

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6735 OF 2017

Hotel Golden Palace, Beer Bar
& Permit Room, Tadgaon .. Petitioner

VS.

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 6734 OF 2017**

Hotel Vishwajeet Club & Beer Bar, Kallam .. Petitioner

VS.

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 6737 OF 2017**

Hotel Samiksha Beer Bar &
Permit Room, Kallam .. Petitioner

VS.

The State of Maharashtra and others .. Respondents

**WITH
WRIT PETITION NO. 6739 OF 2017**

Hotel Shivar Beer Bar & Permit
Room, Kallam .. Petitioner

VS.

The State of Maharashtra and others .. Respondents

AND
WRIT PETITION NO. 6733 OF 2017

Hotel New Himalaya Beer Bar
& Permit Room, Kallam

.. Petitioner

VS.

The State of Maharashtra and others

.. Respondents

Mr. Ashish T. Jadhavar, Advocate for the petitioner in all WPs
Mr. A.B. Girase, G.P. for the respondent/State

CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 07-07-2017

ORAL ORDER :

1. All these five Petitions from the District – Osmanabad, are by Beer Bar and Permit Room owners.

2. Arguments similar to those raised in Writ Petition no. 5182 of 2017, have been raised in these Petitions. It is argued that the road on which Beer Bars and Permit Rooms of the petitioners are located, are neither State Highway (Special), State Highway, a major District Road, Other District Road or a Village Road, much less a National Highway. Hence, judgment of the Hon'ble Supreme Court in the case

of The State of Tamilnadu Rep. by its Secretary Home, Prohibition & Excise Dept. and others Vs. K Balu and Anr. dated 15/12/2016 in Civil Appeal Nos. 12164-12166 of 2016 and in Clarificatory order dated 31/03/2017, would be inapplicable.

3. Mr. Jadhavar, learned counsel for the petitioners places heavy reliance on the communication issued by Public Works Department, map prepared and issued by that Department and particularly of ring road at Osmanabad. He is also relying upon the Panchanama, copy of which is at page 59 of the paperbook in Writ Petition no. 6735/2017.

4. Mr. Girase, learned Government Pleader appearing on behalf of the State and equally, the Sub-Divisional Engineer, who is made a party respondent (Sub-Divisional Engineer, Public Works Department) disputes this position. Apart from reiterating his submissions, which we have outlined in our order passed today in Writ Petition no. 5182 of 2017, he would submit that it would be unsafe to rely upon any of the materials brought by the petitioners.

5. Since it is a matter concerning the implementation of an order passed by the Hon'ble Supreme Court of India, which is binding on the State, with a view to discourage such litigation, the State has already clarified through the Secretary, Public Works Department, having his Office at Mantralaya, Mumbai – 32, that a State Highway within the meaning of Section 3 of the Maharashtra Highways Act, would also include a State Road. Thus, amongst others, the State Highway / State Road is virtually one and the same.

6. He would therefore submit that our judgment and order passed today in Writ Petition no. 5182 of 2017 should apply here as well.

7. After hearing Mr. Jadhavar and the learned Government Pleader, we are of the view that these Petitions are no different than Writ Petition no. 5182 of 2017. Once we find that the clarifications, as are sought by the petitioners, are after the judgment of the Hon'ble Supreme Court, it would be very unsafe to rely on a very sketchy and inadequate material. All the more, we have grave doubts, as to whether any Sub-Divisional Engineer can issue the clarification about the status of the roads and which are existing for decades. Whether

they are Village Roads connecting a village to a taluka place and a road which connects a particular taluka to a district, which was laid, constructed and developed by the Public Works Department, there are category of roads and specified in Section 3 of the Maharashtra Highways Act. This Section 3 of the Maharashtra Highways Act, is what is relied upon. It would be highly improper to accept the version of the petitioners about the location of the shops, all the more when the clarification has been issued by the Public Works Department through its Secretary on 08/06/2017.

8. We have found that the State Government is opposing each of these Petitions. We have also found from the record though Sub-Divisional Engineers of the Public Works Department are impleaded and arrayed as party respondents, the learned Government Pleader appearing on behalf of the State, as also these Sub-Divisional Engineers, is not supporting the version placed on record in the form of some letter or communication from such Sub-Divisional Engineers. In several matters, it was pointed out to us that the Sub-Divisional Engineers have been issuing clarification on their own and contrary to the notifications about the status of the roads.

9. In such circumstances, we do not think that such a dispute, as is raised about the location of the shops, would enable us to brush aside the binding judgment of the Hon'ble Supreme Court. For all these reasons and by following our order judgment and passed today in Writ Petition no. 5182/2017, we dismiss these Writ Petitions.

[MANGESH S. PATIL]
JUDGE

[S.C. DHARMADHIKARI]
JUDGE

arp/