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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2207 OF 2015

Alliance Restaurant and Bar
Private Limited ...Petitioner
vs.
Municipal Corporation of
Greater Bombay & Ors. ...Respondents

Mr.M.M.Vashi, Senior Counsel a/w Ms Aparna Deokar
i/b M.P.Vashi Associates for the Petitioner
Ms Shobha Ajitkumar for the respondent Nos.1 and 2.

CORAM : A.S.OKA, &
G.S.PATEL,JJ.
DATE : DECEMBER 23, 2015

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 Yesterday when the petition was called out, we had put the parties to the notice that the petition will be taken up for final disposal. Draft amendment was taken on record yesterday and marked 'X' for identification. We had informed the learned counsel for the first respondent-Municipal Corporation that the Court will proceed as if the amendment in terms of the draft has been carried out. The amendment is based on a communication issued by the first respondent-Municipal Corporation pending the writ petition.

2 The petitioner was holding a licence under section 394 of the Mumbai Municipal Corporation Act,1888 (for short 'the said Act of 1888'). Notice dated 16th July 2015 (Exhibit-D to the petition) was

served to the petitioner by the Medical Officer of Health of the first respondent-Corporation. The said notice records that the petitioner was holding the premises in respect of which the licence was granted under a Leave and Licence Agreement executed by one Mr.Sanjay Puri. The notice recites that the Advocate for Mr.Sanjay Puri informed the first respondent-Corporation that the Leave and Licence Agreement has come to an end on 8th April 2015 and that the same has not been renewed. The impugned notice recites that as a result of the termination of Leave and Licence Agreement, the possession of the petitioner is illegal and therefore, a show cause notice was issued calling upon the petitioner to show cause as to why the licence should not be cancelled.

3 As the validity period of the licence held by the petitioner under section 394 expired during the pendency of the petition, the petitioner moved the Mumbai Municipal Corporation for renewal of the licence. By a communication dated 1st October 2015, the Medical Officer of Health of G/South Ward of the first respondent-Corporation informed the petitioner that as the Leave and Licence Agreement in respect of the premises has expired on 8th April 2015, the licence cannot be renewed. The petitioner was informed that the licence under section 394 cannot be processed without the No Objection Certificate of the landlord. The said communication dated 1st October 2015 has been annexed to the affidavit in support of Notice of Motion No.515 of 2015 taken out

by the petitioner. The same communication is challenged by the petitioner by way of amendment to the writ petition. In fact, the petitioner has claimed relief by way of Notice of Motion on the basis of the said communication.

4 The submission of the learned counsel for the petitioner is that under section 394 of the said Act of 1888, there is no requirement to obtain the consent of the landlord of the premises as a condition precedent for grant or renewal of licence. He relied upon the decision of the learned Single Judge of this Court in the case of Formac Engineering Limited and another Vs. Municipal Corporation of Greater Mumbai and others 2011¹. The learned counsel for the first respondent-Corporation relied upon the Circular No.18 of 1978 and submitted that in view of the said Circular, the first respondent is justified in insisting on No Objection Certificate of the landlord.

5 We have considered the submissions. Admittedly, under section 394 of the said Act of 1888 by which the power is conferred on the first respondent-Corporation to grant licence and to renew the same, there is no requirement of obtaining the consent of the owner or landlord of the premises as a condition precedent for the grant or renewal of the licence. We have perused the Circular No.18 of 1978. In first paragraph of the said Circular, the Municipal Commissioner has categorically stated that

1 (4) MhLJ. 152 (MANU/MH/0317/2011)

sections 390 and 394 of the said Act of 1888 do not envisage the consent of the landlord as a condition for grant of a licence. The Circular records that while scrutinizing the applications for grant of licences, concerned department should satisfy itself about the factual occupation or possession of the applicant in respect of the premises by insisting upon production of satisfactory proof of such possession or occupation. By way of illustration, a reference has been made to a rent receipt, an agreement or any other reliable document.

6 Yesterday, the learned counsel for the first respondent-Corporation tried to submit that in view of the second part of the Circular, the petitioner will have to show that his possession of the premises for which the licence is sought was lawful. His submission was that as the Leave and Licence Agreement is not in existence, the possession of the petitioner has ceased to be lawful.

