

HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE

AND

HON'BLE SRI JUSTICE S.V.BHATT

W.A.No.94 of 2016

ORDER: *(Per Hon'ble Sri Justice S.V.Bhatt)*

Writ petitioner is the appellant. The writ petitioner prayed for the following relief:

“.. to issue a Writ, order or direction and more particularly one in the nature of writ of Mandamus declaring the action of the respondent authorities in closing the A4 shop bearing door No.1-115/1, situated at Ward No.6, Jodugullapalem, Visakhapatnam without any notice or opportunity to the petitioner as contrary to the principles of natural justice and unjust..”

Through the order impugned in the appeal, the learned Single Judge having regard to the totality of circumstances and the grievance canvassed by the appellant held as follows:

“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.

We have heard learned counsel for the appellant in detail and also Mr.Ch.Samson Babu appearing for 4th respondent.

The counsel for appellant has substantially reiterated the contentions urged before the writ Court and having perused the findings recorded, in the facts and circumstances of the case, we are satisfied that the contentions urged before this Court fail for the reasons already recorded by the Single judge. The writ appeal fails and accordingly dismissed. No order as to costs.

However, the time granted by the learned Single Judge is extended till 24.02.2016 to enable the appellant to shift his wine shop away from the place of worship.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B.BHOSALE, ACJ

S.V.BHATT,J

Date: 12.02.2016

Stp