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906wp7491.23speaking

**THIS ORDER IS CORRECTED AND UPLOADED IN VIEW OF
THE ORDER DATED 15-10-2024.**

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

906 WRIT PETITION NO. 7491 OF 2023

Sharda Bharat Ghodke
Age-70 years, Occu-Business,
Partner-CL-III License No.24
at CST No. 833, MC Property
No. 384/4, gopalnagar,
Latur Road, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad
R/o. Tuljai Nagar, Tuljapur,
Tq. Tuljapur, Dist. Osmanabad

...PETITIONER

VERSUS

1. The State of Maharashtra
Through the Secretary
Home Department,
Mantralaya, Mumba
2. The Collector, Osmanabad
3. The Superintendent of State Excise,
Osmanabad
4. Yashwant Gopalrao Machale,
Age-60 years, Occu-Retired,
R/o. Vidyanagar (East) Beed,
Tq. & Dist. Beed
5. Jayashri Ajit Kadam,
Age-45 years, Occu-Household,
R/o. Tuljapur, Tq. Tuljapur,

...RESPONDENTS

Dist. Osmanabad

Mr. V. P. Latange, Advocate for the petitioner
Mr. Lalit Badgujar, Advocate h/f Mr. Swapnil Deshmukh,
Advocate for respondent No.5
Mr. V. S. Undre, Advocate for respondent No.4
Mr. V. S. Badakh, AGP for the respondents/State

CORAM : KISHORE C. SANT, J.

DATE : 09th OCTOBER, 2024

JUDGMENT:

1. Heard the parties.
2. Rule. Rule made returnable forthwith by consent of the parties.
3. A short issue raised in this petition as to whether the learned Collector while exercising power under Section 142 (1) of the Maharashtra Prohibition Act can direct a liquor shop to be closed for indefinite period.
4. In the present case the learned Collector by order dated 02-06-2023 directed the petitioners to close down the

liquor shop till dispute between the petitioner and land lady-respondent No.5 and respondent No.4 also claims to be partner.

5. The learned advocate for the petitioner vehemently submits that though the learned Collector has power to direct to close the liquor shop under Section 142, however, the power is for limited period and for the reasons to be recorded giving rise to passing of such order. In the present case it is only dispute between land lady and the petitioner. The land lady made an application to the learned Collector on 05-04-2023 informing that she has not renewed the rent agreement for the year 2023-2024 and therefore, there is dispute between the parties. Only on this letter the learned Collector has issued the said order. He submits that there is no law and order situation created at the place where liquor shop is situated. Merely a dispute between land lady tenant cannot be said to be a dispute creating law and order situation. In support of his submission he relies on the judgment reported in 2016 (1) MHLJ 341 in the case of Anjali Wines Vs State of Maharashtra and others. It is held that the

order based only on an apprehension, without objective satisfaction and without any reference to time limit, cannot be passed by exercising the power under Section 142 (1). The petition was therefore allowed in that case. He thus submits that impugned order dated 02-06-2023 deserves to be quashed and set aside.

6. The learned advocate Mr. Undre vehemently opposed the petition. He submits that there is no grievance of the license in favour of the petitioner. For renewal signatures of all partners are necessary. He relies on circular wherein the learned Commissioner State Excise has made it necessary for all the partners to file such application. He thus submits that liquor shop cannot be run unless there is an application for renewal of license signed by all the partners. He relies on the judgment dated 17-11-2021 of this court in writ petition no. 7594/2021 in the case of Shankarabai Swami Gaud Jangampalli Vs State of Maharashtra and others in support of his case.

7. The learned AGP also supports the order and prays for dismissal of the appeal.

8. This court has gone through the impugned order. It is seen that order is passed only on apprehension that because of the land lady tenant dispute there is likely to be law and order situation. This court finds that such dispute can hardly be said to be sufficient to direct to close down the shop. Even on the point for indefinite period this court finds that this order is beyond the scope of section 142 (1) of the Act. This court thus is persuaded to allow the petition.

9. **The writ petition is therefore allowed. The impugned judgment and order dated 02-06-2023 passed by respondent No.2 is hereby quashed and set aside.**

10. It is made clear that this order shall not come in the way of any other proceedings pending the between the parties.

[KISHORE C. SANT, J.]