7 As far as the said Circular is concerned, this Court in the case of Formac Engineering Limited and another (supra) had an occasion to consider the effect of the said Circular. Paragraph 49 of the said Circular reads thus:

"49 It is in such circumstances that I find that Mr.Chinoy is right in placing reliance on the judgment of this Court reported in MANU/MH/0134/2001 : AIR 2001 Bom 281

M.G.Sarasappa Kurup V. Municipal Corporation of Greater Bombay. It may be that the issue before the Court was whether the Corporation was justified in refusing permission for storage of auto tyres in the premises occupied by the petitioners on the ground that the petitioners have failed to show that they have any title to the premises. It is in that context that the learned single Judge has observed that circular No.18 of 1978 issued by the Municipal Commissioner clarifies that before any permission of licence is issued under Section 390 or 394 of BMC Act, consent of the landlord is not necessary. The circular does not envisage any such consent. The learned Judge has rendered a finding that the language of Section 394 of the MMC Act shows that the enquiry should be restricted to the applicant's physical possession of the premises for which permission for storage of articles is sought. It is wholly irrelevant as to whether the applicant is owner of the premises or lawful tenant. So long as there is no declaration by the Court of competent jurisdiction with regard to determination of relationship of landlord and tenant or that the premises are unauthorized or an encroachment, the Commissioner cannot assume to himself the role of deciding the title and make that the basis for refusing permission. While rendering such a finding, the learned

Judge has referred to circular No.18 of 1978.
That circular was relied upon by the Corporation before the learned single Judge on the finding that no part of the circular supports the Corporation stand, the learned Judge concluded that even this circular accepts the position that insisting on production of landlord's consent before any permission or licence is issued under section 390 or 394 of the Act is not envisaged by the said provisions. Thus, the learned single Judge concluded that the circular re-inforces th statutory position. In such circumstances, reliance by Mr.Chinoy on this judgment is apposite and well placed."

(underline added)

8 This Court specifically observed that it is wholly irrelevant as to whether the applicant was the owner of the premises or was a lawful tenant thereof. This Court went further and observed that unless there is a declaration by the Court of Competent jurisdiction that the applicant was in unauthorized possession or was a trespasser, permission or licence cannot be refused. Paragraph 50 of the aforesaid decision clearly lays down that the enquiry contemplated by the second part of the said circular should be restricted to the applicant's physical possession. Thus, this Court held that if the Officer empowered to grant licence is satisfied that the applicant is in physical

possession of the premises in respect of which the licence is sought, he cannot insist upon the applicant proving that his possession is lawful. Only enquiry contemplated while considering the prayer for grant of licence under section 394 of the said Act of 1888 is whether the applicant is in physical possession and whether otherwise he is entitled to the licence.

9 In paragraph 52 of the said decision in the case of Formac Engineering Limited and another (supra), this Court observed that the Municipal Authorities had no power to adjudicate on the issue of ownership or title in respect of the immoveable property, and therefore, merely because the owner or the landlord has raised an objection, the licence cannot be denied.

10 The documents which are required to be produced in terms of the second paragraph of the said Circular are only for limited purposes of showing the physical possession of the applicant. Incidentally, the applicant may produce documents showing his title. The emphasis is on proving the applicant's possession and nothing more. It is obvious that while deciding the application for grant or renewal of licence under section 394, the Municipal Officer cannot decide whether the possession of the applicant is lawful or otherwise. The grant of a licence under section 394 to carry on trade does not confer any title on the applicant.

11 Accordingly, we hold that both the communications dated 1st October 2015 and the notice dated 6th July 2015 are completely illegal and contrary to the Circular No.18 of 1978 relied upon by the first respondent-Corporation. The first respondent-Corporation has accepted that the petitioner is in physical possession of the premises in respect of which the licence was earlier granted. Therefore, in the facts of the case, it will not be necessary for the petitioner to produce documentary evidence of his physical possession.

12 Hence, the petition must succeed. Hence, we pass the following order:

- (I) Impugned show cause notice dated 16th July 2015 and the communication dated 1st October 2015 are hereby quashed and set aside;
- (II) We direct the first respondent-Corporation to consider the prayer made by the petitioner for renewal of the licence under section 394 of the said Act of 1888 in the light of what is held in this Judgment;
- (III) Appropriate decision shall be taken on the said application within a period of four weeks from the date on which an authenticated copy of this Judgment and order is produced by the petitioner;
- (IV) We reiterate that the application for renewal of licence cannot be rejected on the ground that the Leave and Licence Agreement in respect of the premises in question has expired

on 8th April 2015;

(V) We make it clear that in the facts of the case, it is not necessary for the petitioner to produce documentary evidence to show his possession;

(VI) With the passage of time, the challenge to the communication dated 24th July 2015 (Exh.H to the petition) does not survive;

(VII) Rule is partly made absolute on above terms.

(G.S.PATEL,J.)

(A.S.OKA,J.)