

Gaylord Restaurant, Mumbai ... Petitioner
Vs.

Ms. Sharila D'Souza, i/by M/s. Flavia Legal, for the Petitioner.

**CORAM : NARESH H. PATIL &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

P.C. :

1. Heard Ms. D'Souza, learned counsel for the Petitioner, and Ms. Mastakar, learned counsel for the Respondent-Municipal Corporation.

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order dated 9th November 2016, the learned Judge of the City Civil Court, Mumbai, rejected the said Notice of Motion No.2129 of 2016.

3. Being aggrieved by the said order, the Petitioner preferred Appeal from Order No.1030 of 2016, along with Civil Application No.1303 of 2016, before this Court. The learned Single Judge of this Court, [Coram : G.S. Kulkarni, J.], by an order dated 14th December 2016, disposed of the said Appeal, along with the Civil Application therein. Paragraph No.5 of the said order reads as under :-

“5. Needless to observe that, if the regularization proposal, as submitted by the Appellant, does not find favour with the Respondent-Municipal Corporation, the Municipal Corporation shall not take any coercive action for a further period of two weeks from the date of communication of the order.”

4. Accordingly, the Petitioner preferred an application for regularization of (i) enclosure of front side compound wall with fencing; (ii) Cake Shop in compulsory open space, admeasuring 4.60 x 5.20 m. x 3 m (ht), with glass partition of Hotel Gaylord, situated at Ground Floor of Mayfair Building, V.N. Road, Churchgate, Mumbai-400 020.

5. By an order dated 7th March 2017, passed by the Executive Engineer (Building Proposal) City-II of the Respondent-Municipal

Corporation, the application preferred by the Petitioner for regularization came to be rejected on the ground that, the subject structure was of a permanent nature. The Executive Engineer, (Building Proposal) City – II of the Respondent-Municipal Corporation, in his aforesaid order dated 7th March 2017, noticed twenty-one deficiencies in the proposal submitted by the Petitioner.

6. The learned counsel appearing for the Petitioner submits that, in the year 2001, the Collector, by an order dated 28th December 2001, had permitted the Petitioner to use the subject area and to maintain the present structure of the metallic awning / G.I. Shed as also to use the area underneath for running a Bakery Shop and also for the service of customers. The learned counsel further submits that, the subject structure was there in existence since the datum line. Due to passage of time, certain changes were brought in the suit structure. The structure is not of permanent nature.

7. In this respect, learned counsel for the Petitioner has placed reliance on the communication made in the year 2001, by the Assistant Municipal Commissioner, “A” Ward, of the Respondent-Municipal Corporation, which is marked as 'Annexure-N' to the Petition, which reads as under :-

“With reference to above, this is to inform you that M/s. Gaylord Restt. has covered the open space as temporary nature with G.I. Sheet and the below portion using for serving the foods and some portion using for Bakery Shop.

On the basis of documents submitted by party on dt. 8-10-2001, it is confirmed that, an Awning is existing since 1961. As per D.C. Rules and Regulations of 1991, the permanent covering of open space is not permissible. However, in this matter, the said Awning / G.I. Sheet covering is a temporary nature and the same is prior to 1-4-1962. Hence, the same is tolerated and this office have no objection.

Also, as per present policy of Municipal Corporation of Greater Mumbai, the front open space abutting to the Licensed Restt. can be covered as a temporary nature, subject to terms and conditions.

In respect of the other Restt. premises mentioned in the above-referred letter, they will be scrutinized case by case and will be informed accordingly.”

8. The learned counsel for the Petitioner submits that, while passing order dated 28th March 2016, the Assistant Engineer (B & F), 'A' Ward, Designated Officer, of the Respondent-Municipal Corporation, had permitted covering of open space in front of Hotel Geylord. The said Authority had raised objection to the unauthorized enclosure of

front side compound wall with fencing and unauthorized Cake Shop in Compulsory Open Space. The operative portion of the order dated 28th March 2016, passed by the Assistant Engineer (B & F), 'A' Ward, Designated Officer, of the Respondent-Municipal Corporation, which is marked as 'Exhibit-B' to the Petition, reads as under :-

“The documents submitted by you proves the existence of G.I. Shed adm. 18.40 m x 5.20 m x 3 m(ht.) prior to datum line i.e. 01.04.1962. As such, action shall not be perused further for point No.01 of the notice under reference i.e. covering of open space in front of Hotel Gaylord, situated at Gr. Floor, Mayfair Bldg., V.N. Road, Churchgate, Mum-20 between building line and compound wall with Galvanised Iron Sheet roofing adm. 18.40 m x 5.20 m x 3 m(ht.). However, as you have failed to submit any document to prove that the work of (2) unauthorized enclosure of front side compound wall with fencing; (3) unauthorized cake shop in compulsory open space adm. 4.60 m x 5.20 m x 3.00 m(ht) with glass partition without permission from MCGM competent authority i.e. EEBP(City). I hereby declare it as unauthorized.

