IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 340 OF 2014

SHRI. BENEDICT V. M. AGUIAR ... Petitioner

Versus

SHR. VEERAJU V AND ANR., ... Respondents

Mr. Gaurish Agni, Advocate for the Petitioner.
Mr. Vivek Rodrigues, Advocate under Legal Aid for the Respondent No.1.
Mr. Sagar Dhargalkar, Additional Government Advocate for the Respondent No.3.
None appeared for Respondent No. 2.

CORAM:- C. V. BHADANG, J.

DATE : 6th OCTOBER, 2015

ORAL ORDER:

By this petition, the petitioner is challenging the order dated 17.10.2013 passed by the Chief Secretary, Government of Goa in Appeal No. 4A/2012, whereby the appeal filed by the respondent no. 1 under Section 40 of the Goa Excise Duty Act and Rules, 1964 (the Act of 1964, for short) has been allowed, thereby remanding the matter to the learned Excise Commissioner for passing appropriate orders on merits.

2. The brief facts necessary for the disposal of the petition may be stated thus:

That the first respondent-Mr. Veeraju V. filed a complaint dated 03.07.2009 before the Excise Commissioner alleging that the petitioner and two others (who are holding the Excise License Nos. FCL-621, FCL-29 and FCL-173) had encroached on the land comprised in Survey No. 83/11 of Reis Magos village for setting up a liquor vending business without permission. In the present petition, the dispute is only as regards the Excise License granted to Aguiar Bar of the petitioner. The respondent no. 2-Mr. Paramkumar Mohanlal Patel is an intervenor, who intervened in the proceedings disputing the claim of ownership of the respondent no. 1. The learned Excise Commissioner vide order dated 09.03.2010 dismissed the complaint filed by the respondent no.1 herein and while upholding the contentions of the intervenor i.e. respondent no. 2, refused to cancel the license. Feeling aggrieved, the respondent no. 1 approached the learned Chief Secretary. It appears that the said appeal was registered as Appeal No. 7/2010. The learned Chief Secretary instructed the Excise Commissioner to conduct a discreet enquiry in order to ascertain whether the respondents had encroached/shifted their business on the land of the appellant. After conducting the discreet enquiry, the Excise Commissioner passed an order dated 31.01.2012 holding that the complaint is without any substance and dismissed the same. It is against that order, that the respondent no. 1 had filed Appeal No. 4A/2012. The learned Chief Secretary by the impugned judgment dated 17.10.2013 had remanded the petition/complaint of the respondent no. 1 to the Commissioner of Excise and that is how the petitioner is before this Court.

3. I have heard Mr. Gaurish Agni, the learned Counsel appearing for the petitioner, Mr. Vivek Rodrigues, learned Counsel appearing for the respondent no. 1 and Mr. Sagar Dhargalkar, the learned Additional Government Advocate for the respondent no. 3. None appeared for the respondent no. 2.

4. Mr. Agni, the learned Counsel appearing for the petitioner has submitted that by the impugned order, the learned Chief Secretary has remanded the matter to the Commissioner of

Excise and the scope of the enquiry would partake of an enquiry into title, for which the Commissioner of Excise would neither be competent nor it would be permissible to conduct such an enquiry. It is thus submitted that the impugned order enlarges, the scope of the complaint dated 03.07.2009.

5. Mr. Agni, the learned Counsel has taken me through the order dated 31.01.2012 of the Commissioner of Excise, in order to submit that the matter stood concluded when in the enquiry by the learned Commissioner of Excise, no substance was found in the complaint. The learned Counsel has referred to the complaint filed by the respondent no. 1 in order to demonstrate that the impugned order of remand would enlarge the scope of enquiry. The learned Counsel has pointed out on the basis of the contents of the complaint in order to show that the original Tavorna License No. 111 in the name of Aguiar Bar was in the name of Shri Laxman Venkatesh Vaingonkar, who died on 27.10.1964 and who was resident of Bombay. It was contended that in terms of the complaint itself this tavorna license was given on lease by late Smt. Putalibai Laxman Vaingonkar, widow of Laxman Vaingonkar

to Mr. Mariano Paulo Aguiar, who happens to be the deceased father of the petitioner. It is submitted that Mr. Aguiar was operating this license which was then numbered as R/88 and which is presently operated by the petitioner. He therefore submitted that the impugned order needs to be set aside.

6. On the contrary, it is submitted by Mr. Rodrigues, the learned Counsel for the respondent no. 1 that the apprehension expressed on behalf of the petitioner is clearly misplaced as in the order dated 20.12.2010 passed by the Chief Secretary, it is clarified that the enquiry will be limited to the extent as to whether the licensee/s, are running the shop/s on the same premises on which the license was issued. He therefore submitted that the impugned order does not require any interference, as the scope of the enquiry is circumscribed by the provisions of Section 16 of the Act of 1964 and the Rules framed thereunder.

7. I have considered the rival circumstances and the submissions made. The challenge on behalf of the petitioner is that by virtue of the order of remand, the Commissioner of Excise

would conduct an enquiry in the nature of determining the title and the same would not be permissible. I do not find that the said submission can be accepted. In this regard, the order dated 20.12.2010 passed by the learned Chief Secretary may be reproduced thus:

> *"After going through the arguments of both the parties, and the documents placed before me, I am of the view that this Court has No Authority to discuss and decide about Civil matters which is outside the preview of this appellate authority. However up to limited extent, it is required to direct the Excise Commissioner to enquire and pass orders to the effect whether 3 licensed premises at present run by 3 respondents are on the same plot of land, for which licenses were issued. This will be required to be ascertained, so that if there is some discrepancy noticed after such enquiry an appropriate order may be issued by the Excise Commissioner."*

8. It can thus be seen that the apprehension expressed on behalf of the petitioner is misplaced. In that view of the matter, no interference is called for. It is needless to mention that the

learned Excise Commissioner shall conduct the enquiry as directed by the learned Chief Secretary in terms of the impugned order, as also the order dated 20.12.2010 and in terms of Section 16 of the Act of 1964.

The learned Commissioner of Excise shall complete the enquiry as expeditiously as possible and preferably within a period of three months from today.

With this the Writ Petition is disposed of, with no order as to costs.

C. V. BHADANG, J.

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