

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13946 OF 2019

OMPRAKASH EKNATH DANGE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Gangakhedkar S.S.
AGP for Respondents 1 to 4 : Shri Bhagat N.T.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: November 20, 2019
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PER COURT :-

1. The petitioner / original defendant No.6 in RCS No.116 of 2016 has preferred this petition on 19.9.2016 for challenging an order dated 1.12.2016, by which, the trial Court has decided the issue of jurisdiction and has concluded that Section 146 of the Maharashtra Prohibition Act is not an impediment for an individual to prefer a suit for staying an administrative action of movement of a Cl-III license shop from one place to another.

2. The learned Advocate for the petitioner has strenuously canvassed the fourteen grounds formulated in the memo of the petition. Reliance is placed on the following two judgments:-

(i) Shripati Chaituji Mahajan Vs. Sanjay Radhyesham Jaiswal-
[2002 (3) Bom.C.R.752] and

- (ii) Krushnarao Vitthalrao Golhar Vs. State of Maharashtra -
1999 (Supp.) Bom. C.R. 194.

3. Section 146 of the Maharashtra Prohibition Act reads as under:-

"146. No suit or proceeding shall lie against the government or against any Prohibition, Police, or other officers or against any person empowered to exercise powers or to perform functions under this Act, for anything in good faith done or purporting to be done under this Act. "

4. The language used in Section 146 requires no interpretation. This Court has considered in the case of Krushnarao (supra) and has interpreted Section 146 and has concluded that the Government official acting by way of performing official functions cannot be subjected to a civil action under Section 146.

5. The trial Court has recorded in the impugned order that it is considering as to whether the decision of the authority of moving a Cl-III license shop from one place to another is legally sustainable or not. No personal cause has been taken up by the plaintiff against any individual officer, inasmuch as there is not a single prayer in the suit seeking action against an individual officer for any official function

performed by him.

6. In Shripad Mahajan (supra), this Court was dealing with the dissolution of partnership and held that the Civil Court can decide the rights of the partners on dissolution of firm.

7. Considering the above, this petition being devoid of merits, stands dismissed.

(RAVINDRA V. GHUGE, J.)

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