

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7949 OF 2014

Abhay A. Apraj	..	Petitioner
vs.		
State of Maharashtra & Anr.	..	Respondents

Mr. J. S. Chandnani for Petitioner.
Ms P. S. Cardozo - AGP for Respondents

CORAM : M. S. SONAK, J.
DATE : 06 FEBRUARY, 2015

P.C. :-

1] This petition takes exception to the orders dated 30 January 2013 and 10 June 2014 made by the respondents, imposing upon the petitioner penalty of suspension of his video theatre business for a period of twenty days, *inter alia* on the ground that the petitioner, based upon a single licence issued to him, was involved in operation of two theatres.

2] There is no serious dispute that in the premises virtually adjoining the petitioner's licensed premises, there was a video theatre in operation. In reply to the show cause notice dated 29 August 2012, the petitioner has not disputed this position. The petitioner's only case is that if some other person is operating a video theatre from the adjoining premises, then the petitioner

cannot be and is not in any manner concerned with the same. The learned counsel for the petitioner has reiterated the same submission before this Court as well.

3] The learned counsel for the petitioner further submitted that the show cause notice made reference to some pending proceedings, in which it is alleged that the petitioner was fined Rs.10,000/-. In this regard, the learned counsel submitted that at no stage has the petitioner been fined Rs.10,000/- as alleged and in any case, the position of law is settled that pending proceedings cannot be made the basis for penal action. For all these reasons, the learned counsel for the petitioner submitted that the impugned orders imposing penalty of suspension are required to be interfered with.

4] Ms Cardozo, the learned AGP on the other hand defended the impugned orders by submitting that the show cause notice came to be issued on the basis of actual inspection carried out on 23 March 2011, when it was noticed that the petitioner was found operating two video theatres, despite having been issued only one licence. Further, the learned AGP submitted that two Authorities, namely, original and the appellate authority have concurrently found that there was such violation on the part of the petitioner and

the concurrent findings are not vitiated by perversity. Finally, the learned AGP submitted that it is inconceivable that some other person operates a video theatre from the adjoining premises, without any permission whatsoever and the petitioner does not protest against the same. For all these reasons, the learned AGP submitted that the impugned orders, which have in fact taken an extremely lenient view of the matter, may not be interfered with.

5] Having heard the learned counsels for the parties and having perused the material on record, it is to be noted that the petitioner, in his reply has nowhere disputed the position that there is in fact a video theatre in operation from the very adjacent premises. In the reply, the petitioner has not even disputed that inspection was held on 23 March 2011 and that in the course of such inspection it was noticed that it was the petitioner who was operating two theatres, despite having been issued only one single licence. The submission that pending cases cannot be taken into consideration, though well founded, does not apply to the facts and circumstances of the present case. This is because the learned AGP has made it clear that there are no pending cases in so far as the petitioner is concerned, and that the action in the present case was not passed, relying upon any pendency of cases as such. The learned AGP clarified that the reference in the show cause notice is to certain

proceedings against the Manager of the petitioner. Since there is no clarity on this aspect in the show cause notice, it would obviously not be appropriate to accept that the prosecution pertains to the Manager of the petitioner. Be that as it may, perusal of the impugned orders does not indicate that this has been made the basis for imposition of penalty of suspension for a period of twenty days.

6] If all the aforesaid circumstances are cumulatively considered, then it cannot be said that there is any perversity involved in the concurrent findings recorded by the two Authorities. Ultimately, the penalty imposed is also of suspension for a period of twenty days. There is no dis-proportionality involved in the penalty imposed. The petitioner, as noted earlier, has never denied in the reply the fact that a theatre is in operation from the adjoining premises. The petitioner also did not deny the factum of inspection, though the same was specifically referred to in the show cause notice. In the reply, the petitioner also did not request for furnish of any material, so that the petitioner could be in a position to respond to the same. At this stage, it is therefore not permissible for the petitioner to make a grievance that no such material was furnished and therefore there was any violation of principles of natural justice and fair play.

7] The decision of this Court in the case of *Kana Nagu Mhatre vs. The Assistant Commissioner of Police & Anr.*¹, upon which the learned counsel for the petitioner placed reliance is also clearly distinguishable. In the facts and circumstances of the said case, the order impugned in the said petition was set aside and directions were issued for holding of an enquiry by way of record of evidence. In the present case, considering the defence raised by the petitioner, it was not necessary to hold any further enquiry into the matter.

8] Accordingly, there is no merit in this petition and the same is dismissed. There shall be no order as to costs.

9] At this stage, the learned counsel for the petitioner seeks stay upon the implementation of the impugned order dated 30 January 2013 which directs suspension for a period of twenty days. There is no material of record which would indicate that during the period of appeal against the said order, there was any stay in operation. Accordingly, now that this petition has been dismissed, I do not deem it appropriate to grant any stay, at this stage. Request for stay is accordingly denied.

(M. S. SONAK, J.)