

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5167 OF 1997

Balkrishna Mahadeo Salvi] Petitioner

Vs.

The Tahsildar and Executive Magistrate]
Mahabaleshwar, Dist. Satara & Ors.] Respondents

.....

None for the petitioner.
Mrs. K.P. Kulkarni, A.G.P for State.

.....

CORAM : R.G. KETKAR, J.

DATE : 24th MAY, 2017.

P.C.

Heard Ms. Kulkarni, learned A.G.P for respondents No.
1, 2 and 4 at length.

2. By this petition under Articles 226 and 227 of the Constitution of India, petitioner has challenged the order dated 14th July, 1997 passed by the respondent No.1, Tahsildar and Executive Magistrate, Mahabaleshwar. By that order, respondent No.1 has

directed the petitioner to stop user of basement in C.T.S No. 14, Mahabaleshwar, Dist. Satara as a hotel. The relevant and material facts giving rise to filing of the present petition, briefly stated, are as under:

3. On 29th May, 1997, respondent No.1 issued notice calling upon the petitioner to show cause as to why Eating House licence bearing No.5/86 issued on 31st March, 1986 should not be cancelled. Petitioner was called upon to submit reply within 7 days from the receipt of the show cause notice, failing which, it shall be treated that petitioner does not want to say anything in that regard. It is the case of the petitioner that he submitted reply to the show cause notice on 5th June, 1997 at Exhibit G at pages 38 and 38-A followed by further reply at Pages 39 and 40. Respondent No.1 proceeded to pass the impugned order on the ground that despite service of show cause notice, petitioner did not reply within 7 days from receipt of show cause notice as also did not submit any substantial evidence in support of his case.

4. In the petition, petitioner has specifically averred in paragraph XV that he immediately filed reply on 5th June, 1997 to

show cause notice dated 29th May, 1997. Petitioner has also annexed additional reply at Pages 39-40 requesting the Authorities to withdraw show cause notice. Grievance of the petitioner is that the impugned order was passed without considering the reply given by the petitioner to show cause notice. In paragraph XVI, petitioner has specifically asserted that finding in the impugned order that the petitioner did not give reply to the show cause notice is totally incorrect and shows non-application of mind. In ground (I) of paragraph XVII of the Petition, petitioner has specifically asserted that even after reply was given to the show cause notice, it is mentioned in the impugned order that the petitioner failed to give any reply which is factually incorrect which clearly shows that the impugned order is based on total non- application of mind.

5. After hearing both the sides, this Court admitted the Writ Petition and granted interim order in terms of prayer clause (c) of the petition, which reads thus:

“(c)Pending the hearing and final disposal of this Petition, operation, implementation and execution of the aforesaid show-cause notice dated 28-5-1997 (Exh. G hereto) and the impugned order dated 14-7-1997 be stayed and the same may not be acted upon.”

6. No reply is filed denying assertions made in the petition. In view thereof, one has to proceed on the footing that the impugned order was passed without considering reply dated 5th June, 1997, which is at Exhibit G at pages 38, 38-A as also additional reply at Pages 39-40. As the impugned order does not consider replies given by the petitioner, on that short ground alone, it is required to be set aside thereby directing respondent No.1 to decide the show cause notice afresh after considering replies dated 5th June, 1997 at Pages 38 and 38-A and at pages 39-40 and in accordance with law. This is more so when interim order staying the impugned order is operating for more than 20 years. Because of passage of time as also intervening circumstances, if any, respondent No.1 is at liberty to withdraw show cause notice dated 29th May, 1997 and issue a fresh show cause notice calling upon the petitioner to submit reply and documents in support of his case and decide the fresh show cause notice in accordance with law. Hence, the following order.

[1] Impugned order dated 14th July, 1997 is set aside;

[2] Respondent No.1 will consider reply dated 5th June, 1997 at Exhibit G at Pages 38 and 38-A

given by the petitioner to the show cause notice, as also additional reply at pages 39 and 40 and decide the show cause notice afresh and in accordance with law;

[3] Because of passage of time as also intervening circumstances, if any, respondent No.1 is at liberty to withdraw show cause notice dated 29th May, 1997 and issue a fresh show cause notice calling upon the Petitioner to submit reply and documents in support of his case and decide the fresh show cause notice in accordance with law.

[4] All contentions in that regard are expressly kept open;

[5] Rule is made absolute accordingly with no order as to costs.

[R.G. KETKAR, J.]