

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 209 OF 2017
WITH
CIVIL APPLICATION NO. 283 OF 2017
AND
CIVIL APPLICATION NO. 270 OF 2017
IN
APPEAL FROM ORDER ST NO. 8611 OF 2017

The Municipal Corporation of Greater Mumbai, Assistant Municipal Commissioner H/West Ward	...Appellant
<i>Versus</i>	
Swaran Nadhan Salaria & Anr	...Respondents

Mr F Reis, Senior Advocate, with Mrs Madhuri More, for the
Appellant-MCGM.

Mr VA Thorat, Senior Advocate, with Vaibhav Sugdare, JK Shah
& Milan Desai, i/b TR Patel, for Respondent No. 1.

CORAM: G.S. PATEL, J
DATED: 4th July 2017

PC:-

1. Parties are agreed that the Appeal can be disposed of without reasons. The following directions will dispose of the Appeals (the contempt petition having been already disposed of earlier), and Mr

Thorat for the Respondents agrees, the Suits in the City Civil Court.

2. Mr Reis on behalf of the MCGM on instructions agrees that the order dated 3rd March 2017 directing the cancellation of the Respondents' health licence stands withdrawn. This is in view of the additional grounds that the MCGM believes are available to it. The result is that the Respondents' health licence stands revalidated. The MCGM is not required to pass a formal order of revalidation or to issue a revalidated or fresh license. This order will suffice. This is without prejudice to the MCGM's right to once again initiate action but strictly in accordance with law in regard to a cancellation, suspension or other permissible action in regard to the Respondents' health license. The fact of withdrawal of the previous order of 3rd March 2017 is not to prejudice the MCGM's future actions. The MCGM will be entitled to issue a notice on all available grounds. Before passing any order, the Respondents will be heard.

3. The notice dated 23rd March 2006 and the order dated 19th December 2008 are, in my view, clearly in respect of a structure on the terrace of the premises being currently used by the Respondents. The Respondents have removed the structure on the terrace. The notice and the order no longer survive. It is nonetheless open to the MCGM to issue an appropriate notice in respect of the whole or any part of the structure currently occupied and used by the Respondents on all grounds that are available to the MCGM and to proceed strictly in accordance with law, which includes giving the Respondents a hearing before passing any final orders.

4. The Respondents are not to make any further alterations, additions or carry out any construction work of any nature whatsoever without express written permission of the MCGM. In particular, there will be no expansion in any direction, vertical or horizontal, of either their restaurant or kitchen facilities. The Respondents specifically also agree and undertake that they will not carry out any vertical extension of any nature whatsoever. There will be no construction or erection of any kind, permanent or temporary on the terrace of the structure. At present, the structure is a ground floor structure with a flat terrace. There is to be no vertical extension of any kind. The height of the structure is currently 8.4 mtrs and it will not be increased. The length of the structure is 34 mtrs. It is not to be increased either. Thus there will be no vertical or horizontal extension. No open space is to be covered for the use of or as an extension to the restaurant.

5. It is open to the MCGM to specifically take action for compliance with safety and fire safety norms and requirements including the areas required to be kept open for passage of fire tenders and other fire fighting vehicles.

6. It is agreed that the Respondents will have ten days' time to reply to any notice, but the Respondents will not seek adjournments once notices are issued.

7. If an order is passed that is adverse to the Respondents in respect of either the health license or the construction, that order will not be implemented for a period of seven days.

8. BCC Suit No. 809 of 2017 and BCC Suit No. 29 of 2017 may also be disposed of in terms of this order. Both Suits are withdrawn to this Court forthwith and are disposed of in these terms. The Notices of Motion in those Suits do not survive and are also disposed of. Parties will appear before the Trial Court on 14th July 2017 with an authenticated copy of this order. The Trial Court will pass a formal order disposing of both Suits and all Notices of Motion. Those orders of disposal will be counted towards the Trial Court's disposal.

9. The Appeal from Order No. 209 of 2017 and Appeal from Order St No. 8611 of 2017 are both disposed of in these terms. There will be no order as to costs. The Contempt Petition is already disposed of as shown in the CMIS. By way of abundant caution, and should a further order be required, it is clarified that it stands disposed of.

10. The Civil Applications do not survive and are disposed of as infructuous.

(G. S. PATEL, J.)