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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1386 OF 2025

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Prabhakar Keshav Kale

... Petitioner

V/s.

The Collector and District Magistrate
of Solapur & Ors.

... Respondents

Ms.Veena Thadani for the petitioner.

Ms. Savina R. Crasto, AGP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 15, 2025

P.C.:

1. **Rule.** Rule is made returnable forthwith.
2. By this writ petition under Article 226 of the Constitution of India, the petitioner is challenging Judgment and Orders dated 3 January 2025 and 8 April 2025 passed by respondent No.2 and respondent No.1, respectively refusing to renew petitioner's orchestra license.
3. Facts and circumstances as stated by the petitioner are as under:

The petitioner was granted orchestra license for having orchestra performances in his restaurant and was carrying on business in his restaurant without any law and order problems.

The license having for having orchestra performances in the restaurant was first granted to the petitioner on 26 April 2022 and was valid up to 31 December 2022. After the orchestra license was granted to the petitioner, the petitioner managed the business personally. However, thereafter the petitioner fell seriously ill and, therefore, the petitioner decided to rent out the said restaurant to two persons, who approached him and assured him that they had good experience and would manage the business in accordance with law. One of the person was lady and she personally assured the petitioner that she would not allow any untoward incident to be happened in the restaurant. Accordingly, the petitioner on 12 September 2022 entered into agreement with them.

4. Since the license was ending on 31 December 2022, the petitioner submitted an application dated 25 November 2022 to respondent No.1 for renewal of orchestra license. However, said application was kept pending without any decision. She thereafter received a letter dated 2 December 2022 from respondent No.1 asking her to produce certain documents which were produced by the petitioner.

5. According to the petitioner on 21 May 2023 a false criminal case bearing No.317 of 2023 was registered under Sections 234 and 34 of the Indian Penal Code against the persons who were running the said business. The petitioner is not an accused in the said case. The petitioner, therefore, decided to terminate and cancel the rental agreement with the said persons. Accordingly, agreement dated 12 September 2022 was cancelled by the petitioner by a Deed of Cancellation dated 21 June 2023.

6. Thereafter, the petitioner has continued to run the business personally and strictly in accordance with law. No case has been registered against the petitioner nor is there law and order problem in the area because of petitioner's business.

7. The petitioner received a letter dated 12 October 2023 from respondent No.1 informing that the Superintendent of Police, Solapur had objected to the renewal of petitioner's orchestra license on the ground that petitioner had rented out his restaurant; and possibility of refusing FLIII license for breach of conditions and also possibility of violation of condition of license in future. Respondent No.1, therefore, informed the petitioner that in order to decide the application for renewal made by the petitioner in light of the report of Superintendent of Police, Solapur and to take further action, a personal hearing was fixed on 1 November 2023 before respondent No.1. The petitioner requested for copy of report of the Superintendent of Police, which was provided to him and the local officer categorically reported that no case had been registered against the petitioner and recommended for renewal of orchestra license. It was stated that despite receiving positive report from the Inspector of local police station, the Superintendent of Police had asked to re-inquire into the matter and submitted fresh report. The said officer thereafter submitted a report dated 15 June 2023, which was diametrically opposite with earlier report. In the second report, it was stated that in case petitioner's orchestra license was renewed, there was possibility of law and order problem arising in the locality could not be ruled out. The Superintendent of Police, Solapur seek detail report on 8

September 2023 to the respondent No.1 recording that no cases are registered against the petitioner and his antecedents are clean. It was also stated that there had not been any law and order problem, the rental agreement entered into by the petitioner in respect of restaurant had been cancelled. The report stated that there was no objection and no law and order problem. However, the Superintendent of Police recommended not to renew petitioner's orchestra license.

8. The petitioner appeared before respondent No.1 and submitted written submissions and informed that he had already installed CCTV cameras in his restaurant which had been recorded in the panchanama on 21 August 2023. However, only on the basis of recommendation of the Superintendent of Police, respondent No.1 by order dated 8 April 2024 refused to renew license of the petitioner and cancelled the same permanently.

