

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 590 OF 2017

Rammilan Harishankar Shukla ..Petitioner
Versus
The State of Maharashtra and ors. ..Respondents

Mr. Prakash N. Wagh, advocate for the petitioner.
Mr. V. B. Konde-Deshmukh, APP for the State.

**CORAM : RANJIT MORE &
DR. SHALINI PHANSALKAR-
JOSHI, J J.**

DATE : 22nd NOVEMBER, 2017.

P. C. :

Heard Mr. Wagh, learned counsel for the petitioner and
Mr. Konde-Deshmukh, APP for the State.

2. The petition is filed seeking direction to the respondent Nos.1 to 3 to unseal/deseal of Gala No.25 situated at Gulshan Estate near Andheri Ghatkopar Link Road, Behind Peninsula Hotel, Sakinaka, Mumbai (for short “the said gala”) and handover the said to the petitioner on any terms and conditions as this Hon'ble Court may deem fit and proper.

3. The petitioner claims to be a tenant and in possession of the said gala by virtue of the tenancy agreement dated 13th July, 1998, between himself and one Abdul Jabbar Khan. It is the case of the

petitioner that the said gala was given to one Firoz Khan for carrying out his business of scrap (bhangaar). However, the said Firoz Khan was found carrying some illegal business viz. refilling of gas cylinders. The said premises were accordingly raided and FIR came to be registered bearing CR No.185 of 2011 by Sakinaka Police station against the said Firoz Khan and others including petitioner under Sections 420, 285 and 34 of the Indian Penal Code, 1860 and Sections 3(A) (B), 6 and 7 of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 and Section 3, 7(2), 8 and 10 of the Essential Commodities Act, 1955. The said gala was also seized under panchanama dated 10th May, 2011.

4. Earlier, the petitioner had approached the Sessions Court as well as the Controller and Director of Rationing Supply Department for de-sealing of the said gala. However, the petitioner's appeal filed before the Sessions Court as well as application filed before the Controller and Director of Rationing Supply Department came to be rejected on the ground that same are not maintainable. The petitioner, thereafter, having no alternative, approached this Court invoking jurisdiction under Section 226 of the Constitution of India.

5. We have gone through the provisions of the Essential Commodities Act and Sections 6-A, 6-B, 6-C and 6-E thereof.

Section 6-A talks about confiscation of essential commodity. Under this section, the collector may order confiscation of (a) the essential commodity so seized; (b) any package, covering or receptacle in which such essential commodity is found; and (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

Section 6-B mandates issuance of show cause notice before confiscation of essential commodity to the owner of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance, or the person from whom it is seized.

Section 6-C talks about Appeal. It provides that the appeal against an order of confiscation lies before the judicial authority appointed by the State Government.

Section 6-E talks about bar of jurisdiction in certain cases.

6. The petitioner as stated above, earlier filed an appeal before the Sessions Court as well as application before the Controller of Rationing, and the same were rightly not entertained in view of bar under Section 6-E of the Essentials Commodities Act.

7. Mr. Konde-Deshmukh, learned APP, is not in a position to make a statement regarding whether judicial authority is appointed by the State Government under Section 6-C of the Essential

Commodities Act, 1955. The reading of Section 6-A of the Essential Commodities Act makes it abundantly clear that the Collector can direct confiscation only in respect of essential commodity in any package, covering or receptacle and any animal, vehicle, vessel or other conveyance used in carrying such essential commodity. In our view, this section does not permit sealing of immovable property.

8. The panchanama shows that the said gala was sealed only for temporary period. However, till today, the same is not de-sealed. The panchanama refers the name of the petitioner and his claim of being in possession as a tenant. In this circumstances, we direct the investigation officer of the subject crime to de-seal the gala and give possession of the same to the petitioner within a period of two weeks from the date of receipt of this order. We make it clear that we have not entered into a question regarding the petitioner's claim about tenancy in respect of the subject gala. We have kept that issue open to be contested at an appropriate stage before an appropriate forum.

9. In view of above, the writ petition stands disposed off.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]