

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

**WRIT PETITION NO. 870 OF 2016**

**Abdul Qayyum Qureshi**

**... Petitioner**

**V/s.**

**Mumbai Municipal Corporation & Ors.**

**... Respondents**

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Mr. Pradeep Thorat for the Petitioner.

Ms. Geeta Jogalekar for the Respondent/BMC.

**CORAM : A.S.OKA &  
SMT. VIBHA KANKANWADI, JJ.**

**DATE ON WHICH THE JUDGMENT IS RESERVED:29/06/2017**

**DATE ON WHICH THE JUDGMENT IS PRONOUNCED: 13/07/2017**

**:JUDGMENT: (PER SMT. VIBHA KANKANWADI,J)**

. The Petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India. The Petitioner is seeking necessary direction against the Respondents to renew the Shops and Establishment Certificate and the Trade Licence issued under Section 394 of Mumbai Municipal Corporation Act, 1988 (for short “the said Act”) in respect of the business carried out by him in the name of “Lubna General Stores” situated at 138, Church Road, Kalina, Santacruz (E), Mumbai. The Petitioner has also challenged the communication dated 20<sup>th</sup> November 2015 issued by the second Respondent rejecting the application given by the Petitioner for renewal of Shops and Establishment Certificate.

2 The factual matrix leading to the filing petition will have to be considered.

The Petitioner is having a shop admeasuring 8' X 6' with hight of 9' feet made up of B.M. Walls and C1 sheet roof with rolling shutter was in existence since 1970. The Petitioner was carrying out business of selling chocolates and sweets in the said premises under the name and style Lubna General Stores. Initially the said business was carried out by Sayed Ibrahim Sayed Jaffer who expired on 11<sup>th</sup> June 1989. Thereafter, the said business was carried out by his wife Smt. Khatijabee Sayed Ibrahim till 1996. The Petitioner thereafter became a partner in the business through the Deed of Partnership dated 17<sup>th</sup> September 1996. However, subsequently Smt. Khatija Sayed Ibrahim retired from the partnership and thereby, the Petitioner became the sole proprietor of the said business and continued the same. He was thereafter, carrying out restaurant business in the same name. The Respondent had issued a Trade Licence bearing No. 761400666 under Section 394 of the said Act. The Petitioner had also obtained the Registration Certificate of Establishment under the Bombay Shops and Establishment Act, 1948.

3 The Assistant Municipal Commissioner, H/E ward of the first Respondent issued a Notice dated 26<sup>th</sup> November 2001 under Section 314 of the said Act in respect of the Shop Premises held by the Petitioner. The Petitioner had given reply to the same. The said action on the part of the Respondent was challenged by the Petitioner by filing L.C. Suit No. 2809 of 2009 before the City Civil Court. Further, during the pendency of the said suit, the first Respondent demolished the shop premises on 27<sup>th</sup> March 2010. The Petitioner amended his plaint and sought a declaration that the demolition is illegal and also sought necessary direction against the first Respondent to reconstruct the said shop premises. The said suit came to be decreed. It was also directed that the first Respondent should reconstruct the shop premises within two months, failing which a liberty was

given to the Petitioner to reconstruct the shop premises. The Petitioner has reconstructed the shop premises after expiry of two months. He, thereafter, made an application to the first Respondent for issuance of Shops and Establishment Certificate on 20<sup>th</sup> May, 2015. He has paid necessary charges for the same. He had also filed an application on 04<sup>th</sup> November, 2015 to renew the Shops and Establishment Certificate bearing No. HE-I-6035. The second Respondent issued a letter dated 20<sup>th</sup> November 2015 stating that the application for renewal of Shops and Establishment Certificate cannot be accepted as it was earlier cancelled on 09<sup>th</sup> April 2010. The Petitioner has contended that the licence issued under Section 394 of the said Act was renewed from time to time and was valid till 31<sup>st</sup> December 2015. Before expiry of Trade Licence, he had requested the third Respondent to renew the licence. However, there was no response. Again a letter has been given by the Petitioner making the same request on 11<sup>th</sup> January 2016. The Petitioner has constructed the shop premises in pursuance to the Judgment and Decree passed in the said suit. The necessary licences have not been issued by the Respondents. Hence, the present petition has been filed.

