



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 3437 OF 2024

M/S. CITY RESTAURANT AND BAR,

A partnership firm,

Through its partner Suresh Bhaiyalal Jaiswal,

C/o. M/s. City Bar and Restaurant,

Plot No. 14, Chhatrapati Chowk, Central Excise

Colony, Nagpur

....**PETITIONER**

....**VERSUS**....

1) STATE OF MAHARASHTRA,

The Excise Department of Maharashtra,

Through, The Commissioner of State Excise

Department of Maharashtra,

Mumbai.

2) THE COLLECTOR

Nagpur, Dist. Nagpur

3) MOHAN LAXMANRAO SAMARTH,

Aged about 55 year, Occ: Business

R/o. N-128, Reshimbagh, Nagpur 440015.

....**RESPONDENTS**

Shri Z.Z.Haq, Advocate for petitioner.

Ms. D.I.Charlewar, AGP for respondent Nos. 1 and 2/State.

Shri Anand Parchure, Advocate with Shri M.A.Vishwarupe,

Advocate for respondent No. 3

CORAM : SMT. M.S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 15/04/2025

DATE OF PRONOUNCING THE JUDGMENT: 05/06/2025

JUDGMENT

Heard learned Counsel for the petitioner, learned AGP for the State and learned Counsel for the respondent No. 3.

2] Being aggrieved and dissatisfied by the impugned order dated 16.05.2024 passed by the Commissioner of the State Excise, Maharashtra, thereby dismissing the appeal filed by the petitioner under Section 137 (2) of the Maharashtra Prohibition Act, 1949, challenging the order passed by Collector, Nagpur, dated 29.02.2024 of cancelling the FL-III licence in the name of petitioner.

3] The petitioner is a partnership firm running the M/s. City Restaurant and Bar in a premises at City Survey No. 1615, Sheet No. 74, Khasra No. 53/1-2, Mouza Ajni, situated in Central Excise Colony, Nagpur, and is in occupation of the suit premises since September 1987. A tenancy agreement was entered into between the petitioner firm and Mohan Laxman Samarth and the same was renewed

on 01.08.1994.

4] The petitioner firm applied for obtaining FL-III licence in the year 1989 by following due procedure of law and in conformity with the provisions of the Bombay Foreign Liquor Rules, 1953 and the same has been renewed regularly till today.

5] The respondent No.3 filed a suit for recovery of possession under Section 16 (1) (b) & (g) of the Maharashtra Rent Control Act, 1999, against the petitioner firm vide Regular Civil Suit No. 154/2015.

6] The petitioner firm received a show cause notice from the respondent No. 2 - Collector dated 01.12.2020 on 11.12.2020. The respondent No. 2 - Collector called upon explanation regarding inspection dated 10.11.2020, by which, it was found that the premises in map as sanctioned while granting FL-III licence were altered by the present petitioner. The petitioner accordingly filed a reply. The respondent No. 2- Collector, Nagpur, passed an Order dated 31.08.2023, by

which, the respondent No. 2 - Collector exercised power conferred under Section 104 of the Maharashtra Prohibition Act, 1959 and impose a fine of Rs. 40,000/- for the alterations made by the petitioner. The petitioner has duly paid challan on 17.01.2024 of Rs.40,000/-.

7] Meanwhile, the petitioner was served with a notice under Section 53 of the Maharashtra Regional and Town Planning Act, 1966, alleging unauthorized development. The petitioner being aggrieved by the said notice dated 10.03.2023, challenged the said notice by filing suit for declaration and perpetual injunction before the learned Civil Judge, Senior Division, Nagpur, which came to be registered as Special Civil Suit No. 418/2023. The learned Civil Judge, Senior Division, Nagpur, passed an order granting status quo in favour of the petitioner till next date. The said status quo in favor of the petitioner continued till today.

8] Thereafter, a complaint was filed by one Mohan Samarth - the respondent No. 3. The respondent No.2-

Collector issued a notice on 17.04.2023 to the petitioner. The petitioner accordingly submitted reply before the respondent No.2 - Collector. The respondent No.2 - Collector by order dated 29/02/2024 allowed the complaint filed by the respondent No.3 and cancelled the FL-III licence of the petitioner-firm.

9] The petitioner firm filed an appeal u/s 137(2) of the Maharashtra Prohibition Act, 1949, against the order of respondent No. 2 dated 29.02.2024 cancelling the petitioner firm's FL-III licence bearing Appeal No. 78 of 2024 with the Commissioner of Excise, Maharashtra. The petitioner firm also filed an application for stay to the order passed by the respondent No.2 dated 29.02.2024. The respondent No.1 - Commissioner of Excise stayed the said order by order dated 06.03.2024 and dismissed the appeal filed by the petitioner firm vide Order dated 16.05.2024. The aforesaid order is the subject matter of challenge in the present writ petition.

