IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12042 OF 2016

Laju Gul Basantani ...Petitioner
V/s.
The Collector of Nasik & Ors. ...Respondents

Mrs.Veena Thadani for the Petitioner.
Mr.Sachin Kenkal, AGP for the Respondent-State.

CORAM : K.K. TATED, J.

DATE : 21st OCTOBER, 2016.

P.C.

1. Heard the learned counsel for the parties.

2. By this petition under Article 227 of the Constitution of India the petitioner is challenging the order dated 28th September 2016 passed by the Respondent No.1-Collector of Nashik by which petitioner's license FL II and CL/FL/TOD III for running wine shop issued under Maharashtra Prohibition Act, 1949 stands suspended indefinite period.

3. The petitioner challenges the said order by preferring the appeal under Section 137(2) of the Maharashtra Prohibition Act,

1949 (hereinafter referred as 'said Act') along with Application for stay before the Hon'ble Commissioner State Excise on 15th October 2016. However, the Appellate Authority neither decided the application for stay nor granted any ad-interim relief. Hence, the petitioner moved before this Court under Article 227 of the Constitution of India.

4. The learned counsel Mrs.Veena Thadani appearing for petitioner submits that the Respondent No.1. without issuing any show cause notice to the petitioner and or giving any opportunity of personal hearing passed the order dated 28th September 2016. In support of her contention the learned counsel for the petitioner relies on the statement made in paragraph 12 of the petition which read thus :-

> *"12. It is pertinent to note that the 1st Respondent herein did not care to issue a Show-Cause-Notice to the Petitioner and neither was the Petitioner given an opportunity of personal hearing when the Petitioner could have satisfied the 1st Respondent herein that her premises were in accordance with law and were not within the prohibited distance prescribed between religious institutions and wine shops. However, in gross violation of the principles of natural justice, the 1st Respondent herein has*

closed down the legal and authorised business of the Petitioner herein."

5. The learned counsel for the petitioner submits that the respondent No.1 passed the impugned order dated 28th September 2016 on the ground that the temple of Marimata belonging to Shree Gram Vikas Mandal, Satpur, Taluka and District Nashik is within distance of 50 meters from the petitioner's shop. She submits that the Shree Gram Vikas Mandal Satpur has written a letter dated 15th October 2016 to the Collector stating that the said temple is not belonging to them situated in City Survey No.245. The counsel for the petitioner also placed reliance on the letter dated 20th July 2016 issued by the office of the Joint Charity Commissioner, Nashik, Division Nashik bearing Outward No.3896 of 2016 stating that the said temple i.e Marimata Temple, Nashik is not registered with them. The learned counsel for the petitioner submits that in spite of this fact the learned Collector suspended their license for indifinite period. She submits that "Marimata Temple" is neither registered with the Charity Commissioner, nor it is managed by registered Public Trust. Hence, it cannot be recognised as a "religious institution" as contemplated by the Maharashtra Foreign Liquor Rules, 1953. She relies on Rule 25(2)(b) and Explanation (ii),

which reads thus:

> *"25(2) No licence under sub-rule (1) shall be granted to respect of any shop-*
> *(a) ……*
> *(b) Which, if situated in areas within the jurisdiction of any Municipal Corporation of 'A' Class or 'B' Class Municipal Council, is within a distance of fifty metres, and if situated elsewhere, one hundred metres, from any educational or religious institution; or.*
> *Explanation: (ii) "religious institution" means an institution for the promotion of any religion and includes a temple, math, mosque, church, synagogue, agiary or other place of public religious ownership which is managed or owned by a public trust registered under the Bombay Public Trusts Act, 1950 (Bom. XXIX of 1950) and includes such other religious institutions as the State Government may by order specify in this behalf.'"*

She submits that during the pendency of the Appeal if the stay is not granted it will cause irreparable loss to the petitioner.

6. On the other hand learned AGP Mr.Sachin Kenkal appearing on behalf of respondent makes a statement that he received instructions from the Department that the learned Commissioner State Excise will decide the appeal preferred by the petitioner within six months from today. He further submits that there is no question of granting any stay at present. He submits that as per Rule 25(2) if the temple and or any public images worships is within a distance of 50 meters of the shop, the license cannot be granted. He submits that bare reading of Rule 25(2) shows that it is

not necessary that the temple/religious worships be registered under the Maharashtra Public Trust Act, 1958.

7. I have heard both the sides at length. It is to be noted that the bare reading of Rule 25(2), shows that if registered religious institution, temple and religious worships is situated within a distance of 50 meters from the shop, then only the licenses can be canceled. In the present proceedings, Learned Collector passed the impugned order dated 28th September 2016 on the ground that Shree Gram Vikas Mandal Satpur temple is situated within a distance of 50 meters from the shop. Letter issued by the Joint Charity Commissioner dated 20th July 2016 and letter of Shree Gram Vikas Mandal Satpur shows that said temple is not belonging to any registered trust. These things required to be decided by the Appellate Authority after going through the documents on record.

8. Considering these facts I am of the opinion that the petitioner has made out a case for stay of the impugned order dated 28th September 2016 passed by the learned Collector of Nashik, State Excise Department during the pendency of appeal before the Hon'ble Commissioner State Excise, Mumbai. Hence, following order.

ORDER

(a) Respondent No.2 Appellate Authority, Commissioner State Excise is directed to decide the petitioner's appeal under Section 137(2) of the Maharashtra Prohibition Act, 1949 as early as possible.

(b) During the pendency of the appeal the operation and implementation of the order dated 28th September 2016 passed by the Respondent No.1-the learned Collector of Nashik State Excise Department is stayed.

(c) Parties to act on an authenticated copy of this order.

(d) Writ Petition stands disposed of accordingly.

(K.K. TATED, J.)