

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

WRIT PETITION NO. 501 OF 2023

Sayli Bhairawnath Parkhi

.. Petitioner

Vs.

The Municipal Corporation of Greater
Mumbai and Ors.

.. Respondents

Mr. Mayur Khandeprkar i/by Ms. Pushpanjali Arora for Petitioner.

Ms. Pooja Yadav for Respondent No.1-MCGM.

Mr. Amit Shastri, AGP for Respondent No.5-State.

Ms. Sanjukta Dey a/w. Mr. Saiprasad Hole i/by. Yende Legal Associates for
Respoondent No.7.

Dr. Pooja R. Desai, Medical Officer of Health, M/West Ward.

**CORAM : A.S. CHANDURKAR &
M.W. CHANDWANI, JJ**

DATE : 13TH FEBRUARY, 2023.

Oral Judgment :- (Per A.S. Chandurkar, J.)

1. Rule. Rule made returnable forthwith.
2. Heard learned counsel for the parties.
3. At the outset, the learned Counsel for the Petitioner has tendered draft amendment, seeking leave to raise challenge to the show cause notice dated 1st February, 2023 that has been issued during pendency of the proceedings. The amendment is granted. It be carried out forthwith. Re-verification is dispensed with.

4. It is the case of the Petitioner that, she is proprietor of the restaurant, which is serving Herbal Hukkah. The Respondent No.7, who claims to be a Social Activist, had filed complaint against the Petitioner with the Municipal Corporation, pursuant to which restaurant of the Petitioner was inspected and further notices were issued. One of the notices issued to the Petitioner is dated 28th September, 2022 stating therein that license condition Nos.8 and 12 had been breached. The Petitioner filed reply to the said notice and the Deputy Municipal Commissioner, on 21st November, 2022, directed the concerned Officer to get a clarification in the matter insofar as, activity of permitting Herbal Hukkah was concerned. It is thereafter that the fresh show cause notice dated 1st February, 2023 has been issued.

5. The Petitioner submits that the show cause notice has been issued without any due authority of law and it is urged that the provisions of Section 394 of the Mumbai Municipal Corporation Act, 1888 are not attracted.

6. We find that the order under challenge is only a show cause notice which has been issued to the Petitioner. If, the Petitioner raises any permissible ground to indicate that the show cause notice is not justified, it would be for the Municipal Corporation to consider the same and take a decision thereon. The interest of justice would be served by issuing the following directions:

- i. The Petitioner shall, within a period of ten days from today, submit her reply to all the show cause notices including the show cause notice dated 1st February, 2023.

ii. The Medical Health Officer of the MCGM shall grant an opportunity of hearing to the Petitioner and thereafter take a decision on the said show cause notice within a period of four weeks from grant of such hearing to the Petitioner. The Medical Health Officer is free to consider whether the representation of the Respondent No.7 deserves consideration or not.

iii. The decision taken by the Medical Health Officer, be communicated to the Petitioner accordingly. Without prejudice to the rights and contentions of either parties, if any adverse order is passed by the Medical Health Officer, the same shall not be given effect to for a period of seven days from the date of service of the order on the Petitioner.

iv. Keeping all challenges on merits open, the Writ Petition is disposed of with the aforesaid directions. Rule accordingly. No costs.

[M.W. CHANDWANI, J.]

[A.S. CHANDURKAR, J.]