

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

WRIT PETITION (LDG.) NO. 759 OF 2018

Laxmi Restaurant. ... Petitioner.
V/s.
Municipal Corporation of Greater Mumbai
and others. ... Respondents.

Mr.Abhijeet A. Joshi with Mr.Nishant Patil i/b. Dhananjay
Deshmukh for the petitioner.
Mr.H.C.Pimple for the respondent- MMC.

CORAM : A.S.OKA AND RIYAZ I. CHAGLA, JJ.

DATE : 8th March 2018.

P.C.:

Non on board. Taken up on board.

2. Heard the learned counsel for the parties. Perused Exhibit-I to the petition. The petitioner is seeking a writ of mandamus enjoining the Mumbai Municipal Corporation to collect the trade refuse generated by the petitioner. The petitioner is running a restaurant. The issue to be decided in this petition is whether the petitioner is a Bulk Generator of solid waste or not. For deciding the said issue, evidence will have to be adduced by the parties as disputed questions of fact will have to be decided. Therefore, more appropriate remedy is to file a civil suit.

3. The learned counsel appearing for the petitioner submits that some protection be granted to the petitioner as the Municipal Corporation will not collect the solid waste generated by the petitioner.

4. It is not possible for us to record even a *prima facie* finding that the petitioner is not a Bulk Generator. It is not for us to decide the said issue as we are not entertaining writ petition on merits for challenging the notice/order dated 27th February 2018. However, it does not mean that the petitioner can throw or discharge solid waste generated by it outside its premises and, especially on footway or public street.

5. As far as Municipal Corporation is concerned, assuming that the petitioner starts throwing waste on footway or road, it is for the Municipal Corporation to decide whether it wants to do what is threatened in the impugned communication. It is obvious that if what is threatened in the impugned communication is implemented by the Municipal Corporation, it will create a huge nuisance to the adjoining occupants or the public at large. Assuming that the petitioner has not discharged its obligation or has committed any illegality, the legal obligation of the Municipal Corporation under clause (c) of section 61 of the Mumbai Municipal Corporation Act, 1888 of removing and disposing of refuse and rubbish continues to exist.

6. Subject to what is observed above, we decline to entertain this petition. The petition is disposed of with liberty to the petitioner to file a civil suit. All contentions on merits are kept open.