

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.3664 OF 2022

Dr. Shivam Chhotulal Pataria .. Petitioner

Vs.

Brihanmumbai Municipal Corporation & Ors. .. Respondents

- Mr. Aabad Ponda, Senior Advocate a/w. Mr. Jugal Kanani, for the Petitioner.
- Mr. Anoop Patil a/w. Mr. V.V. Mahadik, for Respondent-BMC.
- Mr. Abhay Patki, Addl. GP a/w. Mr. Ajit Shastri, AGP for Respondent No.1.

CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ

DATE : 11th JULY, 2023.

ORAL JUDGMENT (PER. SUNIL B. SHUKRE, J.)

1. Heard. Rule. Rule made returnable forthwith, by consent of learned counsel for the respective parties.
2. The petitioner has challenged the legality and correctness of the impugned order of cancellation of registration of the petitioner's hospital and its permanent sealing made as per order dated 02.07.2021.
3. The petitioner is a sole proprietor of Shivam Hospital, which has

been granted certificate of registration under Section 5 of the Bombay Nursing Home Registration Act, 1949 (hereinafter referred to as the Act 1949) which expires on 31.03.2022. Even before expiry of the certificate of registration, owing to some criminal cases registered against the petitioner, a drastic decision was taken by the respondent Corporation in permanently sealing the hospital of petitioner and cancelling its registration granted under Section 5 of the Act, 1949.

4. Mr. Ponda, learned Senior Advocate for the petitioner submits that the action of sealing and cancellation of registration of the petitioner's hospital is arbitrary and illegal as no show-cause notice, which is required to be given in terms of Section 8(1) of the Act, 1949 and no opportunity of hearing as required under the law, was issued and given to the petitioner and straightaway the impugned action was taken against the petitioner. He relies upon the provisions made in Section 8(1) of the Act, 1949.

5. Learned Senior Advocate further submits that even otherwise there is no *prima facie* involvement of the petitioner in the offences registered against him and this can be seen from the observations made by the learned Single Judge of this Court in the order dated 05.04.2023 granting conditional bail to the petitioner in all the eight criminal cases.

He invites our attention to the observations made in Paragraphs 7, 10, 11 & 13 in support of his submissions. Thus, he submits that even on this ground, there was no material available on record, which would have justified the sealing of the hospital and cancellation of registration of the hospital. He also submits that in view of the law laid down by the Apex Court in the case of *Nevada Properties Private Limited Through its Directors Vs. State of Maharashtra & Anr.*¹, sealing of the hospital, which is an immovable property, is not permissible at the hands of the police exercising its power under Section 102 of the Code of Criminal Procedure, 1973 or anybody else.

6. Learned counsel for the Corporation submits that since several criminal cases were registered against the petitioner and allegations against the petitioner were serious in nature, it was thought by the Corporation that larger public interest would stand served if the hospital was permanently sealed and its registration was cancelled. He submits that the action taken by the Corporation against the hospital was on the basis of the information received by the concerned police, which required taking of serious cognizance of the matter and immediate action against the hospital run by the petitioner. He also submits that in these circumstances giving of show-cause notice was

1 (2019) 20 SCC 119

not considered by the Corporation to be necessary.

7. It is not in dispute that the hospital run by the petitioner has been registered under Section 5 of the Act, 1949 and the certificate of registration was valid upon 31.03.2022. It is also not in dispute that before expiry of registration of the hospital of the petitioner, its registration came to be cancelled and not only that the hospital was also permanently sealed. The question would then arise as to whether the Corporation could have taken such an action against the hospital run by the petitioner without following the procedure prescribed under Section 8 of the Act 1949 and the answer has to be given emphatically in the negative.

8. The reason for negative answer that we have given here could be seen in the provisions made in sub-section 1 of Section 8 of the Act 1949. For the sake of convenience, it is reproduced as under:-

8. Notice of refusal or of cancellation of registration :- (1)
Before making an order refusing an application for registration of an order cancelling any registration, the local supervising authority shall give to the applicant or to the person registered, as the case may be, not less than one calendar month's notice of its intention to make such an order, and every such notice shall state the grounds on which the local supervising authority intends to make the order and shall contain an intimation that if within a calendar month

after the receipt of the notice, the applicant or person registered informs the authority in writing that he desires so to do, the local supervising authority shall, before making the order, give him (in person or by a representative) an opportunity of showing cause why the order should not be made."

9. It would be clear from the above referred provisions of law that before any order refusing registration of the hospital or cancelling registration of the hospital is passed, a show-cause notice giving time of not less than one calendar month is required to be given to the owner or the proprietor of the hospital or the applicant and such show-cause notice must make clear the intention of the supervisory authority to either refuse the registration or cancel the registration by giving the grounds on which the authority intends to make such an order.

10. In the present case, it is an admitted fact that, no such notice as required under Section 1(8) of the Act 1949 was given to the petitioner before taking impugned action of cancellation of the registration and also permanent sealing of the hospital. Besides, we could not come across any provision of law made in the Act 1949 empowering the supervisory authority to permanently seal any hospital registered under the provisions of the Act, 1949, nor learned counsel for the Corporation could show to us the existence of any such provision of law. In the

reply of the Corporation, there is no reference made to any provision of law under which the action of sealing has been taken by a local supervisory authority like the Corporation. That apart; the hospital being an immovable property could not have been sealed under any provision of the Cr.P.C. A useful reference in this regard may be made to the law laid down by the Apex Court in the case of ***Nevada Properties Private Limited (supra)***.

11. We, therefore, find that the impugned action taken against the hospital run by the petitioner is in breach of authority of law, is illegal and arbitrary, to say the least. No doubt, in all the criminal cases registered against the petitioner, there are serious allegations made; but it appears that those allegations insofar as the involvement of the petitioner is concerned, have been found by the learned Single Judge of this Court as not having any *prima facie* substance in them. This can be seen from the observations of the learned Single Judge of this Court in their order dated 05.04.22023 passed in Bail Application No.4350 of 2021, Dr. Shivam Chotulal Pataria together with several other bail applications and they could be found in Paragraphs 7, 8, 10, 11 and 13. The observations made by the learned Single Judge in the common bail order would also show that the stand taken by the Corporation in the circumstances of the case that is no show-cause notice was necessary, is

not justified.

12. For the aforesaid reasons, we are of the view that the impugned action taken by the Corporation is devoid of any authority of law and is illegal, and therefore, needs to be quashed and set aside. Hence, the following order :-

(i) The petition is allowed.

(ii) The impugned order of cancellation of registration of hospital is quashed and set aside.

(iii) It is directed that the seal placed on the hospital be removed with immediate effect. However, the petitioner shall not start running the hospital without obtaining renewal of the certificate of registration in terms of the provisions of the Bombay Nursing Home Registration Act, 1949.

(iv) Rule is made absolute in the above terms.

[RAJESH S. PATIL, J.]

[SUNIL B. SHUKRE, J.]