

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

WRIT PETITION NO. 103 OF 2019

Yunus A. Shaikh

....Petitioner

V/s.

The Superintendent, State Excise,
Solapur and ors.

....Respondents

Ms. Veena Thadhani for the petitioner.

Mr. D.B. Sawant a/w. Mr. Santosh Patil for respondent
nos.5 to 9.

Mr. Sachin Kankal, AGP for respondent nos.1 to 4.

**CORAM: SMT. ANUJA PRABHUDESSAI, J.
DATED : 15th JANUARY, 2019.**

P.C.:

. With consent of the parties, petition is decided finally at the stage of admission.

2. By this petition filed under Article 227 of the Constitution of India, the petitioner has challenged order dated 20/12/2018 passed by the Superintendent, State Excise, Solapur and order dated 21/12/2018 passed by the learned Minister, State of Maharashtra, Mantralaya in Revision Application No.FLR 1318/RA 54/**Raushu-2**. By the impugned orders, the Superintendent of State Excise as well as the learned Minister has ordered closure of liquor shop run by the petitioner. The learned Minister has also ordered cancellation of liquor license.

3. Ms. Veena Thadhani, the learned counsel for the petitioner submits that the petitioner has already complied with the conditions imposed by the Commissioner and the Collector in order dated 21/11/2017 and 22/11/2017. She submits that the building was constructed as per the approved plan and the developer had made an application for grant of occupancy certificate. The Corporation has neither granted nor rejected the request for occupancy certificate. Hence, in terms of section 263 of the Mumbai Municipal Corporation Act, the occupancy certificate is deemed to have been granted and consequently the Superintendent of State Excise as well as the learned Minister could not have ordered closure of the liquor shop or cancelled the license for non-compliance of condition. She further contends that the petitioner was not heard before passing of the closure order dated 20/12/2018 resulting in breach of principles of natural justice.

4. The learned AGP as well as the learned counsel for the contesting respondent have submitted that grant of license was subject to production of documents. The petitioner having failed to produce the required documents, the liquor license was liable to be cancelled.

5. I have perused the records and considered the submissions

advanced by the learned counsels for the respective parties.

6. The petitioner was carrying on the business of sale of liquor in the name and style of 'M/s. Gulmohar Wines at Konark Nagar, Konark Apartment, North Solapur. Pursuant to the judgment dated 15/12/2018 passed by the Hon'ble Apex Court, the liquor shop was closed down as the same was within 500 meters of the National Highway. The petitioner applied for shifting of the license to Gala Nos.10, 18, 19, 11 and 17 of the Konark Apartment. The Superintendent, State Excise, Solapur allowed shifting of the license. The said order was set aside by the Collector as the the Superintendent had allowed shifting without obtaining approval of the Collector and without following due procedure of law.

7. The petitioner challenged the said order before the Commissioner of State Excise, Maharashtra State, Mumbai. The Commissioner remanded the matter to the Collector with directions to verify the facts and to allow re-shifting in the event the petitioner fulfills all the requisite conditions.

8. By order dated 27/09/2017, the Collector rejected the request for

shifting of license for non production of occupancy certificate. The said order was again challenged before the Commissioner in Appeal under Section 137(2) of Maharashtra Prohibition Act. The Commissioner by order dated 21/11/2017 set aside the impugned order and directed the Collector to allow shifting subject to condition that the petitioner would submit necessary documents within a period of one year.

9. The petitioner claims that he submitted the documents and gave several undertakings as required by the Collector / Superintendent. By order dated 22/11/2017, the Collector allowed shifting of license on condition of production of documents within a period of one year. Accordingly, the petitioner commenced his business in the new premises.

10. Some of the persons filed a revision application before the State Government seeking closure of the liquor shop. During the pendency of the revision application, the Superintendent by order dated 20/12/2018 ordered closure of the liquor shop for non compliance of the conditions of order dated 22/11/2017. By order dated 21/12/2018, the learned Minister also ordered closure of the liquor shop and cancelled the license for the very same reasons. Aggrieved by

these two orders, the petitioner has filed the present petition.

11. There can be no dispute that the right of the petitioner to run the liquor shop was subject to the restrictions / conditions imposed in the license. The Superintendent Excise as well as the learned Minister has ordered closure of the liquor shop for non compliance of the condition viz. non production of occupancy certificate. The petitioner has claimed that the developer had constructed the building as per the approved plan and had applied for the occupancy certificate. The Corporation has not granted the occupancy certificate within 21 days of receipt of the notice of completion nor rejected the request for occupancy certificate. The petitioner had earlier brought this fact to the notice of the Collector vide letter dated 16/08/2017 and had informed that in terms of section 263 of the Maharashtra Provisional Municipal Corporation Act the same is deemed to have been granted. The order dated 21/12/2018 also reveals that the petitioner had also raised the issue of deemed occupancy certificate before the learned Minister. The learned Minister has set aside the order dated 21/11/2017 passed by the Commissioner and ordered closure of liquor shop as well as cancellation of license for non production of occupancy certificate and other documents. The learned Minister has taken stringent action of

cancellation of license without considering the submissions of the petitioner and without rendering findings on the aspect of deemed occupancy and further without specifying the other documents which were required to be produced. The order which affects the basic livelihood of a person and infringes the right guaranteed under the Constitution cannot be passed in such a mechanical . The order dated 21/12/2018 being arbitrary cannot be sustained.

12. It is to be noted that the Superintendent State Excise has deprived the petitioner of his right to earn his livelihood without giving him an opportunity of being heard. The impugned order dated 20/12/2018 is in violation of principles of natural justice and cannot be sustained.

13. Under the circumstances, both the impugned orders are hereby quashed and set aside. The petitioner is directed to place all the relevant documents before the Collector as regards compliance of the conditions of orders dated 27/09/2017 and 22/11/2017 within a period of eight days from the date of uploading of this order. The Collector shall independently decide whether the conditions have been complied with and thereafter, take appropriate decision on its own

merits in accordance with law, within a period of one month from the date of receipt of the representation / documents from the petitioner.

14. Writ Petition stands disposed of in the above terms.

(SMT. ANUJA PRABHUDESSAI, J.)