

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.209 OF 2020

Parag Shankarrao Hagavane-Patil

....PETITIONER

V/S

The Collector of Pune & Ors.

....RESPONDENTS

...

Ms. Veena Thadani i/b Mr. Vishal Thadani for the Petitioner.

Mr. S.D. Rayrikar, AGP for Respondent Nos.1, 5 and 6-State.

Mr. Prashant Darandale for Respondent No.4.

...

CORAM : SANDEEP V. MARNE, J.

DATE : OCTOBER 23, 2023.

P.C.:

1 The challenge in the present Petition is to order dated 26 December 2019 passed by the Minister, State Excise allowing the Revision filed by Respondent No.4 and setting aside order dated 4 October 2019 passed by the Commissioner, State Excise.

2 I have heard Ms. Thadani, the learned Counsel appearing for the Petitioner, Mr. Darandale, the learned Counsel appearing for Respondent No.4 and Mr. Rayrikar, learned AGP appearing for the Respondent-State.

3 After having considered the submissions canvassed by the learned counsels appearing for the parties, it is seen that the Commissioner, State Excise, had recorded following findings while allowing Petitioner's appeal and setting aside the order of the Collector:

‘6. I record my observations as under:

The impugned order passed u/s. 54(1)(e) of the Maharashtra Prohibition Act has cancelled the FL-III licence given to the Appellant for allegedly obtaining the licence by fraud. The Collector has stated that the certificate for authorised building issued from the Gram Panchayat is not a legal document as there is no entry of such document being issued in the outward register of the Gram Panchayat. It is pertinent to note that the Food & Drug Administration has given the licence to the Appellant’s premises in the same building. As per the new guidelines issued by the State Government, the eating house certificate issued under the Maharashtra Police Act has been done away with and for running an eatery, FDA licence in form “C” is required. This licence is basically for the food safety standards that are to be maintained by the respective restaurants. The Appellant has also submitted a spot inspection report conducted by the Block Development Officer Zilla Parishad which states that the building has been constructed on the said spot. The Respondent in the matter i.e. the Sarpanch has no other proof of the building being unauthorised except for the fact that the alleged certificate of authorised construction does not bear the outward number. Since there is no proof of the alleged construction being unauthorised and the Appellant’s strong plea that the construction is in existence since 1995, I am not inclined to agree with the impugned order of the Collector.

As regards the objection taken by the complainant i.e. the Sarpanch of the village, this is not sustainable. The Appellant has submitted sufficient documents to show that his structure is in existence since long back. Hence the Sarpanch objection is not authentic.’

4 Thus the Commissioner, State Excise had held that production of Completion Certificate is not required once it is proved that the structure has been in existence for a long time. Ms. Thadani would also question the very requirement of production of Completion Certificate/Occupancy

Certificate as a pre condition for issuance of FL-III license. This is something which needs to be considered by the Minister, State Excise, which apparently has not been considered while passing the impugned order dated 26 December 2019. The Minister has proceeded to brand the document dated 8 May 2017 as a forged Completion Certificate. However, the said document does not, in any manner, indicate or certify that the construction in question was complete. Therefore, the said document cannot be treated as a Completion Certificate. On the contrary, the Petitioner has placed on record the permission issued by the Gram Panchayat on 12 April 1995 for commencement of construction. He has also placed on record the Gram Panchayat Form No.8 to show existence of construction in the records of the Gram Panchayat. Since prima facie evidence is produced to show that the construction is commenced and carried out in pursuance of the permission issued by Gram Panchayat, and since the existence of construction is also shown in the register maintained by the Gram Panchayat, the Minister, State Excise will have to consider the issue as to whether production of the separate Completion Certificate would at all be required as a pre-condition for issuance of FL-III license.

5 The Petitioner has also contended that the hearing was scheduled by the Minister, State Excise, on 28 December 2019 at Nagpur whereas the notice of hearing was received by the Petitioner's Advocate on 19 December 2019 in the evening at Mumbai. Though appearance on behalf of Petitioner is recorded during the course of hearing conducted by the

Minister, State Excise, it is contended that proper opportunity for hearing was not granted to the Petitioner.

6 Considering the over all conspectus of the case, I am of the view that the Revision filed by the Respondent No.4 is required to be re-heard by the Minister, State Excise.

7 Accordingly, the order dated 26 December 2019 is set aside and the Revision preferred by the Respondent No.4 is restored before the Minister, State Excise. The Minister shall proceed to decide the Revision after granting an opportunity of hearing to all the parties concerned. The Minister shall proceed to decide the revision as expeditiously as possible preferably within a period of four months.

8 Parties to appear before the Minister on 1 November 2023 and obtain further directions.

9 With the above directions, Writ Petition is disposed of.

(SANDEEP V. MARNE, J.)