

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

WRIT PETITION NO. 12748 OF 2025

Ramesh Akaram Shirbhate Prop. M/s.
Hiramoti Wines

...Petitioner

Versus

1. The State of Maharashtra, through its
Principal Secretary, State Excise
Department,

2. The Commissioner, State Excise
Department

3. The Collector, State Excise Department

...Respondents

Mr. Drupad Patil, a/w Arvind Aswani, for the Petitioner.
Ms. D. S. Deshmukh, AGP for the State.

CORAM: N. J. JAMADAR, J.
DATED: 7th OCTOBER, 2025

JUDGMENT:-

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsel for the parties, heard finally.

2. The challenge in this petition is to the orders passed by the respondents declining to waive and refund the privileges fee paid by the petitioner for transfer of the FL-II license from a new premises to the old premises where the FL-II license was originally granted.

3. This second round of litigation arises in the backdrop of the following facts:

3.1 The petitioner's original licensed liquor establishment was operated at Shop Nos.3 and 4, Building No.3, Silver Oak, Vallabh Nagar, Pimpri-Waghere, Pune. In view of the judgment of the Supreme Court in the case of *State of Tamil Nadu represented by its Secretary, Home, Prohibition and Excise Department and others vs. K. Balu and another*¹ directing the closure of the licensed liquor establishments in the vicinity of the State/National Highways, the petitioner was required to shift his license to a rented premises at Shop Nos.2 and 3, Udyam Nagar, Pimpri.

3.2 By a subsequent judgment in the case of *Arrive Safe Society of Chandigarh vs. Union Territory of Chandigarh and another*², the Supreme Court permitted the licensed liquor establishments on the State/National Highways in the areas falling within the municipal limits. It was clarified that the judgment in the case of *K. Balu* (Supra) does not prohibit licensed establishments within the municipal areas.

1 (2017) 2 Supreme Court Cases 281.

2 (2018) 13 Supreme Court Cases 133.

3.3 In the meanwhile, the landlord of the new premises instituted a suit against the petitioner being Suit No.5 of 2018. On 10th February, 2018, a decree came to be passed in the said suit directing the petitioner to hand over vacant and peaceful possession of the new premises to the landlord.

3.4 The petitioner, thus, applied for transfer of license to the old premises i.e. Shop Nos.3 and 4, Building No.3, Silver Oak, Pimpri-Waghere, Pune. The respondent No.3 granted the permission to transfer the license subject to payment of privileges fee of Rs.15,00,010/- towards FL-II license and Rs.1,00,010/- towards CL/FL/TOD III license, under the provisions of the Bombay Prohibition (Privileges Fees) Rules, 1954.

3.5 The petitioner deposited the said fees under protest and challenged the said order dated 21st March, 2018 passed by respondent Nos.3 in an appeal under Section Section 137(2) of the Maharashtra Prohibition Act, 1949 ("the Prohibition Act, 1949"). The said appeal was dismissed by respondent No.2 by an order dated 13th May, 2019 on the ground that the decree for eviction was passed on the basis of the Consent Terms arrived at between the petitioner and the landlord.

3.6 A revision preferred there-against before the State Government came to be dismissed by the Minister, State Excise, by an order dated 30th August, 2019.

3.7 The petitioner assailed the said order in WP/1434/2020. The writ petition came to be disposed with the liberty to the petitioner to file a fresh application before the Collector to seek waiver and refund of the privileges fees by raising the ground that the initial transfer of license was necessitated on account of the order passed by the Supreme Court in the case of *K. Balu* (supra) and in view of the subsequent judgment in the case of *Arrive Safe Society* (supra) dated 11th July, 2017, the petitioner was entitled to shift to the old premises and, thus, was not liable to pay the privileges fees for transfer.

3.8 Availing the aforesaid liberty, the petitioner filed fresh application before the Collector (R3).

3.9 By an order dated 20th March, 2024, the said application was again rejected by the Collector (R3) observing that the petitioner was permitted to transfer the license to the new premises without changing any privileges fees and, therefore, the petitioner was not entitled to seek benefit of the

order passed by the Supreme Court in *Arrive Safe Society* (supra).

3.10 The appeal preferred before the Commissioner, State Excise, met the same fate. By an order dated 25th August, 2025, the State Government also rejected the revision under Section 138 of the Prohibition Act, 1949 opining that the decision to transfer the license to the old premises being a voluntary decision the charge of privileges fees was justified. The petitioner has again invoked the writ jurisdiction.

4. I have heard Mr. Drupad Patil, the learned Counsel for the petitioner, and Ms. D. S. Deshmukh, the learned AGP for the State.

