

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 219 OF 2016

ADVANI HOTELS AND RESORTS INDIA
LTD., REP. HEREIN BY ITS AUT. G.M.
(FIN) SHANKAR G. KULKARNI AND ANR ... Petitioner
Versus
THE STATE OF GOA THROUGH ITS CHIEF
SECRETARY AND ANR., ... Respondents

Mr. Nitin Sardesai, Senior Counsel with Mr. Kaif Noorani with Mr.
S. V. Mehta, Advocates for the petitioners.
Mr. A.N.S. Nadkarni, Advocate General with Mr. D. Lawande,
Government Advocate for respondents.

Coram:- F. M. REIS &
K. L. WADANE, JJ.

Date:- 22nd February, 2016

P.C.:

Heard Shri Nitin Sardesai, the learned Senior Counsel appearing for the petitioners and Shri A.N.S. Nadkarni, the learned Advocate General appearing for the respondents No. 1 and 2.

2. The above petition, inter alia, takes exception to the Demand Notices dated 10.07.2014 and 08.09.2014 whereby the recurring amounts towards the running of a casino by the petitioner was sought to be recovered by the respondents.

3. Shri Sardesai, the learned Senior Counsel appearing for the petitioner has pointed out that the demand notices have been

erroneously issued by the respondents based on a notification dated 25.05.2012, without examining the corrigendum which was subsequently issued on 24.08.2012 and published in the Official Gazette on 30.08.2012. The learned Senior Counsel has further pointed out that the petitioners are not liable to pay the said amount, as according to him, the respondents are relying upon a judgement passed in connection with another casino, which according to him, is not binding on the petitioner. The learned Senior Counsel further pointed out that the said judgment came to be passed without examining the subsequent notification published on 30.08.2012. The learned Senior Counsel further submits that a show cause notice has been issued to the petitioner and the matter is under consideration before the competent authority, nevertheless, according to him, the decision has already been taken by the respondents way back on 11.09.2014 to recover the amount from the petitioner. The learned Senior Counsel further points out that as such, the show cause notice and the Demand Notices be quashed and set aside.

4. Shri A. N. S. Nadkarni, the learned Advocate General appearing for the respondents has pointed out that the Demand Notices were issued for recovery of the recurring amount and thereafter as a representation was made by the petitioner disputing the claim, the respondents issued a show cause notice dated 09.11.2015. The learned Advocate General further submits that this itself would suggest that the outcome of the show cause notice would finally

decide whether the petitioners are liable to pay the amounts claimed, to the respondents. The learned Advocate General further points out that the contention of the learned Senior Counsel that every demand for recovery of the recurring fees is preceded by a recovery notice is not correct. The learned Advocate General has pointed out that all contentions of the parties can be kept open to be examined by the competent authority who is examining the show cause notice issued by the respondents.

5. We have considered all the relevant facts and the records of the case. It is now well settled that the interference of this Court in exercise of its jurisdiction under Article 226 of the Constitution of India in matters challenging only a show cause notice is very sparingly exercised and in exceptional circumstances. In the present case, the demand notices were issued way back in August 2014 and thereafter the respondents have been issued a show cause notice in 2015, after examining the representation filed by the petitioner. This exercise itself suggests that the final claim of the respondents towards such recurring fees would rest on the decision on the show cause notice which is under consideration before the competent authority. As such, considering the above and keeping all the contentions of the petitioners open to be examined by the Competent Authority on its own merits, we find no reason to exercise jurisdiction under Article 226 of the Constitution of India at this stage, on the basis of the show cause notice alone.

6. We accordingly dispose off the writ petition by keeping all the contentions of the petitioners open. The show cause notice shall be examined by the respondent No. 2 on its own merits after hearing the petitioner in accordance with law.

7. At this stage, Shri Nitin Sardesai, the learned Senior Counsel submits that in case any adverse order is passed by the respondent No. 2 on the show cause notice, the operation of such order be stayed for a period of five weeks to enable the petitioner to avail of the remedy in law. Hence, in case any adverse order is passed by the respondent No. 2 on such show cause notice, the operation of such order shall be stayed for a period of five weeks. The petitioner at liberty to file a reply to the show cause notice within a period of two weeks from today.

K. L. WADANE, J.

F. M. REIS, J.

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