

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

WRIT PETITION NO.3589 OF 2018

Vijay Gangaram Mhatre & Anr. .. Petitioners
Vs.
The Collector of Thane & Ors. .. Respondents

Mr.S.A. Sawant i/by Ms.Shweta Rathod for the petitioners.
Mr.S.H.Kankal, AGP for the respondent nos.1 & 8.
Mr.Aditya Mokashi i/by Mr.Jaydeep Shringare for the respondent nos.2 to 7.

**CORAM : R.D. DHANUKA, J.
DATE : 26th June 2018**

P.C.:

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 1st September 2017 passed by the learned Minister rejecting the revision application filed by the petitioners under Section 138 of the Maharashtra Prohibition Act, 1949.

2. The authority had granted CL III license in favour of the Ramdas Gangaram Mhatre who was the father of the petitioner no.1 and respondent nos.2 to 7. The said license was valid upto 31st March 2016. Father of the petitioner no.1 and the respondent nos.2 to 7 expired on 1st May 2015 leaving behind the petitioner no.1 and the respondent nos.2 to 7 as the legal heirs. The petitioner no.2 is the son of the petitioner no.1.

3. It is the case of the petitioners that father of the petitioner no.1 and the respondent nos.2 to 7 had executed a Will dated 21st April 2015 and allegedly bequeathed the business of M/s.Golden Wine Shop

along with all its assets, including the vendor's license to the petitioner no.2. It is also the case of the petitioners that after demise of the father of the petitioner no.1 and the respondent nos.2 to 7, the petitioner no.2 has been permitted to carry on business for the unexpired portion of the license upto 31st March 2016. The petitioner no.2 thereafter paid the license fees and applied for renewal of the said vendor's license for 2016-17 and also paid fees for transfer of the vendor's license to his name on the basis of the said alleged affidavit and Will. The respondent nos.2 to 7 who are the daughters of the said deceased requested the Collector not to renew the said license in favour of the petitioner no.2 without their consent. Learned Collector passed an order on 22nd June 2016 thereby refusing to renew the license in favour of the petitioner no.2 and suspended the said license.

4. The petitioners filed a revision application before the learned Minister impugning the said order passed by the learned Collector dated 22nd June 2016. Learned Minister passed an order dated 1st September 2017 thereby rejecting the revision application filed by the petitioners. In the said impugned order, the learned Minister however directed that partnership firm shall be constituted in which the respondent nos.2 to 7 shall be joined as partners in the said partnership firm. It is the case of the petitioners that though the petitioners had offered the partnership to the respondent nos.2 to 7 in the said business of M/s.Golden Wine Shop, the respondent nos.2 to 7 refused to accept the said partnership.

5. Mr.Sawant, learned counsel appearing for the petitioners invited my attention to some of the annexures to the writ petition and

would submit that the petitioner no.2 has been permitted to carry on business without any objection by the respondent nos.2 to 7 till 31st March 2016. He submits that the learned Minister has not only rejected the revision application filed by the petitioners but has directed to constitute a partnership firm and to make the respondent nos.2 to 7 partners in the partnership firm. This finding of the learned Minister is without jurisdiction. It is submitted by the learned counsel for the petitioners that though the respondent nos.2 to 7 have filed two separate suits, no relief has been sought by them till date in respect of the said liquor business run by the father of the petitioner no.1 and the respondent nos.2 to 7 after his demise by the petitioner no.2.

6. Learned counsel placed reliance on the judgment of this Court delivered on 9th December 2005 in Writ Petition No.147 of 2005 in the case of ***Ms. Pamela P. Braganza Vs. Mr. Finlay Braganza*** in support of the submission that the liquor license could not have been suspended merely on the ground that the rival claims were made by the other family members of the licensee.

7. Learned counsel appearing for the respondent nos.2 to 7, on the other hand, raises an issue of maintainability of the revision application itself by the petitioners before the learned Minister and would submit that the remedy of the petitioners impugning the order passed by the learned Collector was by way of filing an appeal under Section 137 of the Maharashtra Prohibition Act, 1949 and not directly by way of a revision application under Section 138 of the said Act.

