

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8862 OF 2021

DEVDAAS SADASHIV SHETTYPETITIONER
V/S
THE STATE OF MAHARASHTRA & ORS.RESPONDENTS

WITH
WRIT PETITION (STAMP) NO.24021 OF 2021

VIRENDRA AITHAPPA SHETTYPETITIONER
V/S
THE STATE OF MAHARASHTRA & ORS.RESPONDENTS

WITH
WRIT PETITION (STAMP) NO.24022 OF 2021

RAKESH HANSRAJ JAINPETITIONER
V/S
THE STATE OF MAHARASHTRA & ORS.RESPONDENTS

WITH
WRIT PETITION (STAMP) NO.24023 OF 2021

SARBJEET SINGH MANCHANDAPETITIONER
V/S
THE STATE OF MAHARASHTRA & ORS.RESPONDENTS

WITH
WRIT PETITION (STAMP) NO.24024 OF 2021

DARSHAN KAUR VAZIR SINGH VASANPETITIONER
V/S
THE STATE OF MAHARASHTRA & ORS.RESPONDENTS

WITH
WRIT PETITION (STAMP) NO.24025 OF 2021

SINDHU TUKARAM DESHMUKHPETITIONER
V/S
THE STATE OF MAHARASHTRA & ORS.RESPONDENTS

WITH
WRIT PETITION (STAMP) NO.24026 OF 2021

SUKHMINDER KAUR KARTAR SINGH DHILLON	PETITIONER
V/S	
THE STATE OF MAHARASHTRA & ORS.	RESPONDENTS

WITH
WRIT PETITION (STAMP) NO.24027 OF 2021

MAHESH SHIVARAM PUTHRAN	PETITIONER
V/S	
THE STATE OF MAHARASHTRA & ORS.	RESPONDENTS

WITH
WRIT PETITION (STAMP) NO.24028 OF 2021

NAGENDRA RAMRAJ YADAV	PETITIONER
V/S	
THE STATE OF MAHARASHTRA & ORS.	RESPONDENTS
WITH	

WRIT PETITION (STAMP) NO.24029 OF 2021

KASHINATH PIRAJI DEGE	PETITIONER
V/S	
THE STATE OF MAHARASHTRA & ORS.	RESPONDENTS

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Mr. Surel Shah with Mr. Saurabh Butala, Mr. Harshad Sathe for the Petitioner.

Mr. Anand Kulkarni for Respondent No.3 in WP Stamp No.2029 of 2021.

Mr. Chirag J. Shah for the Respondent-Corporation in WP Stamp Nos.24020 of 2021, 24021 of 2021 and 24022 of 2021.

Mr. Chirag J. Shah for Respondent No.2 in WP Stamp No.24021 of 2021 and 24022 of 2021 and WP 8862 of 2021.

Mr. A.I. Patel, Additional GP with Mr. A.A. Alaspurkar, AGP for the Respondent-State.

Mr. N.R. Bubna for Respondent nos.2 and 3-Thane Municipal Corporation in WP (Stamp) Nos.24023 of 2021 and 24024 of 2021.

Mr. Mandar Limaye for Respondent Nos.2 and 3 in WP Stamp Nos.24025 of 2021 and 24026 of 2021.

**CORAM : A.A. SAYED &
ABHAY AHUJA, JJ.**
DATE : 22 DECEMBER 2021.

P.C.:

1 All these Petitions impugn the order dated 20 July 2021 of the Respondent No.3-Assistant Commissioner, Thane Municipal Corporation. By the said order, the Restaurant and Bar of the Petitioners have been directed to be sealed on the ground that there have been violation of the COVID-19 norms at their Restaurant and Bar. The Restaurant and Bar of the Petitioners have remained sealed since 20 July 2021.

2 Learned Counsel for the Petitioners has placed on record a copy of the order dated 29 November 2021 of the Respondent-Thane Municipal Corporation pertaining to the COVID-19 norms to be followed. It is contended that nowhere in the said order power has been conferred to seal Restaurant and Bar for violation of COVID-19 norms. Learned Counsel for the Petitioners has placed reliance on the judgment of the Division Bench of this Court in **Bin K. Kuriakose & others vs. Commissioner, Municipal Corporation, 2010(4) Mh.L.J. 239** wherein it is held that the Assistant Commissioner of the Respondent-Corporation has no power or authority to take action under the Disaster Management Act and such power can be

exercised only by the District Authority contemplated under the said Act. The learned Counsel for the Respondent-Corporation have not placed on record anything to show under what provisions of law does the Respondent No.3-Assistant Commissioner derive powers to seal the Restaurant and Bar of the petitioners. Even otherwise, we find that the Restaurant and Bar of the Petitioners has now remained sealed/closed and the Petitioners have been out of business for about five months now, which prima facie violates the Petitioners' rights under Article 19(1)(g) of the Constitution. The impugned order of the Respondent No.3-Assistant Commissioner is without authority of law and cannot be sustained.

3 In the circumstances, we set aside the impugned order dated 20 July 2021. The Respondent-Corporation is directed to de-seal the Restaurant and Bar of the Petitioners forthwith. It will be open for the Respondent-Corporation/District Authority to come out with appropriate policy for more strict consequences to ensure adherence of the COVID-19 norms by the Restaurants and Bars, if so advised. The Petitioners shall file an Undertaking in this Court on or before 28 December 2021 that the COVID-19 protocols shall be followed in all respects at the Restaurant and Bar of the Petitioners. If such undertakings are not filed, the benefit of this order shall not be available to the Petitioners.

- 4 The Petitions are allowed in the aforesaid terms.
- 5 All concerned to act on authenticated copy of this order.

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(ABHAY AHUJA, J.)**(A.A. SAYED, J.)**

SUDARSHAN
RAJALINGAM
KATKAM

Digitally signed
by SUDARSHAN
RAJALINGAM
KATKAM
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