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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 8186 OF 2019

Dattatraya s/o Ramchandram Burra @ Burrawar PETITIONER
Age – 52 years, Occ – Business
R/o Shirur Tajbad, Tq-Ahmedpur
District – Latur
GPA Holder for Smt. Varlaxmi Dattatraya Burrawar
CL-III Licence Holder Partner
and Shri Shriniwas Laxmirajan Burra

VERSUS

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| <ol style="list-style-type: none">1. Hon'ble Minister,
State Excise, Mantralaya,
Mumbai-322. The District Collector,
(State Excise Division)
Latur, District – Latur3. The Superintendent of State Excise,
Latur, District – Latur4. The Inspector,
State Excise Udgir Division, Udgir
District – Latur5. The Deputy Superintendent,
Land Records, Ahmedpur
District – Latur6. Vitthal @ Randhir s/o Balwantrao Patil
Age – 75 years, Occ – Agri
R/o Shirur Tajbad, Tq-Ahmedpur
District – Latur7. Balasaheb s/o Vitthalrao Telang
Age – 65 years, Occ – Business
R/o Hali, Taluka – Udgir, District – Latur8. The State of Maharashtra | <p>RESPONDENTS</p> |
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Through the Commissioner
State Excise, Maharashtra State
2nd Floor, Old Custom House
Mumbai

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Mr. A. N. Nagargoje, Advocate for the petitioner
Mr. S. W. Munde, AGP for respondent - State
Ms. Priya Gondhalekar h/f Mr. Devang Deshmukh, Advocate for
respondent No.7

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 10th AUGUST, 2022

JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned advocates for the parties.
2. This petition, filed under Article 226 and 227 of the Constitution of India, takes exception to the order passed by the Hon'ble Minister, State Excise, Maharashtra State – respondent No.1 dated 30th May, 2019 allowing the proceedings filed under section 138 of the Maharashtra Prohibition Act, 1949 by respondent No.7 and setting aside the orders passed by the Collector and Commissioner and directing renewal of CL-III Licence of respondent No.7.
3. The petitioner having CL-III licence, was running a retail country liquor shop at Shop No. 77, Udgir Road, Shirur Tajband, Taluka – Ahmedpur, District – Latur, since 2009. In the year

2011, the seventh respondent sought permission to shift his country liquor shop opposite the shop of the petitioner. The said permission was refused by the Collector, as the distance criteria mentioned in the rules was not fulfilled. The challenge raised by respondent No.7 to the decision of the Collector before the Commissioner failed. Hence, respondent No.7 filed proceedings under section 138 of the Maharashtra Prohibition Act, 1949 before Respondent No.1. By the impugned order, Respondent No.1 allowed the proceedings filed by respondent No.7. Hence, the present writ petition.

4. The Collector, while refusing permission to respondent No.7, had taken into consideration following aspects:

- “1. The proposed premises was barred by distance restrictions as per Maharashtra Country Liquor Rules, 1971:*
- 2. N. O. C. of the Gram Sabha was not submitted and*
- 3. The layout plan and the map were not submitted.”*

5. While refusing permission to respondent No.7 for shifting his CL-III licence No. 43 from Shirur Taluka to Property No. 2342/10, the Collector has taken into consideration the report dated 18th June, 2011 submitted by the Inspector, State Excise, Udgir Division, Udgir, in which it is stated that when the actual distance from the shop of the petitioner and the proposed shop

of respondent No.7 was measured, it was found to be 94 meter. Since the distance was within 200 meters, as per Rules, the Collector refused permission to shift the shop of respondent No.7.

6. The Commissioner has confirmed the order passed by the Collector holding that there is no proper permission of the village Panchayat and the Commissioner has also relied upon the report of the Superintendent of State Excise, Latur, wherein it is mentioned that from the four boundaries, only one side distance between the shop of the petitioner and the proposed shop of respondent No.7 is 217 meter, there is non compliance of Rule 24 (5) of the Maharashtra Country Liquor Rules, 1973.

7. Respondent No.7, therefore, challenged both the orders passed by the Collector and the Commissioner, by filing Revision under section 138 of the Prohibition Act, before Respondent No.1, which is allowed only on the ground that since the 7th respondent has claimed permission to shift his country liquor licence to the proposed site, since 2011 and as, in the meanwhile, the petitioner has shifted his country liquor shop to other location.

8. Heard the learned advocate for the petitioner, learned

Assistant Government Pleader and the learned advocate for respondent No.7.

9. Admittedly, there have been subsequent developments in the present matter. By order dated 10th May, 2018 the petitioner was permitted to run the country liquor shop at the premises, where he was running his shop. During pendency of the present writ petition, by order dated 29th August, 2019, this Court, considering the fact that the seventh respondent has filed appeal No. 202 of 2018 before the Commissioner, State Excise, Maharashtra State, challenging petitioner's re-shifting to the present location, directed expeditious hearing of the said appeal. Pursuant to the orders passed by this Court, the Commissioner has decided the appeal filed by the seventh respondent and remanded the matter back to the Collector for fresh consideration on merit. The parties are, therefore, prosecuting the matter before the Collector.

10. It is a matter of record that since 2009, the petitioner is running his Country Liquor shop at the present site till March, 2017. Thereafter, due to intervening circumstances, the petitioner was required to close down his shop. Thereafter, again, the petitioner applied for renewal of his CL-III licence and permission to start his shop at the present premises which is

granted in favour of the petitioner by order dated 10th May, 2018 and since then the petitioner is permitted to run his shop at the present premises.

11. From the reports, referred to above, the proposed shop of the seventh respondent is within the distance of 200 meters from the petitioner's shop. Sub Rule (5) of Rule 24 of the Maharashtra Country Liquor Rules, prescribes that distance between any two shops should not be less than 200 meters. Rule 25 (d) (iii) of the Country Liquor Rules provides that the Gram Panchayat in whose area the licenced shop is proposed to be shifted, has to give no objection by passing a resolution of the Gramsabha. The same is absent in the present case. Rule 25 (d) (iv) of the Country Liquor Rules provides that the proposed premises are free from distance restrictions as provided under sub rules (4) and (5) of Rule 24 of the said Rules.

12. Admittedly, in the present case, the proposed shop of the seventh respondent is within distance of less than 200 meters from the shop of the petitioner. Since the petitioner is running said shop from 2009 onwards with a gap of few months and thereafter continuously, the Hon'ble Minister could not have allowed the revision filed by respondent No.7 on untenable ground that since 2011 respondent No.7 is claiming said

premises. While passing the impugned order, provisions of Rule 24 (5) and Rule 25 (d) (iii) (iv) of the Country Liquor Rules are not taken into consideration. Since the legal provisions applicable to the case are ignored, the impugned order cannot be sustained and the same is liable to be quashed and set aside.

13. In the result, the writ petition is allowed. The impugned order dated 30th May, 2019 passed by the Hon'ble Minister, respondent No.1 is quashed and set aside. Rule is made absolute in aforesaid terms. It is made clear that the parties shall prosecute the proceedings pending before the Collector. All the contentions of the parties in the said proceedings are kept open.

[NITIN B. SURYAWANSHI]
JUDGE