5. Mr. Patil, the learned Counsel for the petitioner, would urge that the respondents have not at all considered the ground on which this Court had permitted the petitioner to file a fresh application before the Authorities under the Prohibition Act, 1949. This Court had granted liberty to file such application to raise the ground that privileges fees was not required to be paid for transfer in view of the permission granted by the Apex Court to operate licensed establishment in areas falling within the jurisdiction of the Municipal

Corporation by an order dated 11th July, 2017. The respondents, therefore, could not have dismissed the application for waiver and refund of the privileges fees on the ground that the order of eviction passed by the Court was on the basis of the consent of the parties. Placing reliance on a Division Bench judgment of this Court in the case of ***Vikram Uddhav Chug vs. State of Maharashtra and others***³ and an order of the learned Single Judge of this Court in the case of ***Shri. Mahesh Motiram Aswani vs. The State of Maharashtra and ors.***⁴, Mr. Patil would urge that the controversy is no longer *res integra*. The impugned orders, therefore, deserve to be quashed and set aside.

6. In opposition to this, Ms. Deshmukh, the learned AGP, would urge the significant distinctive feature in the case at hand is that the petitioner had voluntarily suffered a decree for eviction. It is not the case that the petitioner had applied for transfer of the license to the old premises immediately after the order of the Supreme Court in ***Arrive Safe Society*** (supra), dated 11th July, 2017. Therefore, the decision in the cases of ***Vikram Uddhav Chug*** (supra) and ***Mahesh Aswani*** (supra) would not govern the case of the petitioner. The

3 2019(1) Mh.L.J. 931.

4 WP/8076/2023 dtd.19/10/2023.

Authorities were, therefore, justified in rejecting the prayer for waiver and refund of the privileges fees.

7. Under the Bombay Prohibition (Privileges Fees) Rules, 1954, fees for transfer of license from one place to another is chargeable in accordance with the scale indicated in the clauses (a) to (c) of Rule 4. Clause (d) of Rule 4 provides that no fees shall be charged for transfer of license from one place to another in three circumstances. The third circumstance is, license whose premises are closed down or required to be closed down as per order of any Court or Competent Authority.

8. It appears that, in the instant case, the petitioner had applied for waiver and refund of the privileges fees by invoking the aforesaid third exemption clause. The Authorities had rejected the said claim on the ground that the decree was suffered voluntarily and the license was not required to be closed down as per the order of the Court.

9. The moot question that warrants consideration is, whether the petitioner was entitled to waiver of the privileges fees for transfer of the license from the new premises to the

old premises in view of the subsequent judgment in the case of *Arrive Safe Society* (supra) dated 11th July, 2017.

10. In the case of *Vikram Chug* (supra), the petitioner therein was required to close the licensed establishment at the old premises in view of the decision of the Supreme Court in the case of *K. Balu* (supra), dated 15th December, 2016. The petitioner had applied for transfer of the license to the new premises. Permission was granted. However, the petitioner subsequently sought cancellation of the said permission. After the decision of the Supreme Court in *Arrive Safe Society* (supra), the petitioner again applied for re-starting the licensed establishment at the old premises. At that stage, the Authorities charged and demanded privileges fees. Setting aside the said demand, the Division Bench of this Court observed as under:

“17. It can thus be seen that the petitioner on his own volition never intended to shift his license from one site to another site. It is on account of the directions of the Apex Court dated 15-12-2016 which held there could be no liquor shop within 500 mtrs. from the National/State Highway, that the petitioner had to make an application for shifting. Later on, the Hon'ble Supreme Court by the order dated 11th July, 2017 clarified that the prohibition mentioned in order dated 15-12-2016 shall not be applicable in cases where the licenses are situated within Municipal Corporation and Municipal Council areas. It can thus be seen that the prohibition contained in the order dated 15-12-2016 now does not apply to the petitioner's old premises in view of the clarification of its earlier order by Hon'ble Supreme Court. In fact even the respondents have not

charged any privilege fees for shifting of the license from old premises to new premises which shifting was necessitated and was the outcome of the directions of the Apex Court dated 15-12-2016.

18. The Apex Court having clarified its earlier order by a subsequent order dated 11th July, 2017 and as the petitioner wants to continue his license in respect of the old premises, the question of charging any fees for transfer of license from one site to another does not arise at all. In view of the clarificatory order of the Apex Court, there is no need for the petitioner to shift from old premises to new premises. The petitioner's license in the old premises stand protected and the petitioner is entitled to carry on business in the old premises. But for the directions of the Hon'ble Supreme Court on 15th December, 2016 the petitioner would not have applied for transfer of the license from old premises to new premises. The transfer of the license was not on the petitioner's own volition but in compliance with the directions of the Hon'ble Supreme Court. Thereafter, the Hon'ble Supreme Court having issued necessary clarifications vide order dated 11th July, 2017, as a result of which the shop of the petitioner is not affected, the petitioner cannot be penalized only because he had already applied for shifting from old premises to new premises. It is a matter of record that the petitioner did not shift to the new premises. As a matter of fact the application made by him for shifting to new premises which was earlier granted was also cancelled at his request and the respondents themselves had called upon the petitioner to find out suitable premises for shifting of his license.

