

Dusane

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

WRIT PETITION NO.3028 OF 2022

Laxmidevi Ramraj Gupta
(M/s Bobby Country Bar)

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

BHALCHANDRA
GOPAL
DUSANE

Mrs. Veena B. Thadhani i/by Mr. Vishal B. Thadani, Ms. Snehal Gambhir
for Petitioner.

Mrs. S.S. Bhende, AGP for State.

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**CORAM : S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

DATED : 29TH AUGUST 2022

P.C. :

1. Rule. Rule made returnable forthwith with the consent of the parties.
2. The Petitioner applied for transfer of CL-III license to some other place.
3. The Petitioner possesses the CL-III license and the same was transferred in her name on 19th March 1996. The said license was at Shop

No.12, P. No. 7, Jalaram Estate/ Ratnashi Kheraj Estate, M.G. road, Mulund (West), Mumbai. It is the case of the Petitioner that the Petitioner was required to shift the license as the premises where the Petitioner was carrying on the business became dilapidated and dangerous for occupation.

4. The notice was issued by the Mumbai Municipal Corporation under Section 354 of the Act on or about 28th February 2018. Subsequent notice was issued on 14th November 2019 by the Assistant Commissioner "T" Ward, Mumbai Corporation. It was suggested in the notice that the said building is required to be demolished being in a dilapidated condition. The Petitioner in such eventuality sought for shifting of the premises. The same has been allowed on condition that the Petitioner shall deposit an amount of Rs.12,12,770/- as charges for shifting. The same was passed relying upon Rule 8 of the Rules 1954.

5. Learned Advocate for the Petitioner submits that the Petitioner was required to shift the business/ license as the building was in dilapidated and dangerous condition for habitation. The notice was issued by the Competent Authority to vacate the premises. Learned Advocate relies upon Rule 4 (d) of the Bombay Prohibition (Privilege Fees) Rules 1954 (hereinafter referred to as "Rules 1954").

6. Learned AGP submits that for shifting from one place to another place, the Petitioner has paid privilege fees, same has been rightly calculated. Only because the premises on which the Petitioner was carrying on business is in a dilapidated condition and dangerous for habitation would not be sufficient to claim exemption under Clause (d) of Rule 4 of Rules 1954.

7. We have considered the submissions.

8. Before we advert to the contentions raised by the learned Advocate for the parties, it will be appropriate to refer to the relevant provision:

Rule 4. Fees for transfer of a licence from one site to another--

(d) No fees shall be charged for transfer of licence from one place to another in the following circumstances :-

- (i) Licence whose premises are affected by the implementation of Development scheme such as road widening and alike; or
- (ii) licence whose premises are closed or required to be closed down as per the provisions of the Bombay Prohibition (Closure of licence on Resolution by Gram Sabha or representation by Voters in the Ward of Municipal Council / Corporation) Order 2008 or
- (iii) Licence whose premises are closed down or required to be closed down as per order of any Court or Competent Authority".

9. It would appear that general Rule for transfer of license from one site to another is that the party seeking transfer has to deposit the fees/ privilege fees for transfer. However, exception has been carved out in Clause (d) of Rule 4. Clause (d) provides that no fees shall be charged for transfer of license from one place to another in the circumstances enumerated therein. One such circumstance is Sub-Clause (iii) of Clause (d) of Rule 4, which says that the license whose premises are closed down or required to be closed down, as per order of the Court or Competent Authority. The language of Sub-clause (iii) of Rule (d) of Rule 4 is wide enough to cover the eventuality where under the orders of the Competent Authority, the premises is required to be closed down.

10. In the present case, the Petitioner was issued notice by the Assistant Commissioner "T" Ward to the Petitioner. The building where the Petitioner was carrying on the business was declared as a dilapidated building categorised 'C-1' type of Municipal Corporation, Greater Bombay. The said notice further state that it is dangerous to occupy or to use the said building for habitation. The condition of the building is very dangerous and can fall during monsoon. The notice under Section 354 of the Maharashtra Municipal Corporation Act to pull down the building was issued to the owner and the occupier of the said premises. The High Court also did not

interfere in the petition filed by the Petitioner. In the appeal filed by the Petitioner, the Court granted four weeks time to the Petitioner to remove the belongings.

11. It would transpire that the shifting of the business of the Petitioner from the erstwhile premises was not voluntary, but was on account of the circumstances beyond the control of the Petitioner. The provision of exemption cannot be interpreted in a pedantic manner, the same will have to be interpreted keeping in mind the purpose for which the same has been provided. If the premises is closed down or required to be closed down, under the order of the Court or the Competent Authority, then the person is entitled to shift without paying the privilege fees. The language of the same is clear and unambiguous. The Petitioner had also approached the Court, the Court did not grant relief to the Petitioner, on the contrary directed the Petitioner to remove the belongings within four weeks from the said dilapidated and dangerous building. The Municipal Corporation is Competent Authority. The Competent Authority had directed to pull down the building where the Petitioner was carrying on the business on the ground that the building was dilapidated and has become dangerous for habitation.

12. In light of above, it is held that the case of the Petitioner would be covered under Sub-Clause (iii) of Clause (d) of Rule 4 of the Rules, 1954.
13. In light of above, the impugned order is quashed and set aside.
14. Rule is made absolute accordingly. No costs.

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)