

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.274 OF 2022
WITH
INTERIM APPLICATION NO. 1973 OF 2022

Harmesh Singh Chadha @ Jimmy .. Appellant

Versus

Municipal Corporation of Greater .. Respondents
Mumbai and ors

...

Mr.Anuj Narula i/b M/s.Jhangiani, Narula & Associates for the appellant.

Ms.Dhruti Kapadia with Mr.Om Suryavanshi for the respondent MCGM.

CORAM: BHARATI DANGRE, J.

RESERVED : 20th APRIL, 2022

PRONOUNCED : 14th JUNE, 2022

JUDGMENT:-

1 The present Appeal is filed by the appellant, being aggrieved by an order dated 5/3/2022, passed on a draft Notice of Motion filed in L.C. Suit No.499/2022, seeking a declaration that the inspection report and the seizure action, purportedly issued by the Mumbai Municipal Corporation u/s.394 of the Mumbai Municipal Corporation Act, Act, 1988 (hereinafter

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referred to as MMC Act) as nullity and bad-in-law. In the said Suit, the plaintiff has sought a permanent injunction against the defendants from enforcing and implementing the impugned inspection report and the seizure action notice.

2 Heard Advocate Anuj Narula for the applicant and Advocate Dhruti Kapadia along with Advocate Om Suryavanshi for the MCGM.

The dispute revolves around bungalow no.6, Asha Colony, Juhu Tara Road, Vile Parle (W), Mumbai, comprising of five rooms on the ground floor and six rooms on the upper floor (hereinafter referred to as 'suit premises') undisputedly, owned by the plaintiff. The plaintiff is carrying on business as a Restaurateur and hotelier in the western suburbs of Mumbai and plead that he runs various food joints which include "Bed and Breakfast establishment" (for short B & B establishment) on the suit premises which the plaintiff acquired under a registered gift deed in the year 2014 from his mother. It is the case of the plaintiff that prior thereto, in the year 2010, his late father was using the ground floor of the bungalow for the purpose of running a Bed and Breakfast establishment under the Then prevailing Indian Tourism Development Corporation (ITDC) Scheme in an Incredible India Bed and Breakfast Scheme and then the property was styled as U-Turn Residency. In 2013, the ITDC licence was renewed and the plaintiff acquired a licence under a similar scheme floated by Maharashtra Tourism

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Development Corporation (MTDC) and he continued the business activity from the suit premises under the name and style as “J.C. Chalet”.

3 The respondent no.1 is the statutory corporation established under the Mumbai Municipal Corporation Act, 1888 (for short “MMC Act”, and the defendant nos.2 and 3 to the Suit are it’s Officers, being the Sanitary Inspector of the concerned ward as well as the Medical Officer, who are entrusted with the task of performing duties, functions and exercise powers vested in them.

4 The cause of action for the Suit instituted by the plaintiff is an Inspection of his premises at the instance of the Officers of the Corporation on 13/1/2022 and the plaintiff plead that the defendant no.2 issued the warning to the plaintiff to discontinue the trade within 7 days of the receipt of the letter and the defendant no.3 issued a seizure action notice, on the very next day, i.e. 14/1/2022, threatening the plaintiff that all the articles, machinery, devices in the suit premises shall be seized.

Pertinent to note that being aggrieved by the aforesaid notices, the plaintiff instituted a suit earlier but noticing that there were some inherent defect, withdrew the said Suit and filed the present suit in which the draft Notice of Motion is taken out.

I need not delve deep into the pleadings of the plaintiff attributing malafides to his neighbor Ms.Anita Ghai, at

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whose instance, he allege that the corporation authorities had carried out the inspection, and he blamed the said complainant for the entire exercise, resulting into the inspection report and seizure action notice, so that the plaintiff accede to the complainants extortionist demands.

In the Suit seeking aforesaid relief, the plaintiff filed a draft Notice of Motion, praying for a protection in favour of his establishment by way of an ad-interim order, in absence of which the Suit would be rendered infructuous, and he prayed for an injunction against the defendants, their Officers, servants or agents for taking any steps in furtherance and/or enforcement, in any manner, implementing the impugned inspection report and seizure action notice and creating any obstruction in running of the establishment of the suit premises.

