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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.2017 OF 2018**

Hotel and Restaurant Association
(Western India) and Anr.

... Petitioners

Vs.

Municipal Corporation of Greater Mumbai and Ors.

... Respondents

WITH

WRIT PETITION (L) NO.2019 OF 2018

WITH

WRIT PETITION (L) NO.2020 OF 2018

Mr. Ramesh D. Soni a/w Mr. Sameer Pandit i/by Wadia Ghandy & Co.
for the Petitioners in all petitions.

Ms. Pallavi Thakar for the Respondent - BMC.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 15th JUNE, 2018

P.C.

. Not on board. Taken on board.

1 The first petitioner is an Association of Hotel and Restaurants. The second petitioner is the really aggrieved person. Admittedly, under Regulation 65 of the Development Control Regulations for Greater Mumbai, 1991 (for short “DCR”) which is relied upon by the petitioners, even for erecting a temporary construction as

provided under Regulation 65, permission of the Municipal Commissioner is required. The second petitioner is running a restaurant. From photographs annexed to the petitions it appears that a huge area on the ground floor has already been covered by the second petitioner by erecting a shed. Admittedly, the second petitioner who has erected the same has not been granted a permission under Regulation 65. Even according to the case of the petitioners, permission under Regulation 65 was required to be obtained.

2 The learned counsel appearing for the petitioners submits that a practice has been followed by the Municipal Corporation that the persons who apply for erecting such temporary shed are allowed to construct temporary sheds even without grant of permission. He states that on making an application and on payment of scrutiny fees, restaurants are being permitted to erect monsoon sheds without permission being granted by the Commissioner. He relied upon the circular dated 7th November, 2016.

3 The law is very clear. If particular thing is required to be done in a particular manner, the same shall be done in that manner and in no other manner. Regulation 65, on which the petitioner is placing reliance requires prior permission for erection of a monsoon shed.

Admittedly, the second petitioner has not obtained such permission. The circular which is relied upon does not lay down such a practice. It does not lay down that only on payment of fees, a person can make a temporary construction contemplated under Regulation 65.

4 Thus, the second petitioner has erected a monsoon shed in contravention of Regulation 65 as admittedly there is no permission granted. We are surprised to note that the Association of Hotel and Restaurants is the first petitioner. In fact, the first petitioner ought to be interested in ensuring that its members follow the law. But the first petitioner wants to support the second petitioner who has illegally carried out construction of monsoon shed.

5 This is not a case where a slum dweller or a poor person who has done something to protect himself from monsoon. The second petitioner is running a Restaurant. Considering the conduct of the second petitioner of covering huge area by a temporary structure without obtaining permission, no case is made out to invoke equitable writ jurisdiction under Article 226 of the Constitution of India for challenging impugned action of rejecting application.

6 In our view, when the second petitioner constructed monsoon shed without even waiting for grant of permission under Regulation 65, the Municipal Corporation was fully justified in rejecting the application.

7 The petition is rejected. It will be always open for the petitioner to apply for grant of permission under Regulation 65 after removing existing monsoon shed. If such application is made, the same shall be decided within a period of two weeks from the date on which this order is uploaded. We make it clear that the fresh application will be considered only after the shed constructed by the second petitioner is removed.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)