4 We have heard the learned Counsel appearing for the Petitioner and the learned Counsel appearing for the first to third Respondents. It has been submitted on behalf of the Petitioner that when the shop premises have been reconstructed by the Petitioner in pursuance to the decree that was passed in his favour and prior to that the licence issued by the Respondent was in force till 31<sup>st</sup> December 2015, merely, because the licence was cancelled on 09<sup>th</sup> April 2010, there cannot be a refusal for the renewal. He pointed out that the shop premises was demolished on 26<sup>th</sup> March 2010 and 27<sup>th</sup> March 2010 and the said act of demolition on the part of the Respondents has been held to be illegal by a Competent Court. He has also pointed out that the Respondents have filed an

application for condonation of delay in order to challenge the said decree. However, no stay has been granted by this Court. Under such circumstances, the cancellation of the licence on 09<sup>th</sup> April 2010 cannot be said to be a legal act.

5 It has been argued on behalf of the Respondents that the licence was cancelled on 09<sup>th</sup> April, 2010 as the premises was not in existence on that date. The decree is under challenge. Hence, it cannot be renewed.

6 The facts of the case are much clear. It is not in dispute that the trade licence was issued to the Petitioner and it has been renewed from time-to-time. The period of validity of licence was from 01<sup>st</sup> January 2011 to 31<sup>st</sup> December 2015. The Respondent had invoked the provision of Section 314 of the said Act in respect of the shop premises which was later on challenged in the said suit by the Petitioner. During the pendency of the suit, the structure was demolished on 26<sup>th</sup> March 2010 and 27<sup>th</sup> March 2010. Thereafter, it appears that the licence was cancelled on 09<sup>th</sup> April, 2010. The Respondents have not pointed out any other reason for the cancellation of the licence. The said action under Section 314 of the said Act undertaken by the Respondents has been held to be illegal by a Competent Court. Though, the Respondents intend to challenge the said decree, as on today, the decree is in force. In pursuance to the said decree, when Respondents failed to reconstruct the shop premises, the Petitioner has reconstructed the structure. Therefore, the Respondents ought to have considered the Petitioner's application for renewal of licences. Definitely, such renewal would be subject to the outcome of the Appeal, if entertained. Under these circumstances, we do not find any reason to deprive the petitioner an opportunity of doing business in the shop premises. Hence, we proceed to pass following order:-

**ORDER**

- i) The Writ Petition is allowed;
- ii) The impugned communication dated 20<sup>th</sup> November 2015, is hereby set aside;
- iii) The third Respondent shall consider the application for the renewal of Trade Licence bearing No. 761400666 on the basis of the application dated 11<sup>th</sup> January 2016 filed by the Petitioner in the light of the observations made in this judgment;
- iii) The second Respondent shall consider the renewal of Shops and Establishment Certificate bearing No. HE-I-6035 in respect of the shop premises on the basis of payment of charge made by the Petitioner on 20<sup>th</sup> May, 2015 in the light of the observations made in the judgment;
- iv) The second and third Respondents shall take decision on the applications made by the Petitioner within four weeks from the date on which this order is uploaded;
- v) The second and third Respondents shall communicate their decision to the Petitioner;
- vi) The renewal of the Trade Licence and the Shops and Establishment Certificate will be subject to the outcome of the Appeal preferred by the Municipal Corporation;
- vii) Interim order dated 06<sup>th</sup> April 2016 to continue for six weeks from the date on which this order is uploaded.
- viii) The Writ Petition is disposed of on above terms.

**(SMT. VIBHA KANKANWADI, J.)**

**(A.S.OKA, J.)**

