

Ashwini

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10267 OF 2024

- 1. MYRAH HOSPITALITY LLP,**
Through its partner
Vijay Ramchandra Shinde
Having address at Sr.No. 81/3
Aashirwad Bunglow, Bharti Nagar II,
Kothrud, Pune 411029
- 2. VIJAY RAMCHANDRA SHINDE,**
Age: Adult, Occu: Business
Having address at Sr.No.81/3
Aashirwad Bunglow, Bharti Nagar II,
Kothrud, Pune 411029

... PETITIONERS

~ VERSUS ~

- 1. PUNE MUNICIPAL CORPORATION,**
Through its Municipal Commissioner
a Statutory Body formed under the
provisions of the MMC Act, 1949
Address- PMC Bhavan, Main Building,
Shivaji Nagar, Opp. Mangla Theater,
Pune 411 005.
- 2. THE DESIGNATED OFFICER,**
For the purposes of exercise of the
powers of the Planning Authority under
this section and section 54, 55 and 56
Address- Bandhkam Vikas Vibhag,,

... RESPONDENTS

ASHWINI
H
GAJAKOSH

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by ASHWINI H
GAJAKOSH
Date: 2024.07.24
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Zone -4,
Pune Municipal Corporation.

APPEARANCES

FOR THE PETITIONER **Mr Pralhad Paranjape, with Manish Kelkar, Aditya Mhase, Yash Tembe.**

FOR THE RESPONDENT- PMC **Mr Vishwanath Patil (VC), with Nidhi Chauhan.**

CORAM : M.S.Sonak & Kamal Khata, JJ.

DATED : 23rd July 2024

ORAL JUDGMENT (Per MS Sonak J):-

1. Rule. Rule made returnable immediately at the request of learned Counsel for the Respondents.
2. Heard learned Counsel for the parties.
3. The challenge in this Petition concerns the notice dated 22nd July 2024 (Exhibit 'C' on pages 78 and 79 of the paper book) only in so far as it relates to the Petitioners, who are operating the restaurant under the name and Style of 2BHK Diner and Key Club ("Restaurant").
4. The impugned notice lists three violations in numbers 1, 2, and 3. The translation of the same read as follows:

- (1) Waiting and Meeting area/Fabrication and Tin Shed and Side Facade Fabrication enclosure admeasuring approximately $16.5 \text{ sq.mts} \times 23 \text{ sq.mts} = 379.5 \text{ sq.mts} + 7 \text{ sq.mts} \times 7 \text{ sq.mts} = 49 \text{ sq mts}$ – unauthorized construction contrary to the sanctioned plan.
- (2) Tin shed, awning shed, brick work with gate and in excess of the sanctioned plan with commercial usage admeasuring approximately $14 \text{ sq.mts} \times 15 \text{ sq.mts} = 210 \text{ sq mts}$ unauthorized construction contrary to the sanctioned plan.
- (3) Awning on the Right Side of the Restaurant, Fabrication, Plastic Parking Shed approximately $20\text{m} \times 4 \text{ m} = 80 \text{ sq m}$.

5. In so far as the violations at nos. 2 and 3 are concerned, learned Counsel for the Petitioners, based on instructions of Vijay Shinde, the second Petitioner and authorised representative of the first Petitioner, makes a statement that these two constructions /enclosures/works will be demolished within seven days from today, i.e., on or before 30 July 2024 without seeking any extension of time.

6. The above statement is accepted as an undertaking on behalf of the Petitioners, and they are directed to comply with it on or before 30 July 2024. There is no question of regularisation of the constructions/violations at 2 and 3 above.

7. Regarding the construction/violation at No. 1 above, Mr Paranjape, learned Counsel for the Petitioners, submits that such construction was not put up without permission from the PMC. Without prejudice, he submits that at the highest, such construction may not be strictly per the permission granted or in contravention of some of the conditions subject to which such permission was granted. He, therefore, submits that in so far as the construction/violation (1) is concerned, the same is covered by Section 52(1)(b) of the MRTP Act. He relies on the provisions of Section 53(1A) of the MRTP Act to submit that in such a case, the PMC is required to serve one month's notice on the owner/developer or occupier, requiring him to take necessary steps as specified in the notice. He relies on the decision of this Court in the *High Court on its Own Motion v State of Maharashtra & Ors*¹ to support such contention.

8. The record bears out that the Petitioners were granted permission to construct the premises in which the restaurant is housed. The approved plan produced for our perusal and annexed to the Petition refers to an outdoor restaurant, waiting and sitting area with a semi-transparent pergola/canopy above (primarily open to the sky). The impugned notice shows that the conditions of this permission have been breached, and the waiting and sitting areas are not kept open to the sky. The impugned notice also refers to other violations.

1 2024 SCC OnLine Bom 918.

9. This does appear to be a case covered by Section 52(1)(b) of the MRTP Act. Accordingly, considering the provisions of Section 53(1A), the PMC was required to serve one month's notice for taking the steps specified. In this case, a notice of only 24 hours was served on the Petitioners, perhaps on the premise that the Petitioner's case was covered under clauses (a) and (c) of Section 52(1) of the MRTP Act when the Petitioners' case was covered by Section 52(1)(b) of the MRTP Act. The PMC, therefore, had to give one month's notice regarding violation 1 referred to above. This distinction between the provisions of clauses (a) to (d) of Section 52(1) and the resultant consequences in Section 53(1)(a) and 53(1A) of the MRTP Act are discussed in paragraphs 84 to 87 of *High Court on its Own Motion v State of Maharashtra & Ors* (Supra). The discussion supports the petitioners' contention regarding the construction/violation 1 above.

10. On the above short ground, we interfere with the impugned notice only so far as it concerns the violation/construction at (1) above. Our interference is to the limited extent of clarifying that the PMC should not execute the impugned notice dated 22nd July 2024 for a period of one month from the date of its issue, i.e., up to 21st August 2024. With this direction, the defect in the impugned notice of granting only 24 hours to the Petitioners will be completely cured and must be sustained as now modified.

11. Accordingly, we direct the PMC not to execute its impugned notice dated 22nd July 2024, in so far as violation/construction no. 1 of such notice is concerned up to 21st August 2024. However, if, for

any reason, the Petitioners breach their undertaking regarding demolition of violations/constructions 2 and 3, then even the limited relief granted by this order will stand revoked. This means that if by 30th July 2024, constructions/violations at 2 and 3 above are not removed by the Petitioners as undertaken by them, then the PMC will be at liberty to demolish not only the violations/constructions at 2 and 3 but also violation/construction at 1.

12. The rule is disposed of in the above terms without any cost order. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M. S. Sonak, J)