

Sarnobat

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 4114 OF 1998

Mr. Sudhakar S. Suvarna.
(M/s. Hotel Sai Palace) .. Petitioner
Vs.
The Collector of Raigad & Ors. .. Respondents

Mrs. Veena B. Thadani, for the Petitioner.
Mr. S. H. Kankal, AGP for the State-Respondents.

CORAM : M. S. SANKLECHA, J.

DATE : 3rd OCTOBER, 2017.

P. C. :

1. Learned counsel for the parties state that the controversy in the present petition is now within a very narrow compass and could be disposed of finally today itself. This petition under Article 227 of the Constitution of India challenges the order dated 5th August, 1998 passed by the Commissioner of State Excise under section 137 of Maharashtra Prohibition Act, 1949 (Act).

2. The brief facts give rise to this petition is that, on 2nd February 1998, the petitioner was inducted into a premises owned by Zilla Parishad under a tenancy agreement. Thereafter, on 18th December, 1995 a consent in the form of NOC from Zilla Parishad was obtained to run a permit room in the tenanted premises. Consequent to

the consent, necessary permissions were obtained and the petitioner commenced his business of running a permit room.

3. However, on 15th January, 1997 Zilla Parishad passed resolution bearing No. 783 by which the no objection certificate given on 18th December, 1995 to run a permit room was withdrawn/cancelled. Consequently, a show cause notice was issued and by an order dated 1st April, 1998 the Collector Raigad cancelled the appellant's license/permission for permit room.

4. Being aggrieved, the petitioner filed an appeal under section 137 of the Act to the Commissioner State Excise. By the impugned order dated 5th August, 1998 the Commissioner State Excise after recording the aforesaid facts goes on to hold that the remedy to the petitioner is to challenge the cancellation of the NOC by virtue of the resolution dated 5th January, 1997 before a competent forum, as he is not the authority to decide that dispute. The impugned order further holds that until the time, the petitioner's grievance with regard to withdrawal/cancellation of the NOC to run a permit bar is adjudicated upon a competent court, their license will be kept in abeyance. In conclusion the impugned order records that ;

“The appeal is partly allowed, the order of Collector Raigad is set aside, the permit room licence is suspended until the appellant gets a remedy against the Zilla Parishad

resolution regarding his permit room. The stay granted by this office dated 02.04.98 is vacated.”

5. It was submitted on 1st September, 2017 by the petitioner that the entire controversy now stands resolved in favour of the petitioner. This for the reason that the Jt. Civil Judge Senior Division, Raigad had by an order dated 25th July, 2001 passed in Special Civil Suit No. 81/98 filed by the Petitioner had set aside the resolution No. 783 dated 15th January 1997 as being bad in law.

6. Accordingly, the petitioner was granted liberty to file additional affidavit to bring on record the order dated 25th July, 2001 of the Civil Court, Senior Division, Raigad passed in civil suit No. 81/98 instituted by the petitioner. Consequent to the above, Mr. Vinay Panditrao Pawar the Constituted Attorney of the petitioner has filed an affidavit dated 12th September, 2017 to which has been annexed a copy of the order dated 25th July, 2001 passed by the Civil Court in Special Civil Suit No. 81/1998 by the Jt. Civil Judge, Senior Division, Raigad. By the aforesaid order dated 25th July, 2001 the Civil Court held that the resolution No. 783 dated 15th January, 1997 passed by the Zilla Parishad is illegal and invalid. Consequent to the above finding, the withdrawal/ cancellation of the license/permission to do the business as a permit room also set aside/quashed.

7. Therefore, in view of the affidavit of Mr. Pawar dated 12th

September, 2017 read with the order dated 25th July, 2001 passed by the Civil Court in Special Civil Suit No. 81/98, the suspension of the permit room license gets revoked. In fact the order dated 25th July, 2001 of the Civil Court works out the impugned order dated 5th August, 1998 as the conditional suspension would not stand revoked.

8. Accordingly, nothing survives in the Petition. The petition is disposed of in the above terms. No order as to costs.

[M. S. SANKLECHA, J]