

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9388 OF 2013

Prakash Dhondiram Hatangale

..PETITIONER

VERSUS

The Hon'ble Minister for State Excise
Department, Mumbai and Others

..RESPONDENTS

....

Mr. R.S. Shinde, Advocate for petitioner.

Mr. S.K. Tambe, A.G.P. for Respondent Nos. 1 to 3.

Mr. H.V. Patil, Advocate for Respondent No.4.

....

CORAM : T.V. NALAWADE, J.

DATED : 06th DECEMBER, 2016

ORDER :

1. The petition is filed to challenge the order made by Hon'ble Minister for Excise Department by which the CL-III license standing in the name of petitioner is suspended. Both sides are heard.

2. Both sides are claiming to be heirs of Dhondiram who was the original license holder. He died in the year 1973. It is the case of present petitioner that Dhondiram left behind only present petitioner and two daughters and so the petitioner got entered his name in the license in the year 1983. It is the contention of the petitioner that his two sisters had

given consent for entering the name of petitioner in the record and so his name was entered in the license and he has used it for thirty years, till 2010.

3. It appears that Nagrabai – a lady has filed objection in the Excise Department and she had objected to continuation of license in the name of present petitioner. It appears that the Superintendent of Excise Department made some order on 30th September, 1987 and the petitioner agreed to pay Rs.450/- per month to Nagrabai. It appears that Respondent No.4 – Ishwarabai then obtained heirship certificate by contending that she was daughter of Dhondiram and then she also filed objection to continuation of license in the name of present petitioner. The Collector made order and suspended the license as there was dispute about the heirship and also right to hold license. This order of Collector was challenged before the Commissioner. The Commissioner allowed the proceeding but the order of suspension was maintained. This order of Commissioner was challenged before the Minister. It appears that initially the Minister gave opportunity to both sides to see that they enter into partnership as provided in the M.C.S. Rules. This order was challenged by filing writ petition in this Court. This Court set aside the order of Minister and the matter was remanded back to the Minister.

After hearing both sides, the Minister has again made order of suspension of the license and so the petitioner is before this Court.

4. Learned Counsel for petitioner submitted that during her lifetime, Nagrabai made affidavit in support of the case of petitioner that she was only living with Dhondiram and there was no marriage with Dhondiram. It was submitted that Nagrabai also contended that Respondent No.4 – Ishwarabai was the daughter from her husband i.e. Ishwarabai was not borne from Dhondiram. Learned Counsel submitted that after starting of the dispute, heirship certificate was issued in the name of Ishwarabai but it was challenged and the certificate is now canceled and the matter is remanded back to the Civil Court for fresh enquiry. Learned Counsel for petitioner submitted that he has filed suit bearing no. 431 of 2012 for relief of declaration that Ishwarabai is not heir of Dhondiram. He submitted that till the suit is decided, the petitioner needs to be allowed to use the license and run the business.

5. Against aforesaid submissions of learned Counsel for petitioner, learned Counsel for respondents submitted that there is more than sufficient record to show that Respondent No.4 is the daughter of Dhondirm. As per the instructions given by this Court, some record which

was apparently produced before the Court and which shows that Respondent No.4 was born on 04th December, 1959 and she was admitted in the school by Dhondiram on 06th July, 1966 is produced. There is school leaving certificate issued in 1983 showing that name of Dhondiram was given as father of Respondent No.4. Her name was Kishorabai at that time and after her marriage her name is changed to make it Ishwarabai. Similarly, death certificate of Nagrabai is produced on record and it shows that she was using name of Dhondiram as husband. There is also record like pass issued by Maharashtra State Road Transportation Corporation in favour of Nagrabai showing that she was using name of Dhondiram as husband. There is voters list showing that Nagrabai was shown as member of family of Dhondiram and also Prabhu. This voters list was prepared in 1977. There is also voters list of 1971 showing that Nagrabai was living with present petitioner and she was using the name of Dhondiram as her husband. At that time, Dhondiram was alive.

6. Though dispute is pending, the Civil Court has not granted relief of declaration sought by present petitioner. In view of aforesaid record, at present, it cannot be said that Respondent No.4 cannot be called as heir and she has no right to raise the dispute. The contentions made by petitioner that he has disputed relationship and so it cannot be

said that dispute is over heirship cannot be accepted. Rules framed by the State Government show that when there is such dispute, the authority has power to suspend the license. This Court holds that the authority has not committed any error in suspending the license and there is no possibility to interfere in the order made by Hon'ble Minister. Petition stands dismissed.

7. Learned Counsel for petitioner requests for continuation of stay for few days but the other side has strong objection. The petitioner is not paying anything to Respondent No.4 though in the past he was making payment to her mother. In view of this circumstance and as the petitioner is not ready to pay anything, the stay is vacated.

(T.V. NALAWADE, J.)

SSD