

**IN THE HIGH COURT OF BOMBAY AT GOA****WRIT PETITION NO. 729 OF 2017**

KUNDAN KERKAR &amp; 2 ORS.

... PETITIONERS

Versus

VILLAGE PANCHAYAT OF CALANGUTE  
THR. ITS SARPANCH & 2 ORS.,

... RESPONDENTS

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Shri John Abreu Lobo, Advocate for the Petitioners.

Shri Jayraj Lohar, Advocate for the Respondent Nos. 1 and 2.

Shri Galileo Teles, Advocate for the Respondent No. 3.

**CORAM : C.V. BHADANG, J.****Reserved on : 10<sup>th</sup> October, 2017****Pronounced on : 1<sup>st</sup> November, 2017****ORDER:**

The challenge in this petition, under Article 226 and 227 of the Constitution of India is to the order dated 30.06.2017, passed by the learned Adhoc District Court in Civil Revision Application No. 94/2015. By the said order, an application (Exhibit-9) filed by the petitioners for intervention has been dismissed.

2. The petitioners are residents of Naikwaddo, Calangute. It is contended that a restaurant by name 'Cricketers Multicusine Restaurant', run by the third respondent is being run

illegally without a valid trade licence or an excise licence. It is contended that the restaurant is a hotbed of illegal activities which is causing public nuisance, to the local residents. It is contended that in the restaurant, music is played at a very high volume, which is also affecting the residents of the society. It is contended that the authorities are not taking action inspite of lodging of several complaints.

3. The first respondent-Village Panchayat by a resolution dated 16/27 September 2013, refused to renew the trade licence of the third respondent. The learned Additional Director of Panchayat by an order dated 15.10.2015 set aside the resolution passed by the first respondent, thus, directing renewal of the licence. The third respondent filed Execution Application No. 8/2015 for implementation of the order directing renewal of the licence, before the Director of Panchayat. The petitioners sought their intervention in the execution, which was allowed by the learned Director of Panchayat by order dated 17.03.2017.

4. The first respondent-Village Panchayat challenged the order dated 15.10.2015 (directing it to renew the licence) before the learned District Judge in Civil Revision Application No. 94/2015. The petitioners sought their intervention in the said

revision application, which has been refused. It is this order which is subject matter of challenge in this petition.

5. I have heard Shri Lobo, the learned Counsel for the petitioners, Shri Lohar, the learned Counsel for the respondent nos. 1 and 2 and Shri Teles, the learned Counsel for the respondent no. 3.

6. It is submitted by the learned Counsel for the petitioners that valuable rights of the petitioners are involved and are affected by the outcome of the revision application and as such, the intervention ought to have been allowed. It is submitted that the Village Panchayat had acted on the complaint of the petitioners and others and the learned Director for Panchayat, in his discretion has allowed the intervention in the execution proceedings. He submits that the learned District Judge is in error in refusing intervention.

7. On the contrary the learned Counsel for the respondent nos. 1 and 2 and the learned Counsel for the respondent no. 3 have supported the impugned order. It is submitted that the matter of revocation of the trade licence is an issue essentially between the third respondent and the first

respondent-Village Panchayat. It is submitted that the learned District Judge has rightly come to the conclusion that the only question which arises in the revision application is about the legality or otherwise of the order passed by the learned Director of Panchayat. It is submitted that the Village Panchayat, which is the aggrieved party is before the District Court in revision and the claim for intervention is wholly misconceived.

