

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

FRIDAY, THE SIXTH DAY OF JANUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY

WRIT PETITION NO: 44689 OF 2022

Between:

1. Sri Radhakrishna, S/o Late Sri Permanand Das, Aged about 67 Years, Occ. Landlord, R/o 16.11.741, OPP A.B Colony, Moosarambagh Hyderabad.
2. Sri Prateek Waghray, S/o Sri P. Radha Krishna, Aged about 37 years, Occ. Business, R/o 16.11.741, OPP A.B Colony, Moosarambagh Hyderabad.

...PETITIONER

AND

1. The State of Telangana, Represented by Principal Secretary, Excise Department Secretariat Building, Hyderabad.
2. The Commissioner Prohibition and Excise Hyderabad, Telangana State
3. The District Prohibition and Excise Officer, Secunderabad
4. Superintendent of Prohibition and Excise, Government of Telangana Narayanaguda (Dhoolpet Division) Hyderabad.
5. M/s Deccan Wine House and Amrit Bar and Restaurant, (Partnership Firm represented by its partner) Represented by Sri Surakanti Sudershan Reddy and Sri Kunta Veera Reddy Premises bearing No. 4-8-23, 4-8-25, 4-8-25/A, PutliBowl, Hyderabad.
6. Sri Surakanti Sudershan Reddy, S/o Late Sri Yadi Reddy, Aged about 65 years, Occ. Business R/o New Plot No. 44, Road No. 71, Opp. Jubilee Public School, Jubilee Hills, Hyderabad- 500033.
7. Sri Kunta Veera Reddy, S/o Sri K. Malla Reddy, Aged 65 Years, Occ. Business, R/o Plot No. 25 Lumbini SLN Springs, Beside Botanical Gardens, Kondapur, Hyderabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or Direction in the nature of Mandamus or otherwise declaring the inaction on the part of the official Respondents in considering the Representations of the Petitioners dated 16/02/2022, 12/09/2022 and 22/10/2022 as bad, illegal, arbitrary, and violation of the Provisions of the Excise Act and consequently direct the Official Respondents not to renew 2B

License bearing No.71/2006-07 dated 27-07-2006 issued in favour of the Respondents 5 to 7 for running Bar and Restaurant under the name and style of M/s Deccan Wine House and Amrit Bar and Restaurant, 4-8-23, 4-8-25, 4-8-25/A, Putli Bowli, Hyderabad and to forthwith close the Bar and Restaurant being run by the Respondent Nos. 6 and 7 in the name of style of M/s Deccan Wine House and Amrit Bar and Restaurant, 4-8-23, 4-8-25, 4-8-25/A, Putli Bowli, Hyderabad.

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Official Respondents to forthwith close the Bar and Restaurant being run by the Respondent Nos. 6 and 7 in the name of style of M/s Deccan Wine House and Amrit Bar and Restaurant, 4-8-23, 4-8-25, 4-8-25/A, Putli Bowli, Hyderabad Putli Bowli, Hyderabad.

IA NO: 2 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to issue directions to the Official Respondents not to renew 2B License bearing No.71/2006-07 dated 27/07/2006 in favour of the Respondents 5 to 7 during the pendency of the Writ Petition.

Counsel for the Petitioner: SRI SUNIL B GANU

Counsel for the Respondent Nos.1 to 4: GP FOR PROHIBITION EXCISE

Counsel for the Respondent Nos.5 to 7: SRI R.A.ACHUTANAND

The Court made the following: ORDER

HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.44689 OF 2022

ORDER: (ORAL)

This writ petition is filed seeking to issue a writ of Mandamus declaring inaction on the part of official respondents in considering the representations of the petitioners dated 16.02.2022, 12.09.2022 and 22.10.2022 as being illegal and arbitrary, and consequently, to direct the official respondents not to renew 2B licence bearing No.71/2006-07 dated 27.07.2006 issued in favour of respondent Nos.5 to 7 for running a Bar & Restaurant under the name and style of M/s. Deccan Wine House & Amrit Bar & Restaurant at premises bearing No.4-8-23, 4-8-25, 4-8-25/A, Putli Bowli, Hyderabad.

2. The petitioners are the landlords of the premises wherein respondent No.5 Bar & Restaurant is being run by respondent Nos.6 and 7. They have given the said premises on lease to respondent Nos.6 and 7 under registered lease deed dated 02.07.2011 for a period of five years. As respondent Nos.6 and 7 defaulted in payment of rents, the petitioners instituted a suit in O.S.No.693 of 2017 on the file of IX Additional Chief Judge, City Civil Court, Hyderabad, for eviction and recovery of possession of the suit schedule property. During pendency of the said suit, compromise was entered into and the parties reduced the terms of compromise under a Memorandum of

Compromise dated 22.02.2019. As per the terms of compromise, respondent Nos.5 to 7 agreed to vacate the tenanted premises on or before 30.09.2021. Further, they agreed to pay rent @ 1,20,000/- per month for the period from 01.10.2018 to 30.09.2019 and rent @ 1,38,000/- per month for the period from 01.10.2019 to 30.09.2020, besides the rent @ 1,59,000/- per month for the period from 01.10.2020 to 30.09.2021. It was further agreed that the rent would be paid by respondent Nos.5 to 7 on or before 5th of every month. Apart from that, the tenants were also liable to pay the property tax and other statutory taxes including the electricity and water meter charges. In terms of compromise dated 22.02.2019, the decree was passed by the Court below on the same day.

