

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

WRIT PETITION NO. 8065 OF 2024

Babaso Krushna Nigade ...Petitioner
Versus
State Of Maharashtra Thr. Minister
Of State Excise Home Dept And Ors ...Respondents

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Mr. Rahul P. Kasbekar, for the Petitioner.

Mr. P. G. Sawant, A.G.P. for the Respondent – State.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 10th JULY, 2024

P.C.:

1. Heard learned counsel for the petitioner and learned AGP for the State.

2. An FL-III license, was granted to the respondent nos. 4 and 5 on 07.10.2019 (page 49). On a complaint by the petitioner the Collector by the order dated 07.06.2021 (page 25) had cancelled the license, on the ground, that respondent nos. 4 and 5 are not able to show as to how the land and the construction made thereupon for which the license is granted, was acquired (page 26).

3. An appeal against the same by the respondent nos. 4

and 5 before the Commissioner of State Excise, Mumbai, came to be allowed by the order dated 29.10.2021 (page 38), finding that though the order of the Collector alleges fraud, nothing has been discussed as to how fraud was committed by the respondent nos. 4 and 5. The revision there against before the learned Minister, has also been dismissed by the order dated 26.02.2024 (page 85).

4. The learned counsel for the petitioner, submits that the land of Survey No. 174/1, Property/No. 9155/2, situated at Nigdewadi, Post Uchgaon, Tal. Karvir, Dist-Kolhpaur was the joint family property of the petitioner, respondent no. 6 and other co- owners and therefore sale deed executed by the respondent no. 6 in favour of the respondent nos. 4 and 5, in respect of part of the same upon which the license has been granted, was illegal and therefore the license was rightly cancelled by the collector, which order is required to be maintained by setting aside the order of the Commissioner and the Minister.

5. Learned AGP supports the impugned order.

6. The only reason, why the license issued in favour of respondent nos. 4 and 5 came to be cancelled, was that the respondent nos. 4 and 5, were not able to demonstrate as to how

they had acquired the property in respect of which the license was granted. In this context is material to note, that sale deed has been executed by respondent no. 6 in respect of the portion of city survey no 174/1 in favour of the respondent nos. 4 and 5 on 21.04.2018. The petitioner has challenged the sale deed before the learned Civil Court kolhapur by way of Civil Suit No. 43 of 2020, in which an application below exhibit 5 for injunction has been rejected, against which as of now the learned counsel is unable to point out any challenge.

7. This been the position, it is apparent, that the entitlement as of now of the respondent nos. 4 and 5, can be related, to the sale deed dated 21.04.2018. This position clearly has not been considered by the collector as is indicted from his order dated 07.06.2021, which therefore cannot be sustained and has rightly been set aside.

8. In view of the aforesaid factual position, I do not see any reason to interfere in the impugned order.

9. The Petition is dismissed. No order as to costs.

(AVINASH G. GHAROTE, J.)