

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.5156/2017

Subhan Khan Haji Kale Khan,
aged about 70 years, Occ. Agriculturist
and Business, through its P.A. Holder
Mr. Sohail Khan s/o Subhan Khan,
aged about 34 years, Occ. Architect,
r/o Kwaliti Saw Mill, Near Rajkamal Talkies,
New Cotton Market, Akola, Tq. Dist. Akola.

...PETITIONER

...VERSUS...

1. Hussain Khan Haji Kale Khan,
aged about 67 years, Occ. Business,
2. Parvez Iqbal Khan Hussain Khan,
aged about 38 years, Occ. Business.

Both nos. 1 and 2 r/o Kwaliti Saw Mill,
Behind Rajkamal Talkies, Opp. APMC,
Near Shivaji Park, Akola, Tq. Dist. Akola.

3. The Collector,
State Excise Department,
Collector Office, Akola, Tq. Dist. Akola.
4. The Commissioner,
State Excise Department,
Old Custom House, Mumbai.
5. Hon'ble State Minister,
State Excise, Maharashtra State,
Mantralaya, Mumbai-400 032.

...RESPONDENTS

Mr. U. J. Deshpande, Advocate for petitioner.
Mr. C. A. Joshi, Advocate for respondent nos. 1 and 2.
Ms H. Jaipurkar, A.G.P. for respondent nos. 3 to 5.

CORAM:- AMIT BORKAR, J.

DATED :- 11.07.2022

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally by consent of the parties.

2. The landlord of the liquor shop has filed this petition challenging the order passed by the State Government permitting the licensee to continue with the license.

3. The facts giving rise to the present petition are as under.

The petitioner is a landlord of the property wherein the licensee is carrying the liquor business. The authorities granted the license in favour of the respondent nos. 1 and 2 under the Bombay Prohibition Act. However, on 28.03.2005, at the time of renewal of the license of respondent no.1, the petitioner-landlord objected. In view of the said objection, the authorities under the Act refused to renew the license beyond 31.03.2005 on the ground of the absence of consent of the landlord. Respondents nos. 1 and 2 challenged the order dated 28.03.2005 before the Commissioner of State Excise by Appeal No.245/2005. The Commissioner of State Excise allowed the appeal holding that unless there is a

decree of the Civil Court, the authorities under the Act are under an obligation to renew the license. Accordingly, the petitioner approached the Civil Court. The Civil Court, by judgment and decree in Regular Civil Suit No.144/2013, passed a decree for possession.

4. The petitioner, therefore, on 28.11.2014, approached respondent no.3 for the cancellation of the license of respondents nos.1 and 2. According to the petitioner, respondent no.3 issued notice to the respondent nos. 1 and 2 for shifting their license from the premises owned by the petitioner. However, despite the said order, the respondent nos.1 and 2 failed to shift their license. Therefore, on 26.12.2014, respondent no.3 passed an order of closure of business of country liquor of respondents nos.1 and 2 until further orders.

5. In the meantime, the respondent nos.1 and 2 approached the Civil Court with an application for condonation of delay to recall the decree of possession. According to the petitioner, the Civil Court rejected the application for a stay of the decree.

6. Aggrieved by the closure of the license, respondents nos. 1 and 2 preferred an appeal before the Commissioner of State Excise. The petitioner appeared in the said proceeding. Taking into consideration the decree of possession, the learned Commissioner dismissed the appeal of respondents nos.1 and 2. Aggrieved thereby, the respondent nos. 1 and 2 filed revision before the Minister. By the impugned order, the Minister set aside the order of closure of license. Aggrieved thereby, the owner has filed the present petition.

7. According to the petitioner, respondent no.3 has powers under Section 56 read with Section 142 and Rules 25, 43 and 44 of the Maharashtra Country Liquor Rules, 1973 to direct the closure of the license. According to him, initially, the Collector issued a direction directing the respondent nos. 1 and 2 to shift their business to any other premises. For non-compliance of the same, action for license closure has been initiated. Therefore, according to them, respondent no.3 was within its right to cancel the license.

