THE HON'BLE SHRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.22333 OF 2015

O R D E R

The petitioner was awarded a provisional licence to establish an A4 liquor shop with effect from 01.07.2015. He selected the shop premises situated at 1-115/1, Ward No.6, Visalakshinagar, Jodugullapalem, Visakhapatnam, and started his business. His grievance in the present writ petition was that the Excise authorities shut down his shop on 16.07.2015 on the ground that Emmanuel Fellowship Ministries and Welfare Society, Visakhapatnam, the fourth respondent, was operating a Church at the premises bearing D.No.1-111/1, Visalakshinagar, Jodugullapalem, Visakhapatnam, and that the petitioner's A4 shop was within 100 metres of this Church, which was in violation of Rule 25 of the Andhra Pradesh Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012, as amended by G.O.Ms.No.218, Revenue (Excise-II) Department, dated 22.06.2015 (for brevity, 'the Rules of 2012'). The petitioner contended that there was no Church at the premises bearing D.No.1-111/1, Jodugullapalem, and only a building was situated there. He further contended that no permission was obtained by the fourth respondent society to establish a Church at the premises and that it was an unauthorized construction. He asserted that mere registration of the fourth respondent society would not be sufficient to attract the embargo in terms of the distance norms stipulated under Rule 25 of the Rules of 2012.

By order dated 17.07.2015, this Court permitted the petitioner to run his A4 shop at the subject premises. Miscellaneous petitions were filed by the Excise authorities and the fourth respondent society to vacate the said order.

Comprehensive arguments having been advanced by Sri M.V.S.Suresh Kumar, learned counsel for the petitioner, learned Government Pleader for Excise appearing for the authorities, and Sri

Ch.Samson Babu, learned counsel for the fourth respondent society, the main writ petition is taken up for disposal with their consent.

The Prohibition and Excise Superintendent, Visakhapatnam, stated in his counter-affidavit that objections had been received from the Pastor of the Church established by the fourth respondent society and also Vadabalija Seva Sangham, Jodugullapalem Village, against the establishment of the A4 liquor shop by the petitioner at the subject premises. Thereupon, the Station House Officer, Prohibition and Excise Station, Visakhapatnam-II, conducted an enquiry and reported that the shop was situated within 30 metres of the Church and was in violation of the statutory rule. The Superintendent therefore asserted that the petitioner could not operate his liquor shop at the subject premises in violation of law and prayed for vacating of the interim order and for dismissal of the writ petition.

The President of the fourth respondent society filed a counter-affidavit stating that the Church established at the premises bearing D.No.1-111/1, Jodugullapalem Village, has been there for over two decades and that it was not open to the petitioner to dispute its very existence. He further stated that the Excise authorities had inspected the premises, found that the Church was being run there and came to the conclusion that establishment of the liquor shop by the petitioner was in violation of the statutory norms in terms of the distance to be maintained from religious institutions. He pointed out that despite this statutory violation, the petitioner was continuing to operate his business by virtue of the interim order granted by this Court and was causing a lot of inconvenience to the Church congregation. He therefore echoed the prayer of the authorities to vacate the interim order and dismiss the writ petition.

In his reply affidavits, the petitioner reiterated his contention that the fourth respondent society's premises were unauthorized as the building was not constructed with due permission of the Municipal Corporation of Visakhapatnam. He further asserted that no permission had been obtained by the fourth respondent society to construct a Church at the said premises. He denied the averment of the fourth respondent society that the Church has been in existence for over two decades, by pointing out that the society itself was registered in the year 2012. He further stated that he was not aware of the objections raised by the fourth respondent society and the Sangham and was not a party to the enquiry said to have been conducted into such objections. He asserted that Rule 25 of the Rules of 2012 would have no application to the instant case as there was no Church within 100 metres of his shop.

