the Petitioner had refused to vacate the premises and after giving reasonable opportunity to the Petitioner of being heard the impugned order was passed. When the main

petition was heard by this court it was strenuously argued that principles of natural justice were not followed and that the authorities had not granted adjournment to the Petitioner when a request was made that on account of unavailability of their lawyer a subsequent date be given. It was argued at that time that since the Petitioner was not given a hearing, the impugned order should be set aside and the matter should be remanded back. The said contention was not accepted by us and we had made it very clear that we are inclined to dismiss the said petition. At that time the ground which is now sought to be raised in this review petition was not argued and no submission was made regarding this particular aspect which is now sought to be raised in the review petition. If the petition would have been dismissed the MHADA Authorities would have evicted the Petitioner upon completion of the period of 15 days from the date of issuance of notice dated 05.12.2013. In our view, in order to avoid this the Petitioner made a representation to this court that they are willing to give an undertaking and thereafter the undertaking was given and now again a different case is sought was made out that till the Respondent no. 3 obtains necessary sanctions / permissions from the BMC for running of a restaurant bar in the new premises, Petitioner should be relieved of the undertaking. In our view, this plea is a dishonest plea raised by the

Review Petitioner. In fact when we had expressed our doubt about the intention of the Petitioner in handing over the premises and we said that there was some catch in the said offer which was given by the Petitioner. Our apprehension has turned out to be true when we have perused the said review petition. It is an admitted position that the new alternate premises are ready since a long time and all other tenants have already shifted to the new premises, Petitioner continued to carry on its business in the said premises when the development was going on. Correspondence was exchanged and an architect of the Petitioner had submitted his plan and accordingly the Respondent – Developer carried out the necessary amendments in the said lay out plan. It is inconceivable that the Petitioner were not aware that necessary permissions to be obtained by them when they would be shifted to new premises. Regulation 33(7) read with Regulation 33(10) more particularly in clause 8 speaks about relaxation in building and other requirements for rehabilitation. The said regulation reads as under:

“ Relaxation in building and other requirements for rehabilitation – Notwithstanding anything contained in these regulations, the relaxations incorporated in regulations No. 33(10) of these Regulations shall apply. No further relaxations shall be applicable.”

Clause 5.5 of Regulation 33(10) reads as under:

“5.5. Non Conforming Activities :- All activities which were previously existing shall be allowed to be relocated regardless of the non-conforming nature of the activities, except those which are hazardous and highly polluting and except in cases where the alternative accommodation has already been allotted elsewhere by the Municipal Corporation.”

In view of this Regulation, contention of the Review Petitioner that they are not in a position to run the restaurant business is without any substance. Hence we are not inclined to permit relieving the Petitioner from the undertaking which they had given to this court. If the Petitioner do not hand over the possession of the premises they shall be evicted by the MHADA Authorities if necessary by using police force. Review petition is accordingly dismissed.

[M. S. SONAK, J.]

[V. M. KANADE, J.]