5 The learned counsel Mr.Narula for the appellant would submit that the defendants have failed to consider a very significant aspect, being though the B&B establishment partakes the character of a hotel or lodging, as tourist/guest are accommodated in the rooms and served by the plaintiff, but the same is a home stay establishment, as conceived and permitted under incredible India Bed and Breakfast Scheme of Government of Maharashtra/India and therefore, it is not classified as "Trade establishment". He would submit that the impugned reports and the notice ignore the fact that plaintiff is admittedly residing on the upper floor with his family and only the rooms on the ground

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floor are rented out/provided to the guest, subject to all compliance of all the conditions imposed by the MTDC with whom the establishment is registered. Mr.Narula would submit that the inspection report is contrary to the factual scenario as it indicate that 11 rooms are used as guest rooms along with 12 connected toilets which is an incorrect factual position. In any case, the submission of Mr.Narula is when his establishment has already received registration by the MTDC and the said authority is ensuring compliance as well as supervising the said facilities, the insistence of the Corporation to obtain a licence u/s.394 of the MMC Act is unjustified, as it would amount to two authorities controlling the same establishment.

6 Per contra, Ms.Kapadia representing the Corporation would submit that factually when the inspection was carried out by the defendant no.3 of the Suit premises, it was noticed that the appellant was operating without the licence u/s.394 i.e. without permission of the Municipal corporation of Greater Mumbai and he was directed to stop trade activity forthwith. Further, she would submit that the inspection report clearly noticed that the activity/trade of lodging house was being carried out in 11 rooms of the first floor along with 11 rooms on the ground floor, the details of which were provided in the inspection note, which was without permission of the authority and therefore, the appellant was noticed to discontinue the trade/ activity within a period of 7 days from the date of receipt of the inspection report.

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The learned counsel would submit that since the suit premises are situated within the limits of the Municipal Corporation, it is covered by the provisions of the MMC Act, and in terms of Section 394 of the Act, no person shall carry on or allow or suffer to be carried out, in or upon any premises any of the trades specified in para-IV of Schedule-M, or any process or operation connected with such trade. According to Ms.Kapadia, the Schedule cover the activity of “keeping of a lodging house”. She would submit that it is quite possible in a situation that to carry out a particular industry/establishment, licence/ permission from multiple authorities is required and by way of example, she would submit that for a hotel/lodge/eating house, the permission from the local health department of the Corporation, the building department, the fire safety department, etc, are required to be obtained apart from the licence from the Food Safety and Standards Authority of India, registration under the Shops and Establishment Act, 1948, a licence for operating a bar, if liquor is being served as well as in case of a hotel offering entertainment, the licence of PPL (Phonographic Performance Ltd) and PRS (Performing Right Society Licence) may be mandatory for the operation. She would submit that in any case, there is a breach of condition by the appellant even of those terms and conditions under which the MTDC has granted registration and permitted him to carry on the business.

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7 With the assistance of the respective counsel, I have perused the documents accompanying the Appeal, including the inspection report dated 31/1/2021 and the seizure action notice dated 14/1/2022.

There is no dispute that the Regional Director of India Tourism had granted authority in favour of the predecessor of the appellant to operate the Bread and Breakfast Establishment (Gold category) and the said facility continued in favour of the appellant from 12/2/2013 to 11/2/2015 under Silver category.

In the year 2016, the Maharashtra Tourism Development Corporation (MTDC) has registered the establishment of the appellant as 'B&B Establishment' at the suit premises with the cap of five rooms i.e. 10 beds for a period of five years i.e. from 17/2/2016 to 16/2/2021 and the same has been further extended upto 16/2/2026. Pertinent to note that the appellant is permitted to operate as the facility in five rooms with 10 beds in the residential premises, owned by him.

It is, therefore, necessary to ascertain what is the exact scheme and from the documents placed on record, it can be seen that in order to encourage Tourism in the State and to cater to the need of the tourist, who are desirous of visiting various religious and historical places, beaches, mountains and forest in the State, but are unable to find resorts, the MTDC has permitted the residents at the local level to provide accommodation to tourist,

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when the inflow is only for certain season, which would include the accommodation and food facilities. The MTDC, in turn, seek to achieve two objects i.e. encourage tourism in the State and also provide employment to the local citizens, owning premises at various pilgrimage centers, tribal areas or such unique places which would also encourage the domestic and international tourists, to learn about the local culture, life styles, traditions and cuisines.

8 The MTDC assure marketing of these facilities by mentioning their names in the print material and website free of charge and provide registration to such rooms which can be displayed as 'MTDC Approved' on their banners and the information centres of the MTDC will provide information to the tourist about such centre facility.

In short, the MTDC has permitted registration of certain properties with them and it is nothing but grant of franchisee by the MTDC to encourage tourism. This registration is also subject to adherence of certain conditions, and is to be granted subject to filing of an application and on producing necessary permissions/no objections. The minimum beds which could be arranged for, in the said establishment ranges from 4 to 10, with the specification of the rooms. On an application being so preferred, highlighting the facilities in form of breakfast and the specification of the rooms, the registration is provided, subject to an undertaking by the operator to provide safe drinking water,

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clean surroundings, ensuring safety and security of the guest and their belongings etc.