8. I have carefully considered the circumstances and the submissions made and I do not find that a case for interference is made out. Requests similar to the present ones are encountered in many cases, more particularly, involving cases of illegal and unauthorised construction. Notwithstanding the fact that the present case involves a case of a trade licence, similar principles and considerations would arise in so far as a prayer for intervention is concerned. Normally any person can bring to the notice of the competent authority that there is a breach of the conditions of a licence and that the conduction of the business (and in a given case a construction) is illegal. However, that does not change the nature of such dispute, which is essentially between the licensing authority and the licensee. In a given case, where the illegal conduction of such business has a direct and proximate effect, of adversely affecting the personal rights

of a party, the Courts have allowed such intervention. It is a matter of common experience that normally the competent authority like a Gram Panchayat or any other local authority act only when there is complaint made, when in fact they should keep a regular vigil on such breach and should ensure that the business is conducted in strict adherence to the conditions of the licence. There are some cases where it is alleged that the officers of such authority are acting in connivance with the wrongdoer and in such a case, there is a reasonable apprehension that the interest of the ones who are adversely affected may not be safeguarded. There are also cases where the licensee claims that the complaint by the private individuals is motivated and is filed with ulterior motive. The reason for setting out, various possibilities is that the Court while considering the request for intervention has to carefully weigh the competing considerations and then decide the issue. For, the matter of intervention cannot be said to be a formal or a innocuous issue, as in a given case, it may have the effect of unnecessarily enlarging the scope of the proceedings and in a given case may even stifle its speedy and proper disposal. To summarise the principles, (without claiming to be exhaustive) are that, (i) the issue of grant, renewal and cancellation of a licence is an issue essentially between the licensing authority

and the licensee (unless there is a statutory requirement to hear objections from the public or those affected); (ii) thus, normally the Court would not grant a request for intervention unless a clear case of direct and proximate (and not indirect or remote) breach of any proprietary rights is made out; (iii) the Court should also consider whether the intervention would have the effect of unnecessarily enlarging or stifling the proceedings; (iv) if yes, the party seeking intervention should be left to take recourse to the remedy of filing a suit or any other remedy as may be available in law and (v) the request for intervention is not to be granted in a routine manner and the request has to be considered in the light of the facts and circumstances of each case, after carefully evaluating the conflicting considerations of protecting a genuine interest of the party seeking intervention and the objective and speedy disposal of the appeal or the revision as the case may be.

9. Coming back to the present case, the first respondent-Village Panchayat has taken action on the basis of a complaint filed by more than hundred residents of the locality. It appears that the present petitioners are representing their interest. The gravamen of the complaint is that the business of the third respondent is being carried out in breach of the conditions of the

license and there are several illegal activities conducted causing public nuisance in the locality. Essentially, the question before the learned District Judge is whether, the order passed by the learned Additional Director of Panchayat on 15.10.2015, directing the first respondent-Village Panchayat to renew the trade licence of the third respondent is legal and proper. If at all, the business was causing public nuisance, the remedy of the petitioners lies elsewhere and not by way of intervention. Although, today only three of the original complainants have come forward seeking intervention, consider a case if, several complainants who are the residents of the locality start making a request for intervention which would certainly have the effect of stifling the proceedings before the learned District Judge and/or enlarging its scope. The grant, renewal and the cancellation of the trade license is governed by statutory Rules made under the Act and the competent authority can see whether there is compliance with the said Rules or not.

10. The learned Counsel for the petitioners has placed strong reliance on the fact that the Director of the Village Panchayat has granted such intervention in the execution application. In my considered view, this cannot be decisive, for, the order of the Director is not binding on the learned District

Judge. If we apply the principles as set out above, in my considered view, the request for intervention cannot be granted.

11. The petitioners and others appear to be espousing a collective cause of the residents of the locality. Thus, if, according to the petitioners, the business of the third respondent is causing public nuisance, they have to take recourse to an independent remedy as may be available in law and not by way of seeking intervention in the revision application filed by the first respondent-Village Panchayat. In the present case, it is also not alleged by the petitioners that the first respondent-Village Panchayat or its officers are acting in connivance with the third respondent. In fact, it is the first respondent-Village Panchayat which has challenged the order passed by the learned Director.

For these reasons, I do not find that a case for interference in the impugned order is made out. The petition is without any merit and is accordingly dismissed with no order as to costs.

**C.V. BHADANG, J.**

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