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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 161/2016 & CM No.696/2016 (for stay)**

VINOD AND ANR

..... Petitioners

Through: Mr. Pawan Upadhyay & Mr. Nishant
Kumar, Advs.

Versus

DEPARTMENT OF EXCISE AND ANR

..... Respondents

Through: Ms. Mahua Kalra, Adv. for R-1.
Mr. N.K. Sharma, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.01.2016

CM No.697/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 161/2016

3. The petition impugns the order dated 21st December, 2015 of the Commissioner (Excise) of dismissal of appeal preferred by the respondent no.2 Delhi Tourism and Transportation Development Corporation (DTTDC) against the order dated 30th October, 2015 of the Deputy Commissioner (Excise) directing the respondent no.2 DTTDC to shift the L-6 liquor vend functioning at 18, Old Sewa Nagar Market, New Delhi.
4. This petition has been filed not by the respondent no.2 DTTDC whose appeal was dismissed vide the impugned order but by Vinod (petitioner no.1) and Poonam (petitioner no.2).

5. Not finding Vinod to be having anything to do with the matter, it has been enquired from the counsel for the petitioners why he has been impleaded.

6. The counsel states that Vinod is the husband of Poonam and has been incorrectly impleaded and in fact ought not to have been made a petitioner and the petition should have been on behalf of Poonam only who is the owner of shop No.18, Old Sewa Nagar Market, New Delhi with respect to which respondent no.2 DTTDC had obtained the L-6 licence from the excise authorities for operating a liquor vend.

7. I have in the order dated 15th December, 2015 in W.P.(C) No.11619/2015 titled ***Vandana Khanna Vs. Government of NCT of Delhi inter alia*** held, i) that the locus to challenge such an order can be of the licensee i.e. the DTTDC only and not of the owner of the shop; ii) that the owner of the shop cannot claim any locus on the ground of being deprived of rental and share of profits from sale of liquor in the said shop; iii) that when closure / shifting has been ordered after satisfying that the residents of the locality are opposed to the existence of the liquor vend and that the liquor vend can be a source of nuisance and breach of peace, this is a question of fact which is not interferable in exercise of power of judicial review; iv) there is no absolute right to carry on business in sale of liquor and trade therein is controlled; reference in this regard was made to ***Khoday Distilleries Vs. State of Karnataka*** (1995) 1 SCC 574 and ***Krishna Kumar Narula Vs. State of Jammu & Kashmir*** AIR 1967 SC 1368); v) once the authorities concerned and competent to assess the “public will” have in their wisdom assessed that the said shop is not fit for use as liquor vend, the same

would be a relevant factor in the matter of grant of licence / allowing liquor vend to continue.

8. The position here is identical save that in the first round of proceedings before the excise authorities, the petitioner no.2 Poonam being the owner was not heard and was subsequently heard and order was passed after taking into consideration her arguments and contentions. However the same does not affect the reasoning given in *Vandana Khanna* supra.

9. The petitioners here have additionally relied upon Circular dated 9th June, 2015 of the Commissioner of Excise, GNCTD requiring liquor vends to have CCTV cameras to record if anyone contrary to law consumes liquor outside the liquor vend. The counsel for the petitioner on the basis thereof has contended that the grievance owing to which the liquor vend has been ordered to be shifted can be taken care of by enforcement of the said circular and the said circular and the effect thereof has not been taken into consideration by the excise authorities while ordering the closure / shifting of the liquor vend.

10. In my view the installation of the CCTV cameras would only facilitate apprehending and punishing the violators but once the authorities have concluded that the “public will” is against the existence of the liquor vend in the said shop, the reasoning aforesaid would hold the fray.

For the reasons aforesaid, the petition is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

JANUARY 08, 2016

‘gsr’..