

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.36111 2014

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ORDER:
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This writ petition calls in question the action of the respondents 2 and 3 herein in permitting the fifth respondent to run the wine shop at Rayakuduru Village, Veeravasaram Mandal contrary to the location mentioned in A4 license of the fifth respondent i.e., at Aratlakatta village of Palakollu Mandal, West Godavari District.

2. Heard Sri B.Chandrasekhar, learned counsel for the petitioner, the learned Government Pleader for Prohibition and Excise for respondents

1 to 3, Sri Ravi Cheemalapati for the fourth respondent and Sri Dasari S.V.V.S.V Prasad, learned counsel for the fifth respondent apart from perusing the material available on record.

3. Petitioner and the fifth respondent are the licensees of A.4 at Rayakuduru village, Veeravasaram Mandal and Aratlakatta village of Palakollu Mandal, West Godavari District, respectively. The premises of the petitioner's shop as mentioned in Form A4 license is D.No.1-96 of Rayakuduru Village of Veeravasaram Mandal, West Godavari District, within the following boundaries:

“East: Vacant site of House owner.

West: Lane of A. Umamaheswarao

North: R & B Road

South: Permit Room”

4. As per Form A4 license issued in favour of the fifth respondent, the premises of the fifth respondent shop is D.No.2-6/1A of Aratlakatta village of Palakole Mandal within the following boundaries:

“East: Coconut Plant of V.Ramalinga Raju

West: Coconut Plant of V.Ramalinga Raju
North: Aratlakata to Rayakuduru Road
South: Panchatthi Drain”

5. The case of the petitioner is that contrary to the conditions of license, the fifth respondent shop is established in Field No.157/2 and the same falls in Rayakuduru village, but not in Aratlakatta village as mentioned in Form A4 license. In this regard, the petitioner made a representation on 17.10.2014 to the respondent authorities, requesting for removal of shop of the fifth respondent from the unauthorized premises.

6. In support of his case, petitioner herein also filed a copy of the letter in Rc.No.922/2014/D dated 24.12.2014 of the Tahsildar, Veeravasaram Mandal addressed to the Station Officer, Prohibition and Excise, Bhimavaram wherein it is mentioned that the shop of the fifth respondent is located in the North West corner of R.S.No.157/2 of Rayakuduru village of Veeravasaram Mandal, West Godavari District.

7. On the contrary, it is the case of the fifth respondent as per the counter affidavit that his shop is located in Aratlakatta village of Palakole Mandal, West Godavari District. In order to substantiate his case, the fifth respondent herein has filed a certificate dated 22.10.2014 issued by the Village Revenue Officer, Aratlakatta wherein it is certified that the shop of the fifth respondent is in Sy.No.125/1 and 125/2 of Aratlakatta village. The fifth respondent has also filed field sketch issued by the Mandal Surveyor, Palkol. The counter affidavit filed by the third respondent supports the case of the fifth respondent and it takes the support of the certificate dated 22.10.2014 issued by the Village Revenue Officer, Aratlakatta on which R.5 placed reliance. In the counter affidavit deposed by the Prohibition and Excise Superintendent, Bhimavaram, West Godavari District, it is stated that there is no recorded evidence that the A.4 shop of Aratlakatta village is located in Field No.157/2 in an extent of Ac.0.06 cents of Rayakuduru

village and the V.R.O, Aratlakatta has certified that the D.No.2-6/1A in which the A.4 shop of Aratlakatta village is established is in Survey numbers 125/1 and 125/2 of Artlakattta Grampanchayat limits and the said counter affidavit of the Excise Superintendent further avers that there is no need to shift A.4 shop of Aratlakatta to Aratlakatta village as it already exists in Aratlakatta village as certified by the V.R.O, Aratlakatta. The counter further states that the petitioner has established his A4 shop in the extreme boarder of Rayakuduru village adjacent to Aratlakatta village, as such, the allegations made by the petitioner are baseless.

8. For the purpose of resolving the issue in accordance with the ground realities, this Court on 18.06.2015 appointed one Kiran Tirumalasetti as an Advocate Commissioner to conduct survey with the assistance of Deputy Inspector of Survey and Settlements, Office of Revenue Divisional Officer, Narsapur Division, West Godavri District and also the Mandal Surveyors of both Palakollu and Veeravasaram mandals and to submit the report indicating as to whether the shop of the fifth respondent is located in the licensed premises as indicated in his A.4 license.

9. The learned Advocate Commissioner filed his report on 29.06.2015 and paragraphs 4 to 6 of the said report read as under:

“4. I submit that as per the survey conducted by the officials and also revenue records shown by them in respect of their Mandals & Village, the shop of the 5th Respondent in the above Writ Petition is situate at R.S.No.157/1 & 157/2 of Rayakuduru village, Veeravasaram Mandal.

5. I submit that originally the shop is situating in R.S.No.157/1, which is classified as Promboku land and R.S.No.157/2 is classified as Gayallyu, and I also verified the Door No. of the existing shop through Electricity Bill and indicates that the Door No.2-6/1A as indicated in the A4 license and also we certified the adjacent houses which are having Door No. as 2/6/1 and 2-6 of the survey No.157/1 & 2 of Rayakuduru village, but the Door Nos. are given by the

Arthakatta village Panchayat. It is submitted that as per the revenue records the shop is situated in the Rayakuduru village limits i.e., in R.S.No.157/1 & 2 but the same is merged with the Arthalakatta Village and the same village panchayath had given door numbers to the houses as it physically merged with Arthalakatta Village and the distance from the shop of the 5th respondent to petitioner's shop is approximately 2 Kms and both the shops are established at the tail end of the respective villages.

6. We also verified the boundaries of one said 5th Respondent's shop whether it is within the boundaries as mentioned in the A4 license. It is found that present boundaries of the shop are not tallying with the boundaries mentioned in the A4 License; particularly the North side & South side were not tallying. “

10. The above report submitted by the learned Advocate Commissioner candidly discloses that the shop of the fifth respondent is located in Rayakuduru Village of Veeravasaram Mandal, West Godavari District but not in Arthalakatta village of Palakollu Mandal, West Godavari District as mentioned in A.4 license issued in favour of the fifth respondent. Therefore, the complaint made by the petitioner to the official respondents against the fifth respondent herein merits consideration, in accordance with the provisions of A.P. Excise Act and the Rules framed thereunder and the conditions of the license.

11. For the aforesaid reasons and keeping in view the report of the Advocate Commissioner, this writ petition is allowed, directing the official respondents herein to take appropriate action on the issue raised by the petitioner herein in the representation dated 17.10.2014 and initiate action against the persons responsible, in accordance with law, and pass appropriate orders within a period of one month from the date of receipt of a copy of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:07.07.2015
grk



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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Dated 06th July, 2015
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.36111 2014

Dated 06th July, 2015

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Between:

J.Durga Rao,
S/o Suryanarayana,
Aged about 39 years, Occ: A4 License Holder,
M/s.Sri Ganesh Wines, #D.No.1-96, Rayakuduru village,
Veeravasaram Mandal, West Godavari District.

... Petitioner

and

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Prohibition & Excise Department,
Secretariat, Hyderabad and others.

... Respondent