10] Learned Counsel for the petitioner contended that the respondent-Authorities have failed to consider that the

respondent No.2 - Collector has passed an order dated 31.08.2023, by which, the alleged illegal construction carried by the petitioner firm was regularized by imposing a fine to the tune of Rs. 40,000/-, which was duly paid by the petitioner firm. The respondent Nos. 1 and 2 (hereinafter referred as respondent-Authorities) have failed to consider the position of R.C.S. No. 154/2015 and S.C.S. No. 418/2023 and passed an impugned order which needs interference by this Court.

11] The learned Counsel for the petitioner relied on the following citations:-

i) Sudhabai Manohar Meshram and ors. V/s. Wasudeo Chattumal Jhamnani and ors. [2012(4) Mh.L.J. 173]

ii) Satish S/o. Damodhar Kasar V/s. State of Maharashtra and ors. [2012(5) Mh.L.J. 81]

12] On the contrary, learned Counsel for the respondent No. 2 submitted that, only because the petitioner had paid an amount of Rs. 40,000/- does not exonerate him with illegal alterations made with the original construction

which is in violation of the MRTP Act. It is further contended that the respondent No. 2 has rightly come to the conclusion that the petitioner failed to renew the rental agreement since 2012, while making alterations in the premises, no permission from the authorities have been obtained, permit room is functioning in the premises which is not approved. Illegal construction carried out by the petitioner without prior approval from respondent No. 3 and concerned Authorities. All these facts were rightly taken into consideration by the respondent No.1 and passed an appropriate order which needs no interference and accordingly prayed for the dismissal of present writ.

13] Learned Counsel for the respondent No. 3 submitted that during the course of hearing on 21.06.2024, the petitioner contended that the respondent Authorities had already levied a fine to the tune of Rs. 40,000/- vide order dated 31.08.2023 and therefore, cancellation of his FL-III licence on the same ground was unwarranted. It is further contended that the documents at Annexure 5, 6 & 7 clearly

reveal that the said levy of fine was with respect to some change made in the position of wooden staircase only and during the course of further investigation, the Authorities realised that the permit room was being run in different premises and not as per the sanctioned map. Moreover, the petitioner was running the said permit room in the premises which were not even rented to him and has also carried out illegal and unauthorised construction. All these facts were rightly taken into consideration by the Authority and passed an appropriate order by cancelling the license of the petitioner which needs no interference and order needs to be confirmed.

14] Heard both the parties at length. Perused impugned order documents place on record and considered citation relied on by both the parties.

15] On perusal of order passed by the Collector, Nagpur, dated 29.02.2024, by which, the license of the petitioner came to be cancelled by exercising powers under Section 54 (1)(e) of the Maharashtra Prohibition Act, for carrying changes in the license premises and for not obtaining

permission from competent authorities for such changes. The complaint was lodged on the ground that the license holder has not renewed original lease deed since 31.07.1999. It is also complained that before carrying out the construction/changes, the license holder has not obtained permission of competent authority. The permit room is constructed on the premises, apart from the place where the permit room was sanctioned to be constructed. He has illegally constructed permit room without obtaining consent of the owner as well as competent authority. The learned Collector after hearing both the parties and after perusal of the documents and construction carried out, cancelled the license in view of Section 54(1)(e) of the Maharashtra Prohibition Act.

16] Appeal carried out before the Commissioner of State Exercise, Maharashtra State, under Section 137 (2). On perusal of both the orders, it appears that it is finding of Authorities that there was no execution of fresh lease agreement after 1999. Therefore, there is no lease of the premises in favour of petitioner herein. There is no valid and

subsisting NOC or agreement executed by the respondent, authorizing the appellant to process, occupy and run permit room in the premises. As such, not only grant of the said FL-III license but also its renewal from time to time was obtained prime facie by misrepresentation.

17] Admittedly, appellant has carried out changes in view of reply dated 28.12.2020, to the show cause notice dated 01.12.2020. In the said reply, he has admitted that due to wooden staircase there was inconvenience to the customers and therefore, he has included some open space and utilized the same. As per his contention those are within the four boundaries of the premises, for which, license was granted. It is his further contention that as per direction of the Collector minor internal changes within the four boundaries will not make any effect. It appears from the notice 01.12.2020, that there was inspection carried out by Sub Inspector, State Exercise Duty, A - 2, Division Nagpur, on 10.11.2020 of M/s City Restaurant and Bar, Chhatrapati Square, Nagpur. On inspection, it was find that there are changes carried out in

the license premises and not appearing as per sanctioned map. In reply to this show cause notice the petitioner herein submitted that he has utilized some open space.

