

Diksha Rane

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

PUBLIC INTEREST LITIGATION NO. 32 OF 2022

Harish Mangal Gohil

..Petitioner

vs.

Morning Star English Medium
School & ors.

..Respondents

Mr. Harish Mangal Gohil, petitioner-in-person present.

Ms. Priscilla Samuel Nadar for respondent no.1.

Mr. Milind More, Addl. Government Pleader for respondent
nos. 2 and 3 – State.

Ms. K. H. Mastakar for respondent nos. 4 to 7 – MCGM.

**CORAM : DIPANKAR DATTA, CJ. &
M. S. KARNIK, J.**

DATE : AUGUST 29, 2022.

P.C. :

1. This PIL petition is filed under Article 226 of the Constitution of India whereby it is prayed that appropriate action should be taken by the Education Department as well as Mumbai Municipal Corporation against the unauthorized and illegal education institution that is being operated by the respondent no.1 – Morning Star English Medium School (hereafter ‘the said school’ for short).

2. The petitioner, appearing in person, invited our attention to the averments made in the PIL petition. Relying upon the supporting documents annexed thereto, he contended that though notices have been issued by the Municipal Corporation to close down the said school on the ground that the said school has no NOC, registration or made legal compliances to run the said school, neither the Education Department nor the Municipal Corporation has taken further action as a result of which the said school is still functioning.

3. We do not find it necessary to consider the submissions made on behalf of the petitioner at this stage in view of the stand taken in the affidavit-in-reply of respondent nos. 3 to 5 and 7 [affirmed by Shri Kirtivardhan Kiratkudave, who is working as Deputy Education Officer (I/c.) (Private Primary School) Aided School, in the employment of the respondent - MCGM], coupled with the additional affidavit-in-reply of the respondent no.4 [affirmed by Shri Nishad N. Kulkarni, working as Assistant Engineer (Building & Factory) Department, G/North Ward]. The Municipal Corporation in the affidavit has indicated the action that was initiated by them in respect of the unauthorized construction made by the said school.

4. An affidavit-in-reply has been filed by the said school raising serious doubts about the credentials of the petitioner. The said school has placed its stand on record contending that the building is not unauthorized and that it has all the requisite permissions from the Education

Department to run the school.

5. We have gone through the averments made in the PIL petition, the documents annexed and the affidavit-in-replies filed by the respondents.

6. The said school - respondent no. 1 has filed proceedings in the Bombay City Civil Court being L. C. Suit No. 2024 of 2017 challenging the notice issued by the Corporation under Section 354-A of the Mumbai Municipal Corporation Act. The suit is pending. The respondent no.1 preferred a Notice of Motion in the pending suit for grant of interim reliefs. The Notice of Motion is made absolute by the City Civil Court in terms of the prayer clause (a) which reads thus: -

a) That this Hon'ble Court be pleased to declare notice bearing No.GN/DO1GN/175/354-A-MMC Act/GN93NO1/ 30.6.2017 dated 30.06.2017 and Order dated 19.07.2017 issued Under Section 354-A be declared null and void bad in law and cannot be executed in respect of the suit premises admeasuring 169' X 49' with height 25' made of BM Wall and AC Sheet Roof comprising of ground and 2nd floor, situated at 5, Plot No.144, Ashok Silk Mill Compound, Morning Star English School, Kalakilla, Dharavi, Mumbai-400 017 and Order dated 19.07.2017."

7. The Municipal Corporation has taken a stand that in view of the decision of the competent Court, it is not possible for them to presently take action against the alleged unauthorized construction and that appropriate

action would be taken subject to further orders passed by the competent Court.

8. So far as the grievance of the petitioner that the school is being run illegally without obtaining proper permissions, we find from the affidavit-in-reply filed by the Education Department, that the issue of cancelling the recognition of the school is pending consideration before the concerned Committee as reflected from the document dated November 12, 2021 at Exhibit 'N' of the affidavit-in-reply of the respondent nos. 3 to 5 and 7.

9. We are satisfied that on the basis of the complaint made by the petitioner, the Education Department is taking appropriate steps. We have no manner of doubt that the complaint made by the petitioner as regards cancellation of recognition will be taken to its logical conclusion by the Education Department after following the due process of law.

10. So far as unauthorized construction is concerned, the suit is pending in the City Civil Court wherein interim relief in favour of the respondent no.1 is granted. The Municipal Corporation has rightly taken the stand that they would await the orders passed by the City Civil Court before taking further action.

11. In this view of the matter, we keep the liberty of the petitioner open to take recourse to the appropriate remedies as may be available to ventilate his grievance in this regard.

12. Without making any comment on the merits of the contentions raised by the petitioner as well as those of the respondents, for the reasons we have indicated hereinabove, we refrain from entertaining the PIL petition at this stage.

13. The PIL petition is disposed of.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

Digitally
signed by
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DINESH
RANE
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