



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

WRIT PETITION NO. 7383 OF 2024

**Shri Sai Mandir Sewa
Samiti**, Village - Madheli,
Taluka - Warora, District -
Chandrapur, Registration
No. E-0000737 (CDP),
through its President -
Shri Chetan Vijayrao
Mahajan.

....PETITIONER

....VERSUS....

1] Maharashtra State Excise,
Government of
Maharashtra, Mantralaya
Mumbai through Secretary.

2] Collector, State Excise,
Chandrapur.

3] Warsha Vishal Badkhal,
Proprietor of Vishal
Restaurant, House No.
1524, Village - Madheli,
Taluka - Warora, District -
Chandrapur.

....RESPONDENTS

Shri S.G.Jagtap, Advocate for petitioner.
Ms. Deepa I. Charlewar, AGP for respondent no. 1 & 2/State.
Shri A.M.Chandekar, Advocate for respondent no. 3.

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

RESERVED ON : 26/03/2025

PRONOUNCED ON : 05/05/2025

JUDGMENT

Heard learned Counsel for the petitioner and learned counsel for the respondents.

2] Being aggrieved by the order passed by respondent No. 2-Collector dated 29.11.2024, whereby respondent No.2 has granted FL-III license to respondent No.3 under the provisions of the Maharashtra Prohibition Act, 1949 and Rules made thereunder, as the same is blatantly illegal, the present petition is filed.

3] The petitioner is a Mandir Sewa Samiti of Shri Sai Mandir at Village Madheli, Taluka Warora, District Chandrapur, having its registration No.E-0000737(CDP), issued by the Assistant Charity Commissioner, Chandrapur Region, Chandrapur.

4] The petitioner Samiti, since the establishment of Sai Mandir, is looking after its maintenance and renovating the Mandir of Shri Sai Maharaj.

5] The President of the petitioner - Society, beside the activity of Sai Mandir Sewa Samiti, is also a social worker and does the work for betterment of the Society at Village Taluka Madheli, Warora, District Chandrapur.

6] After noticing that respondent No.3 is likely to start her business near Sai Mandir of the petitioner within the restricted distance, the petitioner objected before respondent No.2. It will not be out of place to mention here that the said objection was raised on 15.12.2023, specifically mentioning that issuance of FL-III license in favour of respondent No.3 would not be appropriate, where liquor sale would be done.

7] That despite the objection that the petitioner's Mandir is a registered one before the Assistant Charity Commissioner. Respondent No.2, ignoring the provisions under the Maharashtra Foreign Liquor Rules, 1953, specially distance restrictions from any religious place from the proposed FL-III license premises, granted the same on 23.07.2024 under their Committee meeting.

8] Upon noticing that the license is granted by respondent No.2 to respondent No.3, the petitioner received all the documents under the Right to Information, and thereupon it is learnt that the Committee headed under respondent No.2 for grant of license, has decided on 23.07.2024 in its meeting that they shall take decision of grant of license upon verification as to whether the construction of Trust Mandir is legal or illegal, besides the distance restrictions under the Maharashtra Foreign Liquor Rules, and the same is granted on 23.07.2024 itself.

9] Upon noticing that the hotel of respondent No.3, where license for FL-III is proposed, is within the restricted distance, Shri Sudhir Mungantiwar, the Hon'ble Minister, on 15.12.2023, specifically directed to respondent No.2 that upon an enquiry, action would be taken.

10] From perusal of the resolution of the Committee for grant of license headed by respondent No.2, it would be seen that it has stated that the Committee was looking after

the construction of the Mandir, rather than the distance restrictions under the Rules, and without waiting to the Committee's report, although the same is also on the construction of Mandir but not on the distance, respondent No.2 Collector, on the same date, approved for grant of license on 23.07.2024 itself. In the circumstances, the action on part of respondent No.2, while assessing the parameters under the Rules, the same are ignored and, therefore, grant of license dated 29.11.2024 is liable to be quashed and set aside.

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

i) Keshav Mahadeo Mohane V/s. The State of Maharashtra, State Excise Mantralaya, Mumbai thr. Secretary and ors. [Judgment of this Court in WP No. 1930/2020 with connected WPs, decided on 15/12/2020]

ii) Hotel Shobha V/s. Hon'ble Minister, Dept. of State Excise and ors. [2012(6) Mh.L.J. 708]

12] On the contrary, the learned Counsel for respondent No. 3 submits that prior to issuing FL-III licence to respondent No.3, the other respondents had already inspected the spot and on inquiry, conclusion was drawn that no such temple is in existence as alleged by the petitioner.