18] So far as alternate efficacious remedy is concerned, learned Counsel for petitioner relied on *Sudhabai Manohar Meshram* (supra), wherein, the reliance is placed on the judgment of *Everest Apartments Co-operative Housing Society Ltd. Vs. State of Maharashtra and others*, AIR 1966 SC 1449, wherein, Section 154 of the Maharashtra Co-operative Societies Act fell for consideration. The question was whether it provided an efficacious alternate statutory remedy to the person aggrieved. The Hon'ble Apex Court held as under :

"It is thus apparent that section 154 of the Maharashtra Co-operative Societies Act was held to be potential but not compulsive. It has been held that neither, the word "suo motu" nor the word "on an application of the party" have been used under section 154. It has been held that mere making of an application does not clothe a party nor any right beyond bringing the matter to the notice of the Court and if after the application is made, it is for the Court to consider whether to act or not. It has been held that there is no right to interference and there is no right to relief as in an appeal or revision."

19] Learned Counsel relied on *Satish Damodhar Kasar* (supra), wherein, it is held as under :

"15. In the present case, the petitioner's father and after his death the petitioner had been running the licenced business for over a period of 20 years smoothly and without any complaints. It appears that apprehension has been expressed and entertained by the authorities concerned on the so called complaints of women organizations and the alleged resolution by Gram Sabha about which no record has been available and as such, the impugned order had been issued without any basis therefor.

16. The exercise of powers under sections 54 and 56, or for that matter. section 142 of the Prohibition Act, is regulated by the provisions thereunder. It would be apparent that none of the circumstances referred to under clauses (i) (a) to (e) of section 54 had been subsisting while show cause notice had been issued, nor the reasons referred to under the show cause notice appear to be based on any material. The show cause notice has been vague and appears to have been issued on presumption of there being resolution by Gram Sabha and complaints by Women organizations.

17. Thus, it appears that there had been no attributable cause for intended cancellation of the licence issued to petitioner as could be considered under section 56 of the Prohibition Act. While show cause notice called for explanation against cancellation of licence, the impugned order dated 22-7-1994 refers to a different demand of shifting of shop to some other place.

18. There is no coherence in the show cause notice and the impugned order. The impugned order appears to have

been passed on subjective satisfaction on non-subsisting material and for a different reason about which the petitioner did not get opportunity to tender explanation."

20] It appears that the license was issued in the year 1989 and was in effect by renewal till date.

21] It also appears that the suit was filed by the land owner for eviction came to be dismissed in default. The show cause notice for cancellation, which was issued on 01.12.2020 was duly replied vide 28.12.2020. Thereafter order dated 31.08.2023, passed by the Collector, on the basis of same notice and inspection, it was ordered that there will not be any suspension or cancellation of license. However, compounding fees of Rs.40,000/- was imposed. It is also appears that the same was duly deposited by the petitioner herein. After amount is deposited, it appears that another show cause notice was issued on 10.03.2023, which is issued by the Municipal Corporation, Nagpur. The said notice was challenged by filing Special Civil Suit No. 418/2023. It appears from the order dated 29.02.2024 that on complaint the

Collector reviewed its own order and cancelled the license. Once penalty is imposed and compounding charges were deposited, there was no reason to issue show cause notice on the basis of same complaint. The complainant was having remedy of filing appeal before the Divisional Commissioner. However, it appears that the Collector reviewed its own order dated 31.08.2023 and on the same ground cancelled the license. The Commissioner also has not considered this aspect. The Commissioner also observed that it is a serious matter that the appellant has carried out structural changes to the suit premises for past many years, however, there is no basis for search observations. The inspection which was carried out, on the basis of which, compounding charges were imposed was duly paid by the petitioner. Thereafter, there was no fresh inspection to come to the conclusion that there were any structural changes. There is no fresh show cause notice issued by the Collector, apart from notice dated 01.12.2020. In pursuance to that notice already the Collector passed an order and imposed compounding charges. As such,

due procedure is not followed by the Collector while passing impugned order. The order passed is without authority. In view of *Sudhabai Meshram* (supra), I do not see the remedy of revision is efficacious remedy. So far as issuance of notice by Municipal Corporation, Nagpur, it would proceed as per the said Act and that is not the ground for cancellation of license. In view of *Satish Damodhar Kasar* (supra), unless the circumstances referred to under Clause 1(a) to 1(e) of Section 54 had been subsisting while show cause notice had been issued, the Collector can not invoke his power for cancellation of license. As such, order passed by Collector dated 29.02.2024 in एफएलआर 112023/2200/अकरा/857 and order passed by the Commissioner, Nagpur, dated 16.05.2024 in Appeal No.FLR192024/78/I, both are liable to be set aside. Accordingly, I proceed to pass the following order :

ORDER

- i) The Writ Petition is allowed.
- ii) The order passed by the respondent No.2 - Collector, Nagpur, dated 29.02.2024 in एफएलआर112023/2200/अकरा/857

and order passed by the respondent No.1 - Commissioner of State Excise, dated 16.05.2024 in Appeal No.78/2024, are hereby quashed and set aside.

The Writ Petition is disposed of in above terms.

No order as to costs.

(Smt. M.S.Jawalkar, J.)

B.T.Khapekar/Jayashree..