

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

WRIT PETITION (L) NO.648 OF 2018

M/s. Mogul Hospitality

...Petitioner

vs

The Municipal Corporation of Greater Mumbai And Anr. ...Respondents

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Mr. Mayur Khandeparkar, i/b. Abhishek P. Deshmukh for the Petitioner.

Ms. Vaishali Chaudhari, a/w. Ms. Pooja Yadav, for Respondents –
MCGM.

Shri Parulekar, Additional Fire Officer, Shri Salunkhe, Medical Health
Officer, Shri Sawant, Fire Department Station In charge, present.

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CORAM : S.C. GUPTE, J.

DATED : 3 APRIL, 2018

P.C. :

. The petition impugns an order passed by Assistant Commissioner, H-Ward of Municipal Corporation of Greater Mumbai in respect of two shops. By the impugned order, the Assistant Commissioner directed the Petitioner to remove unauthorized construction in the compulsory open space and also to comply with the terms and conditions of the Health Department and stop using unauthorized enclosed area for serving food. The Assistant Commissioner also directed the Petitioner to make the premises fire compliant as per Fire NOC and Fire Compliance Certificate obtained from Fire Department. The order suspended the licence granted to the Petitioner for running a restaurant in the premises. It is the Petitioner's case that, after this order was passed, the Petitioner has now complied

with each and every requirement of the Fire Department. The Petitioner submits that the only issue, which now remains outstanding, is the purported unauthorized status of the enclosure in front of the restaurant. Learned Counsel submits that the Municipal Corporation of Greater Mumbai had ordered demolition of the alleged unauthorized portion and this order has since been stayed by this Court in an Appeal from Order. Learned Counsel submits that the alleged unauthorized status of the enclosure cannot be used to deny Fire NOC to the Petitioner.

2. Learned Counsel for the Municipal Corporation accepts that save and except the unauthorized status of the enclosure, all other objections of the Fire Department have been removed and the premises are otherwise fire compliant. Learned Counsel submits that Fire Department of the Corporation will submit a provisional fire NOC and, thereafter, issue a fire compliance certificate. Learned Counsel submits that the fire department shall, however, refer the matter for further action, if any, to the Health Department. These statements are made on instructions of Mr. P.R. Parulekar, Assistant Divisional Fire Officer. The statements are accepted.

3. Learned Counsel for the Petitioner states that the Petitioner shall apply to the Health Department of the Municipal Corporation for permission to use the enclosed area for serving of food. Learned Counsel submits that, in view of the stay order passed by this Court prohibiting removal of the alleged unauthorized enclosure, non-compliance with the order of removal of the enclosure cannot be cited as a reason for refusing the permission of the Health Department. The Health Department of the

Corporation may consider the application, if any, made by the Petitioner for permission to serve food in the enclosed area. The fact, however, that the Petitioner has not removed the alleged unauthorized enclosure in response to the order passed by the Corporation shall not be held against the Petitioner as and when his application is considered, so long as the stay granted by this Court in the Appeal from Order continues to operate. It is ordered accordingly.

4. Since this order practically redresses the Petitioner's grievances, the Petitioner does not press his petition. The petition is, accordingly, disposed of, as not pressed, after accepting the statements as above.

5. It is needless to add that, in view of the stay of the order of demolition passed by the Municipal Corporation in respect of the alleged unauthorized enclosure, the directions to remove unauthorized constructions shall not be enforced. Since the Petitioner's premises are now recognized as fire compliant, and the issuance of fire NOC and fire compliance certificate are matters of formality, the Petitioner will be entitled to commence its restaurant business in Shop Nos. 1, 2 and 3 save and except the enclosure in front of the restaurant. As far as the front enclosure is concerned, serving of food within this enclosure can be taken up only after the Health Department of the Corporation issues its permission, to be requested as noted above.

(S.C. GUPTE, J.)