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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.5177 OF 2019

Shri A Hannan A Raheman Khan (Decd) & Ors. ..Petitioners

Vs.

Shri R. Rashid A Rahiman Khan (Decd) & Ors. ..Respondents

Mr. M. S. Mulla for the Petitioners.

Mr. I.M. Khairdi for Respondent No.1(a).

Ms. V. S. Nimbalkar AGP for the Respondent Nos.2 to 4-State.

CORAM : S. M. MODAK, J.

DATED : 14TH NOVEMBER 2022.

PC:-

1. Heard learned Advocate for the Petitioners, learned Advocate for Respondent No.1(a) and learned AGP for Respondent Nos.2 to 4.

2. Earlier to this Petition, there was series of litigation right from District Supply Officer, Deputy Commissioner (Supply) and learned Minister, on more than one occasion.

3. This time the order dated 10th August 2018, passed by the Deputy Commissioner (Supply) is challenged. By the said order, the Appeal of the Petitioner was dismissed.

4. As it involves series of litigation, certain facts needs to be stated : Abdul Rahiman Khan was the license holder of fair price shop No. D-9. He transferred license during his lifetime in the name

of one of his son from the second wife. His name is Abdul Rashid Khan, who is Respondent No.1. This license was cancelled on 4th August 1976 for certain irregularities, however, it was re-allotted in the name of Respondent No.1 for Shop No.D-33. The original licensee expired on 12th December 1980.

5. There was litigation in between Respondent No.1(a) and his real brothers. By the order dated 27th February 1999, passed by the Food Distribution Officer, Solapur, the Petitioner was directed that the names of other sons from the second wife of original allottee, be added. This order was challenged by Respondent No.1 and Appeal was allowed on 27th August 1999 (page 74) The original order was set aside. When the matter went before the learned Minister it was dismissed on 29th December 2003. The order is at page 80. Thereafter, the license continued in the name of Respondent No.1.

6. Now it is the turn of present Petitioner. He started raising grievance that license ought not to have been transferred in the name of Respondent No.1 only because he is son of the original allottee from his first wife. At his instance there are two rounds of litigation. First of all, he made protest by way of notice dated 6th December 2010. For all these years, it seems that the Petitioner was sleeping over its rights. The grievance was rejected by the District Supply Officer, Solapur, on 3rd March 2011 (page 16). The petitioner challenged the said order before the Deputy Commissioner, however, there also the petitioner failed. The said order is at page 22. He approached the learned Minister and as per order dated 4th December 2015, the learned Minister remanded the matter and directed the Deputy

Commissioner to decide the matter afresh on merits.

7. However, on remand the petitioner could not convince the Deputy Commissioner and the Appeal was dismissed on 26th May 2016 (page 43). Again the petitioner, approached the learned Minister. On this occasion, as per order dated 16th January 2018, the matter was remanded to the Deputy Commissioner (Supply). However, even on that occasion the petitioner could not convince the Deputy Commissioner (Supply) and his appeal was dismissed on 10th August 2013 (page 59). This order is challenged before this Court.

8. There is initial objection that the Writ is not maintainable because the remedy of revision is available. Learned Advocate for the petitioner submitted that he approached the learned Minister twice and the matter was remanded to the Deputy Commissioner but still the Deputy Commissioner has not dealt with the matter on merits and that's why this Court can certainly interfere in this matter.

9. It is pertinent to note that the remedy of revision is available. However, considering the fact that the matter was remanded twice and other factual aspects, this Court is entertaining this Writ Petition. After going through the merits, this Court feels that there is no scope for interference. After reading the order, no ground for interference is made out. There is feeble attempt to submit that the Petitioner was not party to the litigation in between brothers interse, from the second wife, which started in the year 1999. There was another feeble attempt to rely upon the Government Resolution dated 11th June 2015, which states how the licenses are to be transferred after the

death of original allottee.

10. Learned Advocate for the contesting Respondent and learned AGP for the Respondent-State are right in their submission that this Government Resolution will not be applicable to the present case and the original allottee during his lifetime transferred the license. They are right in their submission.

11. It is pertinent to note that original allottee transferred license in the year 1975, in the name of Respondent No.1. The present Petitioner has not challenged the same, during lifetime of his father and even thereafter till the year 2010. This inaction dis-entitles the Petitioner to claim discretionary relief. Even though the original license was cancelled and subsequent license was granted, it will not make any difference. It is true to state that license is a personal right. There is another feeble attempt made by making submission that the original allottee was not keeping good health and Respondent No.1 had taken undue advantage of the same. This grievance also cannot be accepted as the same was made belatedly.

12. In view of above, there is no merit in the Petition, and it is dismissed as such.

(S. M. MODAK, J.)