

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7589 OF 2017

Mr. Mohanshyam Omprakash Mangla ... Petitioner.

Versus

The Thane Municipal Corporation
and others ... Respondents.

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Mr. R.D. Soni a/w Mr. Sanjay Gawade and Mr. Ajay Sharma i/b.
Shree & Co. for the Petitioner.

Mr. R.S. Apte, Senior Advocate i/b. Mr. Ajit Ram Pitale for
Respondent Nos. 1 to 4.

Mr. A.P. Vanarase, AGP for Respondent No.5-State.

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***CORAM : Smt. Vasanti A Naik &
Riyaz I. Chagla, JJ.***

DATE : 7th November, 2017.

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. The writ petition is heard finally with the consent of the learned counsel for the parties.

By this writ petition the petitioner challenges the action on the part of the respondent Nos.1 to 4 of sealing his hotel "Mumbai Palace Restaurant and Bar" on 03.12.2016.

Inter alia, it is submitted on behalf of the petitioner that the impugned order is liable to be set aside as no opportunity whatsoever was granted to the petitioner before the petitioners

restaurant and bar was sealed on 03.12.2016. It is stated that the action of sealing or closing the restaurant and bar could have been undertaken by the corporation only after granting an opportunity to the petitioner. It is stated that for the first time, it is stated in the affidavit in reply filed on behalf of the respondents that since the fire safety norms were not adhered to by the petitioner while running restaurant and certain other irregularities were also committed while running the restaurant and bar, the action of sealing the restaurant was undertaken.

Mr. Apte, the learned senior counsel appearing for the respondent Nos. 1 to 4 states that the petitioner was served with a notice in the year 2014 for the inspection of the restaurant with a view to see whether the fire safety norms were adhered to. It is stated that after inspecting the restaurant and the premises a report was prepared by the concerned authority. It is stated that it is apparent from the report that the petitioner had violated the fire safety norms. It is stated that certain other illegalities were also committed by the petitioner while running the restaurant and bar. It is further stated that a notice for compliance of the safety norms was served on the petitioner but the petitioner did not do the needful. It is however fairly stated that before sealing the restaurant and bar of the petitioner, no notice was served on the petitioner, asking him to show cause as to why the restaurant and bar should not be sealed.

It is apparent from the submissions made on behalf of the parties that the respondent Nos. 1 to 4 had not afforded any opportunity whatsoever to the petitioner before taking the action

of sealing his restaurant on 03.12.2016. Before taking the drastic action of sealing the restaurant and bar that is operated by the petitioner on the basis of the license issued by the respondent authorities, it was necessary for the respondent Nos. 1 to 4 to grant an opportunity to the petitioner to show cause. Since the impugned action is violative of the principles of natural justice, the same needs to be declared as illegal.

Hence, for the reasons aforesaid, the writ petition is partly allowed. It is hereby declared that the action of the respondent Nos.1 to 4 of sealing the restaurant and bar of the petitioner without affording the opportunity to him, is bad in law. The respondent Nos. 1 to 4 are directed to remove the seal on the restaurant and bar of the petitioner within two days. It would be open for the Corporation to take appropriate action against the petitioner, as is permissible in law.

Rule is made absolute in the aforesaid terms with no order as to costs.

(Riyaz I. Chagla J)

(Smt. Vasanti A Naik, J)