8. The next submission of the learned counsel for the respondent nos.2 to 7 is that the petitioners cannot be allowed to run the liquor business which was admittedly in the name of the father of the petitioner no.1 and the respondent nos.2 to 7 merely on the basis of the alleged Will and the affidavit alleged to have been executed by the deceased father of the petitioner no.1 and the respondent nos.2 to 7.

9. It is not in dispute that CL III license was issued by the authority in the name of Ramdas Gangaram Mhatre who was the father of the petitioner no.1 and the respondent nos.2 to 7. The said Mr. Ramdas Gangaram Mhatre expired on 1st May 2015. After expiry of the said licensee, the liquor business was continued by the petitioner no.2 till 31st March 2016. Even if the respondent nos.2 to 7 have any legal right in the said shop and liquor business which was in the name of late Mr.Gangaram Gopal Mhatre, the fact remains that till date, the respondent nos. 2 to 7 have not filed any civil suit claiming right, title or interest in the said business or in the said liquor shop of late Mr.Gangaram Gopal Mhatre. Though two other suits are already filed by the respondent nos.2 to 7, no relief has been sought in respect of the said liquor business on the basis of intestacy.

10. This Court in the case of ***Ms. Pamela P. Braganza Vs. Mr. Finlay Braganza (supra)*** has considered the similar dispute and has held that the learned Collector cannot pass an order of suspension of the license merely because one of the legal heirs of the deceased has raised dispute pertaining to the estate of the deceased licensee. The remedy of such member of the family would be to seek adjudication of his rival claims by filing a civil suit. The principles of law laid down by this

Court in the case of ***Ms. Pamela P. Braganza Vs. Mr. Finlay Braganza (supra)*** would apply to the facts of this case. In my view, the learned Collector as well as the learned Minister thus could not have passed an orders of suspension of license and could not refuse to renew the said license.

11. In my view, the impugned order passed by the learned Minister directing the petitioners to constitute a partnership firm and to join the respondent nos.2 to 7 as partners is totally without jurisdiction and without application of mind. This Court expects the parties to sit across the table and to settle the dispute amicably.

12. For the aforesaid reasons, I am of the view that no purpose would be served by suspending the license and not renewing the same if all the other terms are satisfied by the petitioners.

13. I therefore pass the following order :-

- (i) The impugned order passed by the learned Minister on 1st September 2017 is set aside. The impugned order passed by the learned Collector on 22nd June 2016 is set aside.
- (ii) Learned Collector is directed to renew the license in the name of the petitioner no.2 which shall be subject to the outcome of the civil suit, if any, filed by the respondent nos.2 to 7 relating to the said liquor business and the said license.
- (iii) It is made clear that this Court has not expressed any views as to whether the petitioner no.2 is on the strength of the alleged Will

and affidavit is entitled to seek transfer of the said license from the name of the original licensee i.e. Mr.Ramdas Gangaram Mhatre in his name or not.

- (iv) The respondent nos.2 to 7 would be at liberty to file a civil suit for claiming the rival claims in respect of the said business run by the father of the petitioner no.1 and the respondent nos.2 to 7 and for claiming the shares in the said business and the said license.
- (v) If any civil suit is filed by the respondent nos.2 to 7, the said suit shall be decided on its own merits without being influenced by the observations made and the conclusions drawn in the impugned order passed by the learned Minister the learned Collector as well as by this Court.
- (vi) The license shall be renewed by the learned Collector in the name of the petitioner no.2 within two weeks from today. If any further amount is required to be paid by the petitioner no.2 for such renewal for past and future period, the same shall be paid by the petitioner no.2 which payment shall be without prejudice to the rights and contentions of all the parties.
- (vii) Writ petition is disposed of in aforesaid terms. There shall be no order as to costs.
- (viii) Parties as well as the authorities to act on the authenticated copy of this order.

R.D. DHANUKA, J.