

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 934 OF 2016

Lata Sahebrao Deshmukh	... Petitioner.
V/s.	
State of Maharashtra & Ors.	... Respondents

Mr. D.B. Sawant a/w P. K. Lad for the Petitioner.
Mr. Dushyant Kumar, AGP for the Respondents.

**CORAM : K. K. TATED, J.
DATED : 17/11/2016**

PC.:

. Heard learned Counsel for the parties.

2 Considering the facts and circumstances of the present matter, with consent of both the parties Writ Petition is taken on board for final hearing at the stage of admission.

3 By this Petition under Article 226 of the Constitution of India, the Petitioner is challenging the Demand Notice issued by Respondent No.4 dated 25.02.2015 calling upon the Petitioner to pay a sum of Rs.16,53,620/- for shifting wine shop having licence No. FL-II No.367 and CL/FL/TOD-III No.306 from one place to other place in same shop.

4 It is the case of the petitioner that earlier the petitioner was conducted his business from Shop No. 38 situated at Sagar Park Co.Op. Housing Society Ltd., Ghatkopar (W), Mumbai – 400 086. Thereafter, he made application for conducting his business from Shop No.37 also

which was adjacent to the earlier shop/room No. 38, which was adjoining to each other. That was allowed by the Authority. Thereafter, the petitioner made application on 22.06.2011 for deleting the Shop No. 38 from the licence address. Same was allowed by the Superintendent of State Excise, Mumbai Suburban District on 24.08.2011. As per the letter dated 24.08.2011, the petitioner deposited sum of Rs.20/- under Rule 9 of Bombay Prohibition (Privileges Fees) Rules, 1954 (hereinafter will be referred to 'the said Rules') for carrying out amendment in the licence copy. Thereafter, the Respondent No.4 the Superintendent of State Excise, Mumbai Suburban District issued demand notice dated 25.02.2015 calling upon the petitioner to pay sum of Rs.16,53,620/- for shifting a shop premises from one room to another room as per Rule 4(b)(1) of the said Rules. The said demand notice is challenging by the petitioner by this petition under Article 226 of Constitution of India.

5 The learned counsel for the petitioner submits that the Authority below erred in coming to the conclusion that petitioner made application under Rule 4(b)(1) of the said Rules for shifting shop from one place to other place. He submits that petitioner was conducted business from Shop No. 37 and 38 adjoining to each other. He submits that during the course of the business, he purchased Shop No.37. Thereafter there was some dispute between the landlord, who was holding shop No. 38. Hence, the petitioner decided to conduct his business from Shop No. 37 only. Hence, the petitioner made application dated 22.06.2011 for deleting the address of Shop No. 38 as per Rule 8 of the said Rules and same was allowed by the Authority. Petitioner

deposited sum of Rs.20/- vide challan No. 0628199 dated 24.08.2011. The same was accepted by the Authority.

6 The learned counsel for the petitioner submits that the Authority below failed to consider the fact that petitioner never applied for transfer of FL-II licence from one site to another site. He submits that he made application for deletion of Shop No.38 from the licence. He submits that the Authority erred in coming to the conclusion that petitioner is liable to pay fees for transfer of licence from one site to another under Rule 4 of the said Rules. He submits that it is specifically stated in Rule 4(b) that if transfer of licence take place from one site to another site then only they have to pay transfer fees. That is not case in the present matter. He submits that the petitioner applied for amendment of licence as per Rule 8 and that was allowed by the authority. Hence, demand notice dated 25.02.2015 is required to be set aside.

7 On the other hand, the learned AGP appearing on behalf of Respondents State vehemently opposed the present Writ Petition. He submits that shifting the licence from once place to other place in the same building, they have to pay fees as per Rule 4. The State of Maharashtra issued notification dated 29.05.2012 exempted payment of transfer fees of licence in the same building. He submits that in the present proceeding, the transfer taken place before 2012 and hence, petitioner was not entitled to benefit of Government Notification dated 29.05.2012. He submits that the Authority by considering the Rule 4, called upon the petitioner to pay transfer fees which is according to law. Hence, there is no substance in the present petition and same is

required to be dismissed on this ground only.

8 The learned AGP further submits that there is alternate remedy is available to the petitioner to file the Appeal under Section 137 of The Bombay Prohibition Act, 1949. He submits that if efficacious alternate remedy is available to the petitioner, then Writ Petition should not be entertained under Article 226 of the Constitution of India. On these two grounds, the learned AGP submits that there is no substance in the present petition and same is required to be dismissed.

9 I heard both the sides at length. It is to be noted that in the present proceeding, the petitioner filed application on 22.06.2011 for deleting the address of Shop No.38 from the licence. Earlier, the petitioner was doing business from Shop Nos. 37 and 38 were adjoining to each other combined in the same building. Considering the Petitioner's application, the Authority allowed the same on 24.08.2011 on payment of Rs.20/- as per Rule 8. In the present proceeding, the Superintendent of State Excise, Mumbai Suburban District failed to consider the fact that the petitioner made application under Rule 8 for carrying out amendment in the licence and not under Rule 4 for transfer from one place to other place. Bare reading of Rule 4 shows that same is applicable if the application is made for shifting licence from one site to another. In the present proceeding, petitioner had not made any application for shifting licence from one site to another site. Just, he has made application as per Rule 8 for carrying out amendment in the licence i.e. to delete the address shop No. 38.

10 Considering these facts, I am of the opinion that Petitioner has

made out case for allowing this Writ Petition.

11 Hence, following order is passed:

i) Petition is allowed in terms of prayer clause (a), which reads thus:

“a) This Hon'ble Court be pleased to issue appropriate writ, orders or directions calling for papers and proceedings in respect of Petitioner's file pertaining to demand notice issued by Respondent No.4 bearing No. FLR.1112/1076/U/E-2 dated 25th February, 2015 and after scrutinizing the validity and legality thereof the demand notice bearing No. FLR.1112/1076/U/E-2 dated 25th February, 2015 be quashed and set aside.”

ii) No order as to costs.

(K.K.TATED, J.)