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

WRIT PETITION NO.1411 OF 2015

M/s. Hemchand & Company ... Petitioner

Versus

Mumbai Municipal Corporation and Ors. ... Respondents

Mr. M.M. Vashi, Senior Advocate and Mr. Makarand Kale i/by M.P. Vashi Associates for the Petitioner.

Mrs. Shobha Ajitkumar for the Respondent Nos.1 and 2.

Ms. Shilpa Kapil for the Respondent No.3.

**CORAM : A.S. OKA &
C.V. BHADANG, JJ.**

DATE : 1st FEBRUARY, 2016

ORAL JUDGMENT (A.S. Oka, J.)

1. The parties were put to notice that the Petition shall be disposed of finally at the stage of admission. Accordingly, the parties have been heard on the last date.

2. The Petitioner claims to be a registered Partnership Firm. It claims to be a lessee of Airport Authority of India (the third Respondent) of certain plots of land. On the basis of a no objection certificate granted by the third Respondent, Eating House License was granted to the Petitioner by the first Respondent – Municipal Corporation of Greater Mumbai. As the Petitioner was desirous of

having two more Eating House Licenses, an application was made by the Petitioner to the first Respondent – Municipal Corporation. The Petitioner produced various documents which were forwarded by the first Respondent to the third Respondent – Airport Authority of India for authentication. The third Respondent by a letter dated 30th March, 2009, informed the Medical Officer of the Health of the first Respondent – Municipal Corporation that there was a case pending in the City Civil Court. However, it was clarified that the documents submitted by the Petitioner have been issued by the Airport Authority of India. By letter dated 3rd March, 2015, the third Respondent informed the Medical Officer of Health of the first Respondent that the order of eviction has been passed against the Petitioner in respect of the premises for which license was sought and thereafter, the matter was pending in the City Civil Court. By a letter dated 16th March, 2015, the third Respondent informed the Medical Officer of Health of the first Respondent that the Petitioner was an unauthorised occupant of the land held by the Airport Authority of India and there was a huge outstanding amount payable by the Petitioner. Letters dated 30th April, 2015 were issued by the Medical Officer of the Health of K/West ward of the first Respondent to the Petitioner informing that in view of the letter received from the third Respondent, the applications for grant of licence cannot be considered.

3. The learned Senior Counsel appearing for the Petitioner produced on record order dated 15th May, 2015 passed by the learned Judge of the City Civil Court by which an order of eviction dated 9th June, 2014 passed at the instance of the Airport Authority of India has been set aside. He relied upon the decision of the Division Bench of this Court in the case of Alliance Restaurant and Bar Private Limited Vs. Municipal Corporation of Greater Bombay and others in Writ Petition No.2207 of 2015 decided on 23rd December, 2015. He would urge that so long as the Petitioner is in possession, the first Respondent cannot deny license to the Petitioner only on the basis of the objection raised by the Airport Authority of India. The learned counsel appearing for the Airport Authority of India (third Respondent) pointed out that apart from the fact that the proceedings against the order dated 5th May, 2015 are pending, in the same Judgment and Order there is a finding recorded that the Petitioner is a trespasser on the land held by the Airport Authority of India. She submitted that in view of what is observed by this Court in the case of Alliance Restaurant and Bar, as there is already a finding of the Competent Court that the Petitioner is in unauthorised possession and is a trespasser, without no objection of the Airport Authority of India, the Petitioner is not entitled to license from the first Respondent. The learned Senior Counsel appearing for the first Respondent – Municipal Corporation contended that in view of

the failure of the Airport Authority of India to issue no objection certificate, the Municipal Corporation was justified in refusing license.

4. We have carefully considered the submissions. As far the case of Alliance Restaurant and Bar is concerned, this Court was dealing with the issue of license under Section 394 of the Mumbai Municipal Corporation Act, 1888. This Court quoted with approval of 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. Paragraphs 8 to 10 of the said decision in the case of Alliance Restaurant and Bar read thus :-

“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

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

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.”

5. In the present case, the proceedings for eviction were initiated by the Airport Authority of India against the Petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short “the said Act of 1971”). The order of eviction was passed by

the Estate Officer of the Airport Authority of India on 9th June, 2014. The said order was subjected to a challenge by the Petitioner by filing a Miscellaneous Appeal No.17 of 2014 before the City Civil Court. By Judgment and Order dated 5th May, 2015 not only that the order of eviction was set aside but even the show cause notice on the basis of which the impugned order was passed was set aside on the ground that the second Respondent in the Appeal who purportedly acted as the Estate Officer had no jurisdiction to issue show cause notice and to pass the impugned order of eviction.

6. The order dated 5th May, 2015 shows that there are certain observations made therein on the issue regarding the rights claimed by the Petitioner. However, the order of eviction passed by the officer purportedly acting as the Estate Officer of the Airport Authority of India has been set aside. Therefore, as of today, there is no subsisting order of eviction against the Petitioner. The show cause notice and the order of eviction have been set aside by holding the same to be illegal.

7. So long as the Petitioner is in possession, only on the ground of the objection raised by the Airport Authority of India, the Petitioner cannot be denied license. Even if licenses are granted to the Petitioner by the first Respondent as prayed by the Petitioner, the same

will not create any right in favour of the Petitioner in respect of the structure as well as the land below the structure. Notwithstanding the grant of licenses, the Airport Authority of India can always evict the Petitioner in accordance with law. On eviction of the Petitioner in accordance with law, the licences will come to an end. Therefore, the impugned communications dated 30th April, 2015 issued by the first Respondent at Exhibits F-1 and F-2 deserve to be set aside.

8. Accordingly, we pass the following order :-

ORDER

- (i) The impugned communications dated 30th April, 2015 (Exhibit 'F-1' and 'F-2') are hereby set aside;
- (ii) The applications made by the Petitioner for grant of Eating House License shall be considered and decided by the appropriate officer of the first Respondent – Municipal Corporation without being influenced by the objections raised by the Airport Authority of India to the grant of licenses;
- (iii) If the Petitioner is otherwise entitled to receive licenses, the first Respondent will have to grant license to the Petitioner even if the third Respondent has declined to grant no objection certificate;
- (iv) Appropriate decision shall be taken by the first

Respondent on the applications made by the Petitioner for grant of Eating House License as expeditiously as possible and in any event within a period of two months from today;

- (v) We make it clear that notwithstanding this order, it will be always open for the Airport Authority of India to evict the Petitioner in accordance with law. Even if the licenses as prayed for are granted, it will not confer any title on the Petitioner in respect of the premises;
- (vi) The Petition is allowed on above terms;
- (vii) All concerned to act upon an authenticated copy of this order.

(C.V. BHADANG, J)

(A.S. OKA, J)