

Prajakta Vartak

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

**PRAJAKTA
SAGAR
VARTAK**

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WRIT PETITION NO.8268 OF 2021

Ravindra Arvind Bande

...Petitioner

V/s.

Vijaya Manohar Bande & Ors.

...Respondents

AND

WRIT PETITION NO.8270 OF 2021

Ravindra Arvind Bande

...Petitioner

V/s.

Vijaya Manohar Bande & Ors.

...Respondents

Mr. Anil Anturkar, Senior Advocate with Mr. Prathamesh Bhargude and Mr. Sumit Sonare for Petitioner.

Mr. Sumit Khaire for Respondent Nos.1 & 2

Mr. Pratap Patil for Respondent No.4.

CORAM : G. S. KULKARNI, J.

DATE : DECEMBER 17, 2021

PC :

1. Heard Mr. Anturkar, learned senior counsel for the petitioner, Mr. Khaire for respondent nos.1 and 2 and Mr. Patil, learned counsel for respondent no.4/APMC.

2. The challenge in both these petitions is to orders dated 28 October, 2021 passed by the Joint Director of Marketing, Maharashtra State. By the impugned orders, the interim relief which was granted in favour of the petitioner initially by an order dated 27 April, 2021 and thereafter confirmed on 27 May, 2021 has been vacated.

3. Both the petitions concern the licence in respect of a gala at on APMC at Pune which is the subject matter of dispute between the parties. It appears to be not in dispute that initially when the petitioner moved the appellate authority, an ad-interim protection was granted in favour of the petitioner on 22 April, 2021 against the decision of the APMC dated 9 April, 2021 granting licence in favour of respondent nos.1 and 2 which was stayed by such order. The ad-interim order thereafter came to be confirmed by further order dated 27 May, 2021.

4. However, on the listing of the proceedings before the appellate authority on 28 October, 2021 and when a request for an adjournment was made on behalf of the petitioner including on medical grounds the appellate authority without an opportunity being given to the petitioner of being heard, by the impugned orders vacated the interim stay which was granted in favour of the petitioner by the abovesaid orders.

5. Admittedly the petitioner was not heard before the impugned orders were passed. Also there was no independent application which was filed on behalf of respondent nos.1 and 2 praying for vacating the order dated 22 April, 2021 and confirmed by an order dated 27 May, 2021. In my opinion,

such approach ought not to have been adopted by the appellate authority. The parties had sufficient notice that the appeal was pending. Once interim orders were passed, certainly it was expected from the appellate authority that the appeal itself would to be taken up and after an opportunity of a hearing being granted to the parties the appellate authority could have passed appropriate orders. Learned counsel for respondent nos.1 and 2 is not in a position to point out that the petitioner was heard when the impugned order was passed by the appellate authority. In these circumstances, the impugned orders cannot be permitted to operate and is required to be set aside being an order passed in breach of the principles of natural justice.

6. The petitions are accordingly disposed of by passing the following order:-

ORDER

- i. The impugned order dated 28 October, 2021 is quashed and set aside.
- ii. The interim orders dated 22 April 2021 as confirmed by an order dated 27 May, 2021 shall operate till the final disposal of the appeal.
- iii. As the appeal would now be heard, the appellate authority is directed to decide the same as expeditiously as possible and in any event within a period of four weeks from today. All contentions of the parties are kept open.

iv. In so far as the dispute on the occupation and possession of the gala is concerned, there is a serious dispute between the parties. This Court would not delve on such issue as to actually who is in occupation and possession of the said gala. The parties are at liberty to move appropriate proceedings in so far as their contentions assailing occupation and possession are concerned. If such an application is made, it would be permissible for the authority to pass appropriate orders. All contentions in that regard are expressly kept open.

v. The petitions are accordingly disposed of in the above terms. No costs.

vi. At this stage, Mr. Patil, learned counsel for APMC submits that the appeal itself is kept for hearing on 24 December, 2021. If that be so, the appellate authority is requested to decide the appeal finally.

(G. S. KULKARNI, J.)