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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1916 OF 2016 WITH
CHAMBER SUMMONS 44 OF 2017

WP NO.1916 OF 2016

Tina Caterers Pvt. Ltd. & Anr.	...Petitioners
vs.	
Municipal Corporation of Greater Mumbai and others	...Respondents

CHAMBER SUMMONS NO.44 OF 2017

Goldie Sud.	.. Applicant
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In the matter of:-

M/s.Tina Caterers Pvt. Ltd & Anr.	.. Petitioners
Vs	
Municipal Corporation of Greater Mumbai & Ors.	.. Respondents

Mr.Dipesh Siroya for the Petitioners.
Ms Kejali Mastakar for the respondent Nos.1 and 2.
Mr.Ravi Gadagkar i/b Usha Gadagkar for respondent
No.4 and for the Applicant in Chamber Summons.

CORAM : A.S.OKA, &
SMT.VIBHA KANKANWADI,JJ.
DATE : JULY 13, 2017

P.C.:

1 Rule. The Advocate for the first and second Respondents and the Advocate on record for the fourth Respondent waive service. The third Respondent is a formal party. Taken up for final hearing.

2. Heard the learned counsel for the petitioners, the learned counsel for the first and second respondents and the learned counsel for the fourth respondent. We have also heard the applicant appearing in person in Chamber Summons No.44 of 2017.

3 The challenge in this petition under Article 226 of the Constitution of India is to the notice issued by the first respondent-Mumbai Municipal Corporation under section 354 of the Mumbai Municipal Corporation Act,1888 which is served on 24th September 2015. The notice proceeds on the footing that the building subject matter of the petition has been classified as 'C-1' and therefore, it needs to be immediately pulled down. The petitioners are relying upon the report of M/s.Barve Consultants which indicates that the building could be repaired. The report is valid up to 22nd August 2017.

4 In the light of the law laid down by this Court in the case of Mumbai Municipal Corporation vs. State of Maharashtra¹, the Mumbai Municipal Corporation ought to have referred the case to the Technical Advisory Committee (for short 'TAC') in view of the report relied upon by the petitioners. In fact, on the last date, the petition was adjourned to enable the Municipal Corporation to make a statement regarding making reference to the TAC.

1 2014 (6) Bombay Cases Reporter 860

5 The learned counsel for the Mumbai Municipal Corporation on instructions accepts that the report relied upon by the petitioners contains an opinion which can be termed as a conflicting opinion. The learned counsel for the four respondent on instructions states that the fourth respondent has no objection if the case is referred to TAC. The applicant in Chamber Summons No.44 of 2017 and the fourth respondent submitted that they may be heard by the TAC. We have perused the directions issued in the aforesaid decision in the case of Mumbai Municipal Corporation (supra) and in particular paragraph 9. The said judgment does not direct that the owners/occupants should be heard by the TAC. It is for the TAC to decide whether it needs assistance of the contesting parties.

6 We may note here that from the Chamber Summons No.44 of 2017 and the reply filed by the fourth respondent to the Chamber Summons, it appears that there is some dispute between the applicant and the fourth respondent about the title. The fourth respondent accepted that the present applicant is in possession of a part of the subject property but contended that he is in illegal possession. We make it clear that in this petition it is not necessary for this Court to go into the issue of title and the issue whether the possession of any of the occupants of the building is illegal. These issues will have to be decided in appropriate proceedings in accordance with law.

7 It is obvious that there is no option for the Mumbai Municipal Corporation but to refer the case to the TAC in the light of the binding directions issued in the petition filed by the Municipal Corporation itself. It follows that till the TAC submits the report, further action cannot be taken on the basis of the notice under section 354 of the said Act.

8 The learned counsel for the petitioners submits that the petitioners are carrying on business in the shops on the ground floor of the building in question. It is pointed out that the licence under the Shop and Establishment Act, 1948 has not been renewed by the first respondent-Corporation. The applicant in Chamber Summons submitted that even his trade licences are not being issued in view of the notice issued under Section 354 of the said Act.

9 If the petitioners and the other occupants want to carry on trade or business, they will have to put their customers or persons visiting their respective premises to notice that there is a grave risk involved in case they enter the respective premises as there is already a notice issued under section 354 of the Mumbai Municipal Corporation Act, 1888.

10 On application being made by the occupants of the building, it will be open for the Mumbai Municipal Corporation to consider the prayer for grant of trade licences or licences under the Shop

and Establishment Act,1948 subject to condition of the applicants giving an undertaking to the Mumbai Municipal Corporation to display boards at prominent places in their respective premises putting their customers to notice that it is dangerous to enter in the respective premises. Needless to add that the licences shall be granted or renewed provided the applicants are otherwise entitled to it.

11 We dispose of the petition by passing the following order:

(I) We direct the petitioners to file an undertaking in addition to the undertaking filed in terms of the order dated 6th June 2016 stating therein that the said undertaking already given will continue to operate and bind the petitioners till appropriate decision is taken by the Municipal Corporation on the basis of the report of TAC. If such undertaking is not filed within a period of two weeks from the date on which this order is uploaded, protection granted under this order will cease to apply. In addition, the Petitioners shall give an undertaking that in the event they are permitted to commence business in their premises, they will display boards in prominent places in their business premises or at the entrance of the business premises informing their customers/ visitors that they should enter the premises at their risk considering the fact that a notice under section 354 of the Mumbai Municipal Corporation Act,1888 has been issued;

(II) We direct the Municipal Corporation to refer the case to TAC. The case shall be referred to TAC even before a copy of this Judgment and order is uploaded on the website. The TAC shall scrupulously follow the directions issued by this Court in the case of Mumbai Municipal Corporation (supra) and in particular clause (d) of paragraph 9 of the said Judgment dated 23rd June 2014. The TAC shall submit a report to the Mumbai Municipal Corporation within a period of two months from today. It is for the TAC to decide whether it needs presence or the assistance of the occupants/owner of the building;

(III) After receiving the report of the TAC, the concerned competent authority of the Mumbai Municipal Corporation will decide whether the impugned notice under section 354 of the said Act can be implemented. If the Competent Authority decides to implement the notice, intimation in writing to that effect shall be served along with a copy of the TAC report not only to the parties to this petition but also to the applicant in Chamber Summons and all other occupants in the building;

(IV) Needless to add that till the date on which the Competent Authority or the Municipal Corporation takes appropriate decision, no further actions shall be taken on the basis of the impugned notice issued under section 354 of the said Act of 1888. If the Competent Authority decides to enforce the notice, no steps on the basis of the said notice shall be taken for a period of one month from the date on which the intimation of the said decision along with

a copy of the report of the TAC is served to the petitioners and the applicant in Chamber Summons;

(V) We make it clear that we have made no adjudication on the issue of present structural status of the building in question;

(VI) Writ petition is disposed of on above terms;

(VII) In view of disposal of the writ petition, Chamber Summons No.44 of 2017 does not survive and the same is also disposed of.

(VIBHA KANKANWADI,J.)

(A.S.OKA,J.)