9 In order to encourage tourism, the Tourism Department of State of Maharashtra had taken certain initiatives one of which being exemption from payment of luxury tax. The Government Resolution dated 31/3/2012 issued by the Tourism and Cultural Affairs Department, acknowledge the registration of B&B facility at the instance of the MTDC, permitting the owner of the premises to rent out 2 to 6 rooms to the tourist and the said resolution refer to a Government Resolution issued by the Urban Development Department on 3/2/1997, where certain benefits were conferred upon such establishments, like no increase in the rateable value of the said property where B & B facility is made available, no hike in the property tax more than 20% and exemption from compliance of terms and conditions and taxes, otherwise applicable to the hotels and restaurants operating within the limits of the Municipal Corporation/ municipal limits.

10 Section 394 of the MMC Act impose a restriction upon certain activities to be carried out within its limits of the Corporation except on the licence granted by the Commissioner and this include carrying of any trade upon any premises which is specified in part IV of Schedule M or any process or operation connected with any such trade and Part IV of Schedule 'M' cover an activity of 'lodging'.

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The argument of Mr.Narula that the Bread and Breakfast establishment under the MTDC scheme is not covered u/s.394, at the first blush may appear to be attractive but on closer scrutiny of the rules and regulations of the MTDC, do not appear to be so.

11 No doubt, Bread and Breakfast establishment has been granted registration under the MTDC, but it is no licence by the MTDC to carry on such an activity. Since the MTDC is a body of Government of Maharashtra responsible for development of tourism in the State, and is engaged in systematic development of tourism on commercial lines, in order to achieve it's initiative and encourage tourism in the State, it owns and maintains several resorts at key tourist centres. However, realizing that it may not be possible to have their resorts at some obscure basis which do not have a regular inflow of the tourist or it being seasonal innature, the MTDC has encouraged the B&B scheme, keeping in tune their primary object of encouraging tourism.

However, this registration/permission to operate an establishment of B&B facility in a residential house is not a purely commercial venture as what is expected is, some of the rooms of the residential house, are permitted to offer B&B facility. This, however, prima facie will not absolve the establishment to obtain necessary other permission/licences which are required for it's operation. The property is not exempted completely from the tax, but certain concession is granted. In order to operate the

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facility as a lodging, it would necessarily require compliance of condition like health, licence since the Corporation is responsible for the cleanliness and ensuring that requisite facilities being made available to the customers, who are taking benefit of the lodging. It would also require compliance of the building permit and it cannot be said that on the MTDC granting the permission, the changes in the residential premises will not have to be ratified/ authorized by the Building department of the Corporation. Such an establishment will necessarily have to obtain the fire safety permit as well as the permission from the FSSAI, since food is being offered to the tourist at such an establishment. *Prima facie*, the licence which is required to be obtained u/s.394 in order to operate a trading or activity upon the premises cannot be said to be exempted, merely on registration of the facility with MTDC.

12 In any case, what the appellant is expected is to obtain licence from the Corporation authority u/s.394 while he is operating the B&B facility as the MTDC has only given an authorization to him to operate the said facility within the limits of the Municipal Corporation. The MTDC *prima facie* has not intended to do away with the statutory requirements or denude the Corporation of its power to control the activities including any trade activity being undertaken within its jurisdiction.

The impugned order, refusing ad-interim relief in favour of the plaintiff by recording that the licence is not obtained by the plaintiff and further recording that *prima facie* it appears

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that when the Officers of the defendant visited the premises, the plaintiff was using more rooms and beds in the suit premises than actually permitted to him by MTDC itself, reflect that the plaintiff himself was carrying an activity beyond the permission granted by the MTDC. If such an activity *de hors* the permission is being carried out within the jurisdiction of the Municipal Corporation, it cannot be said that the authority is not empowered to take any action. The ad-interim relief has rightly been refused under the impugned order dated 5/3/2022.

Upholding the impugned order, the Appeal is dismissed.

In view of dismissal of AO, Interim Application No.1973 do not survive and is disposed off.

13 At this stage, the learned counsel for the appellant seek extension of the protection granted by way of ad-interim order, in the wake of the fact that the Appeal is decided on merits and when it is specifically held that the licence by the Corporation u/s.394 is imperative, despite registration with the MTDC, the prayer made by Mr.Narula is rejected.

(SMT.BHARATI DANGRE,J)