HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT APPEAL No.70 of 2016

Date:7.06.2016

Between:
M/s. Sri Sai Wines (Old Bhavani Wines)
H NO. 11-10-734/9/1
DRDA office Road, Khammam District rep by its Proprietor Kodumuri Venu

…..Appellant

and

M/s. Liquids Restaurant and Bar
Rep by its Managing Director,
Sri Samineni naresh S/o Venkateswarlu
R/o T B Palem, Kodad, Nalgonda district and others

…..Respondents

The Court made the following:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE P. NAVEEN RAO

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PC: (*Per the Hon'ble Sri Justice P.Naveen Rao*)

Appellant is 6th respondent. Parties are referred to as arrayed in the writ petition.

2. On 2-7-2015 Gazettee notification was issued calling for applications to award licenses to run retail outlets for sale of Indian Made Foreign Liquor (for short IMFL) in Khammam Municipal corporation limits. The notification gives a break up of locations of retail outlets. Insofar as this writ petition is concerned, the 6th respondent competed for location of retail outlet in Division No.33 of the municipal corporation and being highest bidder, license was granted to him. As a consequence to the grant of license, 6th respondent has to identify premises where the retail outlet can be located. At this stage, petitioner instituted the writ petition alleging that though the license granted to 6th respondent is in Division No. 33, he is establishing the retail outlet in the premises which is falling in Division No. 34 in the premises adjacent to the Bar and Restaurant of the petitioner. Petitioner objected for establishment of retail outlet outside the division in which the license was granted and adjacent to the existing Bar, as it would adversely affect his business.

3. The said claim was resisted by 6th respondent. According to 6th respondent, in the premises selected by him liquor retail outlets were operated for several years. According to him, shop No. 3, as per Gazettee Notification, is the shop belonging to Division No. 33 and the same shop was located in the said premises. In support of the said contention, 6th respondent placed reliance on the license issued on 10.7.2012 and 10.7.2014 to the earlier license holders. He further submitted that the shop is located in Division No. 33 only and false allegation is made.

4. Since there is a serious dispute regarding exact location of the premises, learned single Judge suo-motto impleaded Khammam Municipal Corporation as 7th respondent. 7th respondent filed the counter affidavit. According to 7th respondent, the premises where 6th respondent proposed to locate retail outlet is now falling in Division No. 34 as per reorganized divisions in the municipal corporation. The Court was further informed by the learned standing counsel appearing for Khammam Municipal Corporation that on the clarification sought by the Excise Authorities on the location of the premises, by letter dated 15.10.2015, the Commissioner clarified that the subject premises falls within Division no. 34 of the corporation as per G O Ms No. 78 dated 16.6.2015 notified in Gazettee No. 192 dated 2.7.2015.

5. Having regard to the said categorical assertion of the municipal corporation,

the writ petition was allowed and directions were issued to the Excise Authorities to ensure that 6th respondent shifts the location of the shop to any premises within the division in which license was granted under notification dated 14.9.2015. Aggrieved thereby this appeal is filed.

6. Heard Sri S.Srinivas Reddy learned counsel for 6th respondent and Sri D.V.Sitarama Murthy, learned senior counsel appearing for writ petitioner.

7. Learned counsel for 6th respondent submits that the municipal corporation has given a false report on 15.10.2015 and said report is contrary to the earlier report dated 5.6.2015. The Commissioner, Municipal Corporation addressed letter to the Prohibition and Excise Superintendent, Khammam enclosing the list of wards in Municipal Corporation and as per the list furnished, the house number where the 6th respondent proposed to locate his retail outlet falls in Division No. 34 and therefore within few months the corporation cannot change its stand. He further submitted that map considered by the learned single Judge does not reflect correct location of the boundaries of the Divisions and according to correct location of the subject premises, it is falling within Division No. 33. Gazette Notification by which the process for awarding of the license was initiated alone has to be considered and notification indicates the boundaries and that the municipal corporation has no role with reference to location of retail outlets. He submits that as per the Gazette notification dated 14.9.2015, the shop in Division No. 33 is called as Khammam No.3 shop and very same shop was located in the same premises all along and this is clear from the documents granting licenses to the then license holders dated 10.7.2012 and 10.7.2014 and 6th respondent established retail outlet in the same premises. He submits that the petitioner established the Bar and Restaurant at some other place earlier and recently shifted it to present location. Thus, petitioner having come to present location later, cannot object to running of the retail outlet from the same premises. Learned counsel also placed reliance on the voters list published by Khammam Municipal corporation of the year 2015, in support of his contention. He, therefore, submits that the learned single Judge erred in allowing the writ petition.

8. Learned senior counsel submits that insofar as earmarking of divisions and fixing of the boundaries for various divisions of the municipal corporation, the municipal corporation alone is competent. Excise authorities only follow the

information furnished by the municipal corporation regarding division of wards. The information furnished to the Excise authorities on 5.6.2015 cannot be relied upon as actual Gazette notification regarding the establishment of divisions and demarcation was published on 2.7.2015 and after the Gazette publication, no reliance can be placed on the earlier correspondence. The report of the Commissioner dated 15.10.2015 in response to the information sought by the Excise authorities informing the Excise authorities that subject premises falls within Division No. 34 is in tune with the demarcation of the boundaries as evident from the Gazette notification dated 2.7.2015. The sketch filed at page 60 of the material paper book clearly points out that the subject premises is located in Division No. 34.

9. The only issue for consideration is whether the premises identified by the 6th respondent for location of his retail outlet is falling in Division No. 33 or 34. It is not in dispute that 6th respondent is granted license to establish retail outlet for sale of IMFL in Division No. 33. As per the norms, the retail outlet has to be located in the same division for which license is granted, unless the license holder is permitted to shift by way of a specific order of the competent authority. In the case on hand, no such permission was granted. Thus, the license holder cannot locate the IMFL outlet at any other place other than in Division No. 33. The report dated 15.10.2015 of the Commissioner, Khammam Municipal Corporation is clear and categorical that premises bearing House No. 11-10-734/9/1 falls within Division No.34. There is no merit in the contention of the learned counsel for 6th respondent that in the same premises retail outlets were earlier located. The licenses dated 10.7.2012 and 10.7.2014 granted to other license holders in the earlier excise years do not indicate the division number where the license was granted. Be that as it may, subsequent to reorganization of divisions and demarcation of boundaries, revised Gazette notification was published on 2.7.2015. In terms of the Gazette notification and as seen from the boundaries of the divisions, the subject premises is falling in Division No.34. Municipal Commissioner is the competent authority to assert location of a premises within the corporation limits. He asserts in his letter dated 13.10.2015 that the subject premises falls in Division No. 34. No case is made out to discredit said report. Therefore, 6th respondent cannot place reliance upon the earlier correspondence of the Commissioner, Municipal Corporation dated 5.6.2015 and licenses granted in the previous excise years. No other material is brought on record to disprove the stand of the petitioner and the municipal corporation.

10. Having regard to the same, we do not see any error in the decision arrived at by the learned single Judge, warranting interference in the writ appeal. Accordingly, the writ appeal is dismissed. Miscellaneous petitions, if any, pending, stand dismissed. No costs.

DILIP B. BHOSALE, ACJ

P.NAVEEN RAO, J

Date: 07.06.2016
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HON'BLE THE ACTING CHIEF JUSTICE DILIP B.BHOSALE
AND
HON'BLE SRI JUSTICE P.NAVEEN RAO

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