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

WRIT PETITION NO. 2100 OF 2016

Smt. Israwati Devi R. Dubey

.. Petitioner

Vs.

Licensing Inspector and ors.

.. Respondents

Ms. K. P. Ravi I/by K. P. Ravi & Co. for petitioner.

Mr. Dushyant Kumar a/w Ms. Sheetal Metkari for MCGM.

Mr. Vijay Prakash Yadav for respondent no.4.

Pravin
Dasharath
Pandit

CORAM: NARESH H. PATIL, ACTING CJ &
G. S. KULKARNI, J.

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AUGUST 20, 2018.

P.C.

1. The petitioner challenges the communication dated 30/3/2016 addressed by the Senior Inspector (Shop and Establishment), H/East Division informing that the Registration Certificate No. HE-IV-179 issued in the name of the petitioner has been cancelled.

2. The petitioner's contention is that the petitioner's License for the year 2015-16 was granted under the Maharashtra Shops and Establishments Act, 1948. The petitioner is running a hotel under the said license. By communicated dated 30/3/2016 the respondent-Department informed that the the Shop and Establishment Registration Certificate has been given in the name of respondent no.4 and the Registration Certificate No. HE-IV-179 given in the name of petitioner has been cancelled.

3. The learned counsel appearing for the respondent nos.1, 2 and 3 submits that on Inspector's report, the respondents had decided to cancel license granted in the name of petitioner and accordingly the license was cancelled and granted in favour of respondent no.4. The learned counsel appearing for the respondent no.4 further places reliance on the sale deed dated 22/10/2010 executed between the respondent no.4 and the original owner – Sunil Sharma of the subject premises. The said document is not a registered sale deed but is merely a notarised one. It is the plea of the respondent no. 4 that since then he has been in possession of the subject premises and has been running the hotel. It is further submitted that in the year 2014-15 the license was renewed and granted in favour of respondent no.4.

4. The learned counsel appearing for the petitioner has referred to the proceedings of the Suit filed by the petitioner before the Bombay City Civil Court, Dindoshi, bearing Civil Suit No. 1504 of 2016 for injunction against the respondent no.4. It is submitted that the Civil Court has granted ad-interim reliefs against respondent no.4 by an order dated 8/6/2016.

5. The learned counsel appearing for respondent no.4 submits that respondent no.4 too has filed Civil Suit No. 3147 of 2016 for recovery of possession against the petitioner herein in the Bombay City Civil Court, Dindoshi. It is submitted that the application has been made for trying both the suits together.

6. We may refer to the view expressed by the Apex Court in the case of M/s. Raj Restaurant and anr. vs. Municipal Corporation of Delhi **[(1982) 3 SCC 338]**, where the Apex Court has held that the authority in either refusing to renew the license or cancelling or revoking the same, the minimum principle of natural justice or notice and opportunity to represent one's case is a must. Such a decision in violation of the minimum principle of natural justice would be void. The relevant observations, in para 5 of the said decision, read thus :-

“5. In such a situation before either refusing to renew the licence or cancelling or revoking the same, the minimum principle of natural justice or notice and opportunity to represent one's case is a must. It is not disputed that no such opportunity was given before taking the decision not to renew the licence though it is admitted that for the reasons herein-before set out the licence was not renewed. Such a decision in violation of the minimum principle of natural justice would be void.....”

It is clear that in the present case the Corporation has not issued any show-cause notice to the petitioner. The principles of natural justice have been violated in cancelling the petitioner's license. It is on this ground the petition needs to succeed adverting to the principles of law laid down by the Apex Court in the case of M/s. Raj Restaurant and anr. (Surpa).

7. For the reasons stated above, the impugned communication dated 30/3/2016 issued by the Senior Inspector (Shops and Establishments) H/East Division is quashed and set aside.

8. In the facts of the present case, it would be open to the petitioner to apply afresh to the concerned authority of the Municipal Corporation for

issuance of a license. If the respondent no.4 has any objection to the said application, in such event the concerned authority of the Municipal Corporation shall permit the parties to place on record necessary materials limited for the purpose of issuance of a license. The concerned authority of the Municipal Corporation, taking into consideration the rival pleas and the materials, shall take appropriate decision on the license application. We do not express any opinion on the rival pleas which the parties may urge before the concerned authority. All contentions of the parties are expressly kept open.

9. The petition is partly allowed in the aforesaid terms. No costs.

G. S. KULKARNI J.

ACTING CHIEF JUSTICE