IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 1633 OF 2021

PETITIONER :- Nikhilkumar Dinkarrao Waretwar, aged about 32 years, occupation : business, M/s. Rudra Restaurant, Parastola, Deori, Tahsil Deori, District Gondia.

...VERSUS...

RESPONDENTS :-

1] The State of Maharashtra, through its Secretary, State Excise, Mantralaya, Mumbai.

2] The Commissioner, State Excise, Maharashtra State, Old Custom House, Mumbai

3] The Collector, State Excise, Gondia.

4] The Superintendent, State Excise, Gondia.

Mr.S. G. Jagtap, counsel for petitioner.
Mr. N.R. Patil, AGP for the respondents.

CORAM : SUNIL B.SHUKRE & ANIL L. PANSARE, JJ.

DATE : 02.12.2021.

O R A L J U D G M E N T (Per: Sunil B.Shukre, J.)

Heard.

2. **Rule**. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

3. The order passed by the Hon'ble Minister of State, dated 13th October, 2018 is very clear. By this order, the Hon'ble Minister has quashed and set aside the orders passed by the Collector, Gondia on 22nd December, 2017 and 31st March, 2018 thereby rejecting the application of the petitioner for grant of FL-III licence for the purposes of the bar and restaurant which he proposes to run from property No.3534, situated in Ward No.17, Deori, District Gondia. The order directs respondent No.3 to take action as per law for grant of licence to the petitioner.

4. Now the grievance of the petitioner is that for one reason or the other, not tenable in law, the Collector is refusing to grant FL-III licence to the petitioner.

5. It is submitted by learned counsel for the petitioner that now respondent No.3 has come out with another excuse stating that the property from where FL-III licence would be operated belongs to the government and the petitioner is an encroacher thereupon but, the fact is that there is an assessment

list of building and lands issued by none other than the Chief Officer, Nagar Panchayat, Deori, who had given a report on 11th August, 2021 that the property is under occupation of the petitioner. He also submits that till date no show cause notice had been issued to the petitioner for removal of encroachment, if any. According to the learned counsel for the petitioner, it is factually wrong to say that the petitioner is an encroacher.

6. In the reply, filed by respondent No.3, same stand has been taken that the petitioner is an encroacher on the property in question. But, respondent No.3 has not supported his contention by filing on record any document showing the property No.3534 existing in Ward No.17 is on the government land.

7. There is one report dated 11th August, 2021 sent to the Inspector, State Excise Department, Deori, District Gondia by one Mr.Ajay R. Patankar, Chief Officer, Nagar Panchayat, Deori. This report states that the petitioner has made his construction bearing property No.3534 by encroaching upon government land. This report is quite vague. It does not give any details of the land which the report says to be belonging to the government and on which the unauthorized construction has been allegedly made by

the petitioner. It is not known as to on what basis this report has been given by the Chief Officer, Nagar Panchayat, Deori, by Mr. Ajay R. Patankar, the Chief Officer, Nagar Panchayat, Deori. There is another document, which bears stamp of the date of 11/08/2021 and which is purported to be signed by the Chief Officer, Nagar Panchayat, Deori. The signature appearing on this document *prima facie* tallies with the signature appearing on the report dated 11th August, 2021, and therefore, it *prima facie* appears that this document, which is an assessment list of building and lands for the purpose of the taxation for the year 2020-2021 has been issued by the same officer, who has issued the report of the same date of 11th August, 2021.

8. Now, if the property No.3534 which has been shown to be liable to taxation for the year 2020-2021 as per the assessment list, was really an unauthorized one, the property would have been liable to it's demolition and not to any taxation. This document has a foot note clarifying that it is not a document which can be used as evidence or proof of ownership and it has been issued only for the fiscal purposes. If this foot note is true, there was no reason for Shri Ajay R. Patankar, the Chief Officer, Nagar Panchayat, Deori to have sent a report dated 11th

August, 2021 to the said Excise Inspector informing him that this was an unauthorized construction. The foot note is indicative of the absence of knowledge of the author of the document regarding ownership in respect of the subject property and therefore, there was no justification for the Chief Officer to have issued report dated 11th August, 2021.

9. Any way, all these aspects will have to be carefully considered by respondent No.3 when he goes about giving effect to the order of the Hon'ble Minister, dated 30th October, 2018.

10. In view of above, the writ petition is allowed by directing respondent No.3 to implement the order of the Hon'ble Minister dated 30th October, 2018 in its letter and spirit, at the earliest and preferably within two weeks from the date of receipt of the order.

11. Rule is made absolute in the above terms. No costs.

(ANIL L. PANSARE, J) **(SUNIL B. SHUKRE, J)**

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