19. We may make a profitable reference to the decision of the Apex Court in the case of *Raj Kumar Dey and others vs. Tarapada Dey and others*, reported in (1987) 4 SCC 398 in this context. In para 6 it is held thus :

"6. We have to bear in mind two maxims of equity which are well settled, namely, *actus curiae neminem gravabit* - An act of the Court shall prejudice no man. In Broom's Legal Maxims, 10th Edition, 1939 at page 73 this maxim is explained that this maxim was founded upon justice and good sense; and afforded a safe and certain guide for the administration of the law. The above maxim should, however, be applied with caution."

20. A useful reference can also be made to the decision in the case of *Gursharan Singh and others vs. New Delhi Municipal Committee and others*, reported in (1996) 2 SCC 459 wherein the principle laid down in *Raj Kumar Dey's* case (supra) is followed.

21. In this view of the matter, the petitioner cannot be faulted for making an application for shifting his license from old premises to new premises. The respondent No. 3 and 4 were justified in not charging fees for transfer the license from old premises to new premises in view of the Circular dated 7th June, 2017. Conscious that as a result of the shifting for which the applicants are not at fault and even as the applicants would have to face severe hardships and monetary loss, the State Government had taken a decision not to charge any fees for transfer from the old premises to the new premises. Pursuant to the clarification issued by the Hon'ble Supreme Court, if the license of the petitioner as regards the old premises stand protected, the question of the respondents demanding transfer fee under Rule 4 (b) of the Rules 1954 does not arise. In the present fact situation the respondents are not at all justified in raising the demand for transfer fee on the pretext that Rule 4(b) of the Rules 1954 is attracted, as the petitioner cannot be said to have made any application for transfer from one site to another site since the petitioner wants to carry the business in the old premises itself. In our opinion, the impugned Demand Notice is completely arbitrary and irrational and therefore deserves to be quashed and set aside."

11. Following the aforesaid judgment in the case of ***Mahesh Aswani*** (supra) a learned Single Judge of this Court directed the refund of the privileges fees deposited by the petitioner therein for the transfer of the licensed establishment to the old premises after the judgment in the case of ***Arrive Safe Society*** (supra) dated 11th July, 2025. The learned Single Judge was of the view that the decision of the Division Bench in the case of ***Vikram Ghug*** (supra) governed the facts of the said case as well.

12. In the facts of the case at hand, there is no controversy that the initial shifting without payment of the privileges fees

from the old premises to the new rented premises was on account of the judgment of the Supreme Court in the case of ***K. Balu*** (supra) dated 15th December, 2016. The said transfer was not voluntary. It was in compliance of the directions of the Supreme Court and the consequent action of the Authorities under the Act. It is also not in dispute that the petitioner sought re-transfer of the license to the old premises only. The factor that intervened was, a consent decree for eviction passed in Suit No.5 of 2018 on 18th February, 2018. The Authorities have construed this factor against the petitioner to deny the benefit of waiver of privileges fees on account of re-transfer to original premises.

13. If the said factor of the passing of the decree in Suit No.5 of 2018 is considered in isolation and *de hors* the circumstances, which necessitated the transfer of license from the original premises to new premises, an inference may be justified that the said consent decree having been voluntarily suffered, the petitioner is not entitled to the benefit of exemption. However, in the considered view of this Court, the said factor cannot be appreciated *de hors* the initial compulsive shifting of license from the original premises to new premises.

14. In view of the decisions of this Court in the case of *Vikram Chug* (supra) and *Mahesh Aswani* (supra), had the petitioner made an application for re-transfer after the decision of the Supreme Court in the case of *Arrive Safe Society* (supra) dated 11th July, 2017, the demand of privileges fees would not have been sustained. The only additional factor of the consent decree of eviction, having been passed against the petitioner, does not make such qualitative difference as to deprive the petitioner of the benefit of the aforesaid judgments. It is necessary to note that a huge time had not elapsed from the subsequent judgment of the Supreme Court in the case of *Arrive Safe Society* (supra) and the application for re-transfer of license to the old premises so as to snap the link between the actions pursuant to the orders of the Supreme Court. I am, therefore, inclined to allow the petition.

15. Hence, the following order:

: O R D E R :

- (i) The petition stands allowed.
- (ii) The impugned orders passed by the Collector (R3) in
FLR 112017/1606/1913 dated 20th March, 2024,

confirmed by the Commissioner (R2) in Appeal No.FLR.192024/180/I, dated 17th January, 2025, and the State Government (R1) in Revision Application No.FLR 1225/RA24/RAUSHU-2, dated 25th August, 2025, stand quashed and set aside.

- (iii) The respondents are directed to refund the privileges fees deposited by the petitioner, under protest, within a period of three months from today.
- (iv) Rule made absolute to the aforesaid extent.

No costs.

[N. J. JAMADAR, J.]