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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION No. 14 OF 2016

(Writ Petition No. 121 of 2005 is converted into PIL)

Mumbai Mahanagar Vyapari Seva Parishad ... Petitioners

Vs.

Commissioner

Municipal Corporation of Gr. Mumbai & Ors... Respondents

Ms. Sumedha Rao, for the Petitioners.

Mr. M. A. Sayyed, AGP for the Respondent – State.

Ms. Shobha Ajitkumar, for the Respondent – BMC.

CORAM : V. M. KANADE, &
B. P. COLABAWALLA, JJ.

DATE : MARCH 7, 2016

PC.

1. The reliefs claimed by the Petitioners are in the nature of Public Interest Litigation (for short “PIL”). However, the petition has been registered as writ petition, viz. Writ Petition No. 121 of 2005. The Petitioners are directed to amend the cause title of the petition and convert it into a “Public Interest Litigation”. Amendment to be carried out for within one week. Office is directed to give a fresh PIL number.

2. By this petition / PIL, which is filed under Article 226 of the Constitution of India, Petitioners are seeking following reliefs:

- “(a) The Hon'ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus directing Respondent No. 1 to issue “stop work” notice to Respondent No. 6 for construction of building known as “Agora Plaza”;
- (b) The Hon'ble Court be pleased to issue a writ of mandamus or any other writ, order or direction in the nature of mandamus to respondent Nos. 2 to 4 directing them to cancel the licence granted to Respondent No. 5 for the trade of eating house called “MacDonald” in building known as “Agora Plaza”.
- (c) Pending the hearing and final disposal of the writ petition, the Hon'ble Court be pleased to stay the licence issued, if any, by Respondent No. 3 to Respondent No. 5 for conducting eating house known as “MacDonald” in building known as “Agora Plaza”;
- (d) Pending the hearing and final disposal of the writ petition, the Hon'ble Court be pleased to restrain Respondent No. 5 from carrying on the trade of

eating house known as “MacDonald” in building known as “Agora Plaza”;

- (e) For costs of this Petition;
- (f) For any other reliefs in interest of justice.”

3. Petitioner is Mumbai Mahanagar Vyapari Seva Parishad, which is a registered association under the Maharashtra Co-operative Societies Act, 1960. Petitioners' members are thirty six traders' association each having a membership of average fifty retailers. The grievance of the Petitioners is that Respondent No. 5 – Hardcastle Restaurants Pvt. Ltd. is conducting an eating house in the name and style of McDonald in the building constructed by Respondent No. 6.

4. According to the Petitioners, Respondent No. 5 has opened a restaurant in a building known as “Agora Plaza”. According to the Petitioners, construction of the building is not over, and therefore, according to them, no regular water connection can be sanctioned. Therefore, Respondent No. 5 is not entitled to carry on business of eating house in the said building, since according to the Petitioners, occupation certificate has not been granted to Respondent No. 5.

5. An affidavit in reply has been filed on behalf of the Respondent-Corporation dated 4th February, 2004. In the said affidavit, it is stated that occupation permission for the complete ground floor for the restaurant of Building No. 1 was issued on 21.1.2004 by the E.E.B.P. (W.S.) 'R' Ward. It is also stated that notice under under Section 353A of the MMC Act was issued and served on Respondent No. 5 on 12.1.2004. The affidavit also states that contention of the Petitioners that the stilt portion is converted into shopping without any parking space is not correct. Further affidavit has been filed by the Medical Health Officer R/C Ward of the municipal corporation. He has stated that the Corporation's Health Department also has issued notice to Respondent No. 5 asking them to discontinue the trade which is being conducted without obtaining licence under Section 394 of the M. M. C. Act. He has also stated that Respondent Corporation has also launched the prosecution against Respondent No. 5 for carrying out activities without licence under S. 394 of M. M. C. Act and the same is pending.

6. In our view, in view of the affidavit in reply filed by the Respondent-Corporation, it is clear that they have taken steps for

prosecuting Respondent No. 5, and the said prosecution is pending. In our view, the petition has itself worked out, and it has become infructuous on account of the affidavits in reply filed by the Respondent-Corporation. Learned counsel appearing on behalf the Petitioners has urged that this Court should ask the Corporation to inform this Court what is the stage of prosecution. In our view, it is not possible for this Court to monitor every prosecution launched by the Corporation, and that is not the function of this Court while exercising the jurisdiction under Article 226 of the Constitution of India. This petition / PIL was filed in the year 2004, more than 11 years have passed. If again further directions are given by this Court, matter may not see light of the day and will remain pending for a couple of years. We are, therefore, of the view that no useful purpose would be served in monitoring the prosecution, which is initiated by the Corporation against Respondent No. 5. Writ petition / PIL is, therefore, disposed of in the aforesaid terms.

Sd/-

[B. P. COLABAWALLA, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemth