

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION (ST.) NO.13549 OF 2019

Vijay D. Shetty and Anr.

...Petitioners

vs.

Municipal Corporation of Greater Mumbai
and Others

...Respondents

Mr. Jamsheed Master a/w. Mr. Rushad Irani and Ms. Nikita Menon I/b. Purazar Fouzdar, for the Petitioners
Ms. Sheetal Mane, for Respondent No.1 – MCGM.

CORAM : M. S. SONAK, J.

DATE : MAY 03, 2019

ORAL JUDGMENT:

. Heard Mr. Jamsheed Master, learned counsel for the Petitioners and Ms. Sheetal Mane, for Respondent No.1 – MCGM.

2. The challenge in this Petition is to the order dated 20th April, 2019 by which the learned Additional Chief Judge (Appeal Court) has dismissed the Petitioners' application seeking interim relief pending disposal of the Municipal Appeal No. 13 of 2019 in which the Petitioners have challenged certain orders cancelling the license to operate the eating place.

3. From the perusal of the impugned order as well as the record, there is no case made out to warrant for interference. In fact the

grant of interim relief to the Petitioners would virtually amount to allowing the Appeal instituted by the Petitioners at the interim stage. It is pertinent to note that the Petitioners had prayed for interim mandatory injunction to direct MCGM to renew their license which have already expired. Such orders cannot normally be made at the interim stage and that too in the absence a very strong *prima facie* case. Since the license have already expired, there is no question of the Petitioners claiming for any interim relief and on the basis of same continuing or commencing the business from the suit premises. There is absolutely no jurisdictional error in the view taken by the Appeal Court.

4. Mr. Master, however submits that the Petitioners' application seeking renewal of license is not even being accepted by the MCGM much less considered in accordance with law. He pointed out certain snapshots from the website of the MCGM. In fact the system is not accepting the renewal application and the MCGM refuses to accept the application in the physical form also.

5. According to me, the MCGM is obliged to at least accept the application for renewal of license and therefore it is open to the

MCGM to dispose of such application on their own merits and in accordance with law. The MCGM cannot simply refuse to accept the application and thereby avoid making decision as to whether the Petitioners are entitled to any renewal or not.

6. Mr. Master, learned counsel for the Petitioners state that there are no provision under the MCGM Act which entitled the Petitioners to continue the business merely on the ground of pendency of application for renewal. In the facts of the present case, there is also no question of permitting the Petitioners to continue with the business from the suit premises, even on the ground of pendency of application for renewal because MCGM has expressly cancelled the license and as such cancellation is subject matter of Municipal Appeal NO. 13 of 2019.

7. In the aforesaid position, there is really no prejudice to the MCGM or the public interest as well if the Petitioners are permitted to make application seeking renewal of license. Whether such application is allowed or not, it is for the MCGM to decide it by appreciating the facts as well as the law as may be applicable. Accordingly, though the impugned order is not interfered with,

MCGM is directed to accept the Petitioners' application for renewal of license and thereafter dispose of such application on its own merits and in accordance with law as expeditiously as possible and in any case within a period of two months from the date of such application is actually made by the Petitioners and received by the MCGM. If there is some difficulty in the system accepting the online application, the Petitioners are granted liberty to make such application in the physical form and MCGM is directed to consider and dispose of such application on its own merits and in accordance with law.

8. It is made clear that this Court has not adverted to the merits of the renewal application which is to be made and therefore all contentions of parties on this issue is kept open for determination by the MCGM.

9. This Petition is accordingly disposed of in the aforesaid terms.

10. There shall be no order as to costs.

11. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)