

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

4 WRIT PETITION NO. 12493 OF 2019
WITH CA/13619/2019 IN WP/12493/2019
WITH CA/8010/2021 IN WP/12493/2019
WITH CA/5154/2021 IN WP/12493/2019

**SATISH BALAPRASAD MANTRI AND ANOTHER
VERSUS
THE CONTROLLER OF EXPLOSIVES GOVT O INDIA AND
OTHERS**

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Advocate for Petitioners : Mr. Amit A. Mukhedkar
Advocate for Respondents No. 1 : Mr. R.R.Bangar
Advocate for Respondent -Intervenor : Mr. P.D. Jarare

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**CORAM : RAVINDRA V. GHUGE &
S.G.DIGE, JJ.**

DATE : 25.04.2022

P.C. :

CIVIL APPLICATION FOR INTERVENTION.

1. The applicant - intervenor is the biological brother of the deceased petitioner-Satish. While seeking intervention, he points out that the fire - cracker shop of the deceased / joint licence holder was in between his godown on the ground floor and the residence of the deceased petitioner on the second floor. Location of the shop was so dangerous that the family residing in the house above the shop and the godown of the

applicant in which his employees used work below the shop, were equally at risk. The intention of the applicant is to assist the Court.

2. The learned Advocate for the petitioner has strenuously opposed the application.

3. Considering the above and the reasons set out in the application, the same is allowed. The applicant shall be added as respondent No. 6 in the petition, forthwith.

4 The learned Advocate Mr. Jarare causes his appearance on behalf of the added respondent in writ petition.

WRIT PETITION

5. By this petition, the petitioner has put-forth prayer clauses “B”, “C”, “D” “E” and “F”, which read as under :-

“A] The order dtd. 27-8-2019 passed by the Divisional Commissioner at Aurangabad in case no. 2018/SAPR/Pol-1/Phataka/CR-69, may please be quashed and set – aside, by issuing a writ of certiorari or any other order or writ in the nature of writ of certiorari ;

B] The order dtd. 3-7-2018 passed in Case

no.2008/PB-1/Desk-2/T-5/CR-95 by District Collector at Nanded, may please be quashed and set aside, by issuing a writ of certiorari or any other order or writ in the nature of certiorari;

D] By issuing a writ or mandamus or any other order or writ of a like nature, the respondent Nos. 1 and 3 may please be directed to grant 'no objection certificate' and Fireworks License in favour of the petitioners, as per directions issued by District Collector in its final order dtd. 06-10-2015 whereby the Appeal proceedings filed by petitioners bearing Case No. 2006/RB-1/Desk-2/T-5/CR-95, is partly allowed;

E] To hold that the appeal filed by petitioners before the Divisional Commissioner at Aurangabad bearing case no. 2018/ SAPR/ Pol-1/ Phataka/CR-69, is allowed;

F] Pending, hearing and final disposal of the Writ petition, the respondent nos. 1 and 3 may please be directed to grant provisional "No Objection Certificate" and provisional Fireworks License in favour of the petitioners, as per Rule 107(3) of the Explosive Rules 2008;"

6. By an order dated 15-10-2019, notices were issued to the respondents. This Court noticed Public Interest Litigation No. 152 of 2015, which has been referred to in the impugned order of the Divisional Commissioner, Aurangabad dated 27-08-2019. Needless to state, the existing licence of the petitioner for operating the fire crackers shop has been cancelled by the District Collector. There were various rounds of litigations. The impugned order is the last order delivered by the Divisional Commissioner sustaining the decision of the District Collector dated 03-07-2018.

7. There is no dispute that the shop of the petitioner was granted licence to sell Fireworks, Chinese Crackers and Sparklers with the storing capacity of (1500 K.G.) of explosives (Barood). Below the shop of the deceased petitioner, is the godown of the intervenor - applicant, who is the biological brother of the deceased petitioner - Satish Balaprasad Mantri. Above the firecrackers shop, is the residence of the deceased petitioner. His firecrackers shop is located in a residential colony in District Nanded coming under the jurisdiction of the Wazirabad Police Station.

8. We have considered the impugned orders of the District Collector and Divisional Commissioner. We find that the orders are sound and do not require any interference. However, at this stage, the learned Advocate for the petitioner widow submits on instructions that she is willing to file an application under Section 109 of the Explosive Rules, 2008 framed under Explosive Act, 1884. Rule 109 reads as under :

“109. Amendment of Licence in respect of alteration or change in the premises or licenses capacity, but not involving change of name of licensee or partners or directors or members-

(1) A licence granted under these rules may be amended by the authority empowered to grant the licence if the amendment is not inconsistent with the provisions of these rules.

(2) A licensee who desires to have his licence amended shall submit the following particulars to the licensing authority, namely:-

(a) an application stating nature of the amendment and the reasons therefor;

(b) the original licence together with enclosures to it;

(c) plans showing the details of the

proposed amendment if such plans are required by the licensing authority for the purpose of amendment.

(d) prescribed scrutiny fee;

(e) prescribed amendment fee.

(3) The licensing authority after scrutiny of the documents submitted under sub-rule (2), and after making such further inquiries and taking such action as deemed necessary, may take suitable action to amend the licence.”

9. Considering that one of the licence holders has passed away and the widow, is a joint licence holder, it would be appropriate to permit her to apply to the appropriate authorities under Rule 109 and seek transfer of the licence in her name, but not to be transferred to an independent person by deleting the name of the petitioner. She further submits that she would suggest a location for transferring the licence under Rule 109 to the said spot and the appropriate authorities may consider such request application on its own merits.

10. Considering the above and in view of the fact that the

licence holder cannot be replaced by any other person, we can permit the petitioner to apply for change of location and for transferring her licence to that location, under Rule 109.

11. In view of the above, this petition is disposed off with the following directions :-

(a) We modify the impugned order by replacing the order of quashing of the licence, to restoring it in the name of the surviving widow with liberty to apply under Rule 109 to the Appropriate Government.

(b) Needless to state, a specific property-place shall be indicated by the licensee in her application and if it is in conformity with the law and rules, the appropriate Government may consider relocating the shop to a different location.

(c) We make it clear that the appropriate authority shall stringently apply the rules, while issuing any order on such application and ensure that the licence for the relocated place shall not be within the residential area or in such area which would endanger human life or wild life.

12. We make it clear that we have only guided the authority to be extremely careful while considering such application. We have not expressed any opinion on the merits of the application, which the petitioner desires to file. The said application would be decided on or before 30-09-2022 on its own merits as per the provisions of Law.

13. Pending Civil applications, if any, stand disposed off.

(S.G.DIGE, J.)

(RAVINDRA V. GHUGE, J.)

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