

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9296 OF 2021

Kedar s/o Manmatappa Panchashari
Age: 41 years, Occu: Business,
R/o Pochamma Galli, Latur,
Tq. & Dist. Latur.

.. **Petitioner**

Versus

1. The State of Maharashtra,
Through District Collector,
Latur.
2. District Deputy Registrar,
Cooperative Societies, Latur &
Licensing Authority under the
Warehouse Act, 1960.
3. Gangadhar Sopanrao Kasle,
Proprietor of Kasle Warehouse,
Sikandarpur, Katpur Road,
Latur, Tq. & Dist. Latur.

.. **Respondents**

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Mr. Nitin Jagadale h/f. V.D. Salunke, Advocate for the Petitioner.
Mrs. V.N. Patil Jadhav, AGP for the respondent-State.
Mr. M.S. Kulkarni, Advocate for the respondent no.3.

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**CORAM : MANGESH S. PATIL &
Y.G. KHOBRADE, JJ.
DATE : 29-11-2022**

ORAL JUDGMENT :-

Heard. Rule. The Rule is made returnable forthwith. At the joint request of both the sides the matter is heard finally at the stage of admission.

2. The petitioner is coming with following prayers:

“B) To issue writ of Mandamus or any other appropriate writ or directions in the like nature, the Respondent No.2, DDR, Latur/Licensing Authority under the Warehouse Act, may kindly be directed to take appropriate action against Respondent No.3 and to release the goods deposited by petitioner mentioned in para no.5 from the custody of Respondent No.3 and handover the said goods to the petitioner in his presence or in presence of ARCS, Latur.

C) To issue writ of Mandamus or any other appropriate writ or directions, the Respondent Nos.1 & 2 may kindly be directed to take action u/s. 35 of the Warehouse Act against Respondent No.3 for doing Warehouse business without valid license from 2018 onwards till today;”

3. The learned advocate for the petitioner submits that the petitioner had deposited the goods in the warehouse of the respondent no.3 but those were not returned. He pursued the matter with the respondent no.2-District Deputy Registrar, Co-operative Societies, Latur. It is alleged that though the respondent no.3 was possessing a licence under the Maharashtra Warehouse Act that was not renewed from time to time and he was conducting the business illegally. The petitioner therefore requests for return of the goods and directing the respondent no.2 to initiate appropriate action under Section 35 of the Maharashtra Warehouse Act against respondent no.3.

4. The learned AGP referring to the affidavit in reply filed on behalf of the respondent nos.1 and 2 submits that the respondent no.3 is under obligation to return the goods or to face the consequences as are contemplated under the Act.

5. The learned advocate Mr. Kulkarni for the respondent no.3 submits that the petition involves disputed question of facts. In his affidavit in reply the respondent no.3 has specifically mentioned about he having returned the goods to the petitioner's brother, however, because of the thick and fast relations no receipt was obtained. The petitioner is taking advantage of this fact. There are circumstances to indicate that even after the disputed goods were deposited on 04.12.2019 and 10.12.2019 the petitioner had continued to deposit his goods in this warehouse without any demur which is indicative of the fact that he had no dispute about the earlier transactions.

6. Having heard both the sides, we make it abundantly clear that going by the stand being taken by the contesting parties as regards the return of the goods or otherwise it being a pure question of fact, this Court cannot undertake any exercise to ascertain the factual aspects. We leave the parties at that.

7. As far as the action to be initiated by the respondent no.2 under the provisions of the Maharashtra Warehouse Act, the respondent no.2 in his affidavit in paragraph 4 and 5 has mentioned as under :

“4. I say and submit that the present Writ Petition in its present form and with the prayers made therein are not tenable. There is no violation of fundamental right of the Petitioner and hence exercising writ jurisdiction under Article 226 read with 227 of the Constitution of India is not permissible.

5. I say and submit that the Petitioner is trying to convert a contractual dispute into a writ petition. According to the Petitioner he has kept certain goods in the warehouse of the answering respondent and the same are allegedly not returned to him. In order to get back the alleged goods from the present Respondent, the Petitioner has approached this Hon’ble Court. The present Writ Petition in these facts and circumstances of the case is clearly an abuse of remedy provided by Article 226 of the Constitution of India and hence the Writ Petition is liable to be dismissed on this ground alone.”

8. It is indeed surprising as to in spite of such a stand about the licence of the respondent no.3 having not been renewed and the matter is still pending with him and in spite of having mentioned that the respondent no.3 is liable for further action under the provisions of the Act, the authority is merely content in informing this Court his powers without disclosing his intention as to invoke those powers.

9. We, therefore, dispose of the Writ Petition merely directing the respondent no.2 to take appropriate decision on the grievance being put up by the petitioner in accordance with law after extending an opportunity of being heard to the petitioner as well as the respondent no.3, as early as possible and in any event within 12 weeks from today. It is made clear that we have not expressed anything on merits as regards the action to be taken by the respondent no.2.

9. Rule is made absolute in above terms.

[Y.G. KHOBRADE, J.]

[MANGESH S. PATIL, J.]