8. According to respondents nos. 1 and 2, respondent no.3 was within its powers to grant permission to respondents

nos. 1 and 2 to carry on the business of liquor. According to him, the direction as contemplated under Sections 54 and 56 is for enforcement of the prohibition policy of the State Government and not for enforcement of the civil rights of the landlord. According to him, respondent no.5, in the exercise of supervisory powers under the provisions of the Act, was fully justified in passing the order permitting the respondent nos. 1 and 2 to carry on license in the premises owned by the petitioner.

9. The learned A.G.P also supported the order of the Minister. According to her, the reason stated in the impugned order, i.e. pendency of the application to recall decree of possession, was a valid consideration and respondent no. 3 being a supervisory authority has the power to pass the said order to enforce the policy of the State Government.

10. Having carefully considered the submissions made on behalf of both sides, in my opinion, respondent no.5 was justified in permitting respondents nos. 1 and 2 to carry on liquor business on the premises owned by the petitioner. Section 54 of the Maharashtra Prohibition Act confers powers to cancel or suspend the license on the satisfaction of any condition in clauses (1)(a) to

(d) of the said section. According to the petitioner, the present case is covered under Section 54 (1) (c) of the said Act. According to him, there is a breach of the order passed by the Collector to shift the license. At this stage, it is relevant to point out that the terms and conditions of the license contemplated an order passed by the authorities under the Act to give effect to the provisions of the said Act or in furtherance of the Government's prohibition policy. In the present case, the order dated 24.12.2014 is based on the decree of possession dated 27.08.2014 passed by the Court. In my opinion, the authorities under the Prohibition Act are not entitled to give effect to the orders of the Civil Court. The proper course to be adopted by the landlord in such a case would be to execute the decree to get the actual possession of the licensed premises. With the result, the license holder would stand evicted; in that case, the license holder would be obliged to apply for his license transfer. The circuitous mode adopted by the landlord to close down the licensed business of country liquor by respondent no.1 is not permissible.

11. Insofar as the power under Section 142 of the said Act is concerned, the said power can be exercised in case the Collector is of the opinion that it is in the interest of public peace to close

down any place of the licensee. However, in the facts of the present case, said eventuality had not occurred.

12. The petitioner has placed reliance on Rule 25 of the Maharashtra Country Liquor Rules, 1973. On a careful perusal of Rule 25, it is clear that the said rule deals with a situation where a license holder intends to shift his licensed premises. The said rule prohibits the license holder from shifting his business from one place to another without prior approval of the Collector. Furthermore, the said rule lays down the course to be followed by the Collector in case the license holder files such an application. The second proviso to the said Rule, on which the petitioner places the reliance, would be attracted only if there is an application filed by the license holder seeking shifting of his shop from one place to another and, in such case, expiry of the term of rental deed or refusal of the landlord to agree to continue with license would arise.

13. Reliance is placed on this Court's judgment in **S. M. Mallewar and Ors. .vs. State of Maharashtra and Ors.**; reported in **[1993 (1) Mh. L. J. 685]**, helps the case of respondent no.1 than the petitioner. In paragraph 16 of the said judgment, this Court

has incorporated the expression, "any cause other than those specified in section 54", to mean such acts having nexus with the enforcement of the policy of prohibition and the object of the Act. This Court has further held that Section 56 of the Act, inter alia, provides for cancellation of license on a ground having nexus with the enforcement of the policy of prohibition or statutory orders which may be passed under the Act, a cause reasonably considered with implementation of the policy of the State.

14. In the result, in my opinion, respondent no.5 in the exercise of supervisory powers under the Act was fully justified in passing the order, which has the effect of having nexus with the enforcement of the policy of prohibition and object of the Act. Therefore, in my opinion, there is no merit in the petition. The petition is, therefore, dismissed.

It is made clear that it was always open for the landlord to execute the decree for possession in the absence of interim relief granted by the Court, which passed the decree.

Rule is discharged.

JUDGE

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