You are hereby directed to remove the said unauthorized work within 07 (Seven) days from the receipt of this order, failing which the said unauthorized work will be demolished by this office at your entire risk, cost & consequences without any further intimation, which please note.

You shall further note that under section 475(A) of Mumbai Municipal Corporation Act, you are liable to be punished with an imprisonment for a term, which shall not be less than one month & same may be extended to one year & with a fine, which shall not be less than Rs.5,000/- & which may be extended to Rs.25,000/- and in case of continuing offence a further daily fine, which may extended to Rs.500/- for the above offence.”

9. The learned counsel appearing for the Petitioner, therefore, submits, on instructions, that the Cake Shop structure will be removed by the Petitioner, but the G.I. Sheet structure, which was erected much earlier, and the adjoining portion, where some sitting arrangement is made, be maintained.

10. The learned counsel appearing for the Respondent-Municipal Corporation submits that, while considering the regularization application of the Petitioner, the Respondent-Municipal Corporation had taken into account the entire nature of the subject structure. Petitioner had altered the suit structure. There is no place for movement of Fire Brigade Vehicle in case of any exigency. The subject structure is between the building line and the compound wall. It would be dangerous in case of any untoward incident taking place, for the service providers to move in and around the building. It is further

submitted by learned counsel for the Respondent-Municipal Corporation that, the G.I. Sheet erected in the open space in front of Hotel Gaylord amounts to permanent structure.

11. The counsel submits that, if the Petitioner is desirous to apply for an awning, then, after the present subject structure is demolished, the Petitioner may apply for awning. In case, the Petitioner applies for awning, such an application would be considered on its own merits.

12. We have perused the record and the orders passed by the City Civil Court and learned Single Judge of this Court. We have also perused the impugned order dated 7th March 2017 passed by the Executive Engineer (Building Proposal) City-II of the Respondent-Municipal Corporation and the entire material placed on record. In the given facts of the case, we would not substitute our view to the view of the experts, who had categorized the subject structure *'not to be of temporary nature'*. We have seen the photographs placed before us by the contesting parties. Though the learned counsel appearing for the Petitioner, on instructions, submitted that the Cake Shop area of the subject structure would be removed, still the issue remains as regards G.I. Sheets, which have been used as 'roof covering' of open space in front of Hotel Gaylord between building line and the compound wall.

The learned counsel for the Respondent-Municipal Corporation further submits that, the adjoining area, where the customers are allowed to sit, has to be removed, as the same part of permanent structure erected by the Petitioner, which would obstruct use of the building in case of exigency.

13. There is substance in the submission of the learned counsel appearing for the Respondent-Municipal Corporation. In case of any untoward incident, there should be sufficient space in and around the building for the service providers to move in.

14. The concerned Authority, being the Executive Engineer, (Building Proposal) City – II of the Respondent-Municipal Corporation, in his order dated 7th March 2017, had raised twenty-one issues on the proposal submitted by the Petitioner for regularization of the subject structure. We do not find any error in the view adopted by the Respondent-Municipal Corporation.

15. In the facts of the case, we are not inclined to interfere in the impugned order dated 7th March 2017 passed by the Executive Engineer (Building Proposal) City-II of the Respondent-Municipal Corporation.

16. However, in the event, the Petitioner applies for a permission for 'awning', after removal of the subject structures, the same would be considered by the Respondent-Municipal Corporation on its own merits and a decision shall be taken within a period of four weeks from the date of receipt of such an application.

17. In view of the above, the Writ Petition is rejected.

18. At this stage, learned counsel appearing for the Petitioner seeks two weeks time to remove the subject structures. This request is opposed by the learned counsel appearing for the Respondent-Municipal Corporation. In the facts of the case, we grant two weeks time to the Petitioner to remove the subject structures.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [NARESH H. PATIL, J.]