3. Learned counsel for the petitioners submitted that respondent Nos.5 to 7 failed to vacate the premises and clear the arrears of rents amounting to Rs.16,57,472/-, therefore, the petitioners were constrained to file Execution Petition No.865 of 2021, which was allowed by the Court below by order dated 25.03.2022. However, when the Court Bailiff went to the suit schedule property for evicting respondent Nos.5 to 7, the premises was found locked. As the Bailiff could not execute the warrant, he filed bailiff report on 29.12.2021 to that effect. It is further contended by the learned counsel for the

petitioners that respondent Nos.5 to 7 are not only harassing the petitioners, but also taking law into their own hands. Intentionally the subject premises was locked to prevent the Bailiff from getting the premises vacated in compliance of the orders passed in the Execution Petition. Respondent Nos.5 to 7 were resorting to illegal acts of violating the Court order. The petitioners were constrained to give a representation dated 16.02.2022 to the Excise officials requesting them not to renew the 2B licence bearing No.71/2006-07 dated 27.07.2006 issued to respondent Nos.5 to 7. However, no action has been taken so far against respondent Nos.5 to 7 and they are continuing their business of running Bar & Restaurant without licence. Learned counsel also submitted that 'No Objection' of the petitioners is required for obtaining 2B Licence and also for renewal of licence. So far, the petitioners have not given 'No Objection' to respondent Nos.5 to 7, thus, the Excise officials ought to have considered the representation of the petitioners. The petitioners have submitted further representations dated 12.09.2022 and 22.10.2022. In spite of receiving such representations, no action is being taken by the official respondents.

4. Learned Government Pleader for Prohibition and Excise, having received the written instructions, submitted that respondent No.5 has

remitted total Bar Excise Tax for the year 2022-2023 with a request that he will submit another partition lease deed for 230 sq. meters from another landlord Radha Krishna, s/o. Late Paramanand Das, and Prateek Waghray, s/o. Radha Krishna, at an early date. However, so far, the licence has not been renewed due to non-submission of another partition deed.

5. Mr. R.A. Achutanand, learned counsel for respondent No.5 to 7, has referred to Rule 9-A of the Telangana Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short, 'the Rules'). It is submitted that renewal application along with requisite renewal fees has been submitted by respondent No.5 in terms of sub-Rule (3) of Rule 9-A of the Rules, which deals with renewal of 2B licence. It is contended that licensee shall have right to carry on business till renewal is refused. It is not in dispute that the renewal application is filed by respondent No.5 along with requisite renewal fees and is under consideration and so far it is not rejected.

6. Learned counsel for the petitioners relied on the order passed by a learned single Judge of this Court in W.P.No.36681 of 2015, dated 22.02.2016, and submitted that unless there is a lease document as per Rule 6 of the Rules and 'No Objection' is taken from the landlord, the tenant-licensee is not entitled to run the Bar. However, in the

instant case, eviction suit filed by the petitioners was decreed. E.P is filed to execute the decree. So far, for several reasons as stated aforesaid, the decree was not executed.

7. Learned counsel for respondent Nos.5 to 7 submitted that application under Section 47 of the Code of Civil Procedure, 1908, filed by respondent No.5 was pending adjudication and it came to be dismissed recently, thus, the contention of the petitioners that respondent No.5 is dodging the execution proceedings is not correct.

8. In the opinion of this Court, the case of respondent No.5 stands on a different footing compared to the facts in W.P.No.36681 of 2015. It is not the case of the petitioners that respondent No.5 Bar and Restaurant was not running during the pendency of the suit. It appears from the record that as the petitioners have encountered some difficulty in executing eviction decree, an application is submitted opposing renewal of 2B licence of respondent No.5 Bar & Restaurant. As the said application is pending and so far not rejected, this Court is not inclined to pass any orders. However, before taking a decision on renewal of licence of respondent No.5, the representations of the petitioners dated 16.02.2022, 12.09.2022 and 22.10.2022 shall be considered and appropriate orders shall be passed thereon within a

period of six (06) weeks from the date of receipt of a copy of this order, by giving an opportunity of hearing to respondent No.5 also.

9. Accordingly, this writ petition is disposed of. No order as to costs.

As a sequel thereto, miscellaneous applications, if any, pending in the writ petition stand closed. No order as to costs.

//TRUE COPY//

Sd/- A. V. S. PRASAD
ASSISTANT REGISTRAR
SECTION OFFICER

To

1. The Principal Secretary, Excise Department Secretariat Building, Hyderabad, State of Telangana.
2. The Commissioner Prohibition and Excise Hyderabad, Telangana State.
3. The District Prohibition and Excise Officer, Secunderabad.
4. Superintendent of Prohibition and Excise, Government of Telangana Narayanaguda (Dhoolpet Division) Hyderabad.
5. Two CCs to GP FOR PROHIBITION EXCISE, High Court for the State of Telangana, at Hyderabad. [OUT]
6. One CC to SRI SUNIL B GANU, Advocate [OPUC]
7. One CC to SRI R.A.ACHUTANAND, Advocate [OPUC]
8. Two CD Copies

PSK.



CC TODAY

HIGH COURT

BVR,J

DATED:06/01/2023

ORDER

WP.No.44689 of 2022



DISPOSING OF THE WRIT PETITION
WITHOUT COSTS.

11/01/2023
[Signature]