Perusal of Rule 25 of the Rules of 2012, as amended by G.O.Ms.No.218 dated 22.06.2015, reflects that an A4 liquor shop cannot be established within 100 metres of a place of public worship, viz., a Temple registered with the Endowments Department/a Mosque registered with the Wakf Board/a Church established and managed by a registered Christian Organization/Society. It is not in dispute that the fourth respondent society is a registered society and the Certificate of Registration issued by the Registrar of Societies and District Registrar, Visakhapatnam, reflects that it was registered as Society No.534 of 2012 on 29.08.2012.

The contention of Sri M.V.S.Suresh Kumar, learned counsel, is however that this society has not established a Church at the subject premises as no permission was taken therefor and the construction itself is an unauthorized construction. Upon a pointed query from the Court as to the legal provision under which the fourth respondent society was required to obtain permission for running a Church, the learned counsel relied on Section 428 of the Greater Hyderabad Municipal Corporation Act, 1955, which is applicable to the Visakhapatnam Municipal Corporation.

Perusal of the said provision and more particularly, Section 428(2)(vii), reflects that notice is required to be given thereunder to the Commissioner of the Corporation only if any structural alteration is being made for converting a building into a place of religious worship, when such building was not originally meant or constructed for such purpose. This provision would only come into play if there is any structural alteration of an existing building so as to convert it into a place of worship. However, there is no evidence of the fourth respondent society having undertaken any structural alteration whereby it would have been required to apply for permission to the Commissioner of Visakhapatnam Municipal Corporation. The contention is therefore rejected.

Sri M.V.S.Suresh Kumar, learned counsel, fairly conceded that the fourth respondent society did not have to obtain any other permission for running a Church. His further contention however is that there is no Church at the subject premises and it is only a plain building. However, there is no requirement in law that for the purpose of running a Church, a traditional Church building is required. A place of worship need not be structured traditionally to qualify as such and it would be open to have a place of worship in a regular building also. The traditional concomitants of a Church, such as a steeple, church bell and stained glass, are not the *sine qua non* for categorizing a building as a Church. This contention of the learned counsel is also rejected.

It is the further contention of the learned counsel that the fourth respondent society's construction is unauthorized as per Municipal laws. However, the Municipal Corporation has not been made a party and mere failure of the fourth respondent society to deny the petitioner's averment in this regard would not be sufficient for this Court to render a finding on this aspect. The further contention that the fourth respondent society was registered only in 2012 and the Church could not have been in existence for two decades is of no real significance. All that is required for the bar envisaged under Rule 25 of the Rules of 2012 to operate is that there should be a Church established and being managed by a registered Christian Organization/Society within the prohibited distance. As this is presently established on facts, Rule 25 of the Rules of 2012 would stand attracted and the petitioner cannot run his business in violation thereof.

One other contention urged by Sri M.V.S.Suresh Kumar, learned counsel, is that there was a violation of the principles of natural justice as the petitioner was not put on notice of the objections raised or the enquiry conducted thereon by the Excise authorities. However, this Court is not persuaded to interfere on this ground. The petitioner is presumed to know the legal position and if he established his A4 shop in violation of the prescribed distance norms under Rule 25 of the Rules of 2012, any action taken by the Excise authorities to rectify such violation would not ordinarily require them to put the petitioner on notice, unless there is a dispute as to the actual distance between the structures. That, presently, is not the complaint of the petitioner. As per the findings recorded by the authorities, the distance between the petitioner's A4 liquor shop and the Church is far lesser than the stipulated 100 metres, being only about 30 metres. The petitioner does not even dispute this aspect. That being so, even if he was not given an opportunity to participate in the enquiry, no prejudice was caused to him and the violation of the principles of natural justice, even if any, is not sufficient to come to the rescue of the petitioner.

On the above analysis, this Court finds that the petitioner cannot be permitted to operate the subject A4 liquor shop at its present location, as it is in violation of Rule 25 of the Rules of 2012. However, as the petitioner has been operating at the subject location by virtue of the interim order, he is allowed two weeks from today to shift his business to another location in accordance with the statutory rules.

Subject to the above observation, the writ petition is dismissed. Pending miscellaneous petitions shall also stand dismissed. No costs.

SANJAY KUMAR, J

3rd FEBRUARY, 2016
PGS