9. Aggrieved thereby, the petitioner filed appeal under Section 33 of the Maharashtra Police Act, 1951 along with application for stay. Despite hearing of the application for stay, no orders were passed. Therefore, the petitioner filed Writ Petition No.135 of 2024 for direction to pass appropriate orders on the stay application. This Court, by order dated 17 October 2024, directed Appellate Authority to pass appropriate orders and the Appellate Authority heard the appeal and stay application on 3 January 2025 and upheld the order dated 8 April 2024. Hence, the petitioner has filed present writ petition.

10. Ms. Thadani, learned Advocate for the petitioner submitted that renewal of license ordinarily is a matter of course unless there are sufficient and justifiable reasons to refuse renewal. She submitted that the Authorities under the Act had not given any show-cause notice before cancellation of license. The first and second Authority passed the impugned orders without applying their mind independently and based their decision only on adverse report of local police. She submitted that the respondent Nos.1 and 2 failed to consider that no person from nearby locality had objected for renewal of orchestra license. She further submitted that the rental agreement executed in favour of third persons had already been cancelled. Mere pendency of the criminal case cannot be a ground for renewal of license. No independent and cogent evidence has been produced by respondent No.1 in support of allegations in the order that the petitioner violated rules and license conditions. She submitted that the State Government Circular dated 23 January 2009 directs all police officers not to take action on the basis of pending cases. Inviting my attention to Section 152(2) of the Maharashtra Police Act, she submitted that unless persons who have been accused in the said cases are convicted, action under Section 152(2) of the Maharashtra Police Act cannot be taken. She submitted that the petitioner had already installed CCTV cameras which had been recorded in the panchanama. She submitted that the action of cancellation of license permanently is disproportionately harsh considering illegalities alleged against the petitioner.

11. Per contra, learned AGP opposed the writ petition contending that by executing rent agreement, the petitioner has violated terms of license condition No.9. She submitted that despite issuance of direction, No CCTV cameras were installed in the Orchestra Bar. She submitted that despite expiry of license and this fact being communicated to the petitioner, he illegally continued orchestra and bar activities. She, therefore, submitted that the writ petition is liable to be dismissed.

12. Rival contentions fall for consideration.

13. On perusal of the impugned order, it is evident that the action of refusal to renew license is based primarily on the reason that the petitioner had unauthorizedly sublet the licensed business in favour of third party thereby violating Rule 202 of the Licensing and Controlling Places of Public Amusement (Other than Cinemas) and Performances for Public Amusement including Melas and Tamashas. In so far as the refusal to renew license on this ground is concerned, the petitioner appears to have established before the Authorities and even the report of the Superintendent of Police indicates that the petitioner had already cancelled the rent agreement executed in favour of third party. It is true that allowing somebody else to carry out business on any agreement is contrary to Rule 202 of the said Rules. In my opinion, the license has been cancelled from 8 April 2024 and it is almost a year thereafter the business of the petitioner is closed. Therefore, in my opinion, the period from cancellation of license from 8 April 2024 till the date of delivery of present judgment can be treated as suspension of license and the Authorities deserves to be directed to renew the

license as considering the grounds for refusal to renew license are not serious enough to permanently cancel the license.

14. However, the reasons assigned in the impugned order that the petitioner has not complied with the directions issued by Police Officer of local police station is concerned, the said reasons are vague in nature and as already observed, the period of one year of closure of business is sufficient for the act of illegality alleged against the Petitioner.

15. One more ground which finds mention in the impugned order is registration of offence against the person in whose favour rent agreement was executed. Undisputedly, the petitioner is not an accused. Moreover, this Court has consistently held that mere pendency of criminal case is no ground for cancellation of license.

16. On overall consideration of the reasons assigned in the impugned order, in my opinion, the impugned orders cannot be sustained.

17. Accordingly, rule is made absolute in terms of prayer clause (b). No costs.

(AMIT BORKAR, J.)