13] It is submitted that, as per directions issued by respondent No. 2, the Sub-Divisional Magistrate, Warora submitted its report in respect of illegal construction of alleged temple and turning point bar of uncle of petitioner. It is submitted that after due verification and spot inspection, respondent No.2 rightly concluded that there is no substance in the objection raised by the petitioner and therefore, issued FL-III licence to the respondent No.3.

14] It is submitted that there is no substance in the petition filed by the petitioner. The petitioner Chetan Mahajan is acting as a Tool in the hands of business competitor of respondent No.3 namely Sanjay Mahajan who is also running bar and restaurant. The brother of Sanjay Mahajan namely

Devanand Maharaj is political rival of husband of respondent No.3 and Sarpanch of village Madheli. Due to political rivalry and to avoid healthy business competition, instant petition is filed to harass respondent No.3. Hence, for all above reasons, there is no substance in the petition and it is liable to be dismissed.

15] The learned Counsel for the respondent No.3 relied on the following citations:-

i) Borivali Education Society, Mumbai and anr. V/s. Municipal Corporation of Greater Bombay and anr. [2014(2) Mh.L.J. 769]

ii) Grampanchayat, Bardapur V/s. The State of Maharashtra thr. Principal Secretary, Dept. of State Excise, Mumbai and ors. [Judgment of this Court in PIL No. 94/2018 decided on 8/2/2019]

16] I have heard both the parties, perused impugned order and documents placed on record and considered the citation relied on by both the parties. It is contention of the petitioner that by giving complete go-by to the Rule 45 (1)(a),

45(1)(b) of Bombay Foreign Liquor Rules, 1953. The order came to be passed by the Collector without there being any recommendation by the Committee. It appears that the Collector directed the Sub Divisional Officer, Warora, to submit its report on the point that whether the construction of Sai Mandir and the registration is legal and valid. Accordingly, the Sub Divisional Officer called remark of the Tahsildar as well as Police Inspector, Police Station, Warora. Accordingly, after receipt of the same, he submitted his report/remark to the Collector. It is noted that Plot No.4, Gat No. 134 in Mouza Madheli is NA plot owned by one Chayabai Bhoyar. It is statement of Girdhar Baba Kohpare that he has purchased the said plot.

17] It is submitted that he has claimed to have purchased the said plot No.4 from Chayabai Bhoyar on 27.12.2023 and her name was deleted on 20.01.2024 and he has donated out of same plot 10 ft. x 7 ft. land to Sai Mandir Seva Samiti on 07.02.2024. It was reported that while initiating construction, there was no any permission taken for

fragmentation of that plot nor any sanctioned map for construction of temple was obtained. The Gram Panchayat Madheli informed accordingly. There was one complaint by 214 villagers dated 27.10.2023 intimating that on plot No.4, there is a construction of Temple initiated without there being any sanction.

18] It also reveals from the said enquiry that the President of the said Sai Mandir Seva Samiti, Shri Chetan Vijayrao Mahajan stated in his statement that Trust was registered on 11.10.2024. As there was Temple to be erected Shri Girdhar Baba Kohpare donated 10ft. x 7ft. land by oral gift deed. The Gram Panchayat Madheli, refused to grant permission as the said land does not come under gaathan and they were directed to obtain permission from Sub Divisional Officer, Warora. However, it is specific statement made by the said President that without obtaining any permission, since 25.09.2023, the construction work is going on. He admitted that there was stay granted by Taluka Magistrate on 28.12.2023. There is specific admission that there is no

permission granted for such construction from any of the authorities. Thus it can be seen that the said plot came to be purchased by the Giridhar Baba Kohpare on 27.03.2023 and it was gifted to Sai Mandir on 07.02.2024. Admittedly, construction was commenced on 25.09.2023.

19] It appears from the report that there is already one 'Turning Point Bar', which is existing. As such, the illegal construction of temple is in future regularised, it may create law and order situation. However, as on today, there is no legal construction. On perusal of photographs dated 18.11.2023, even on 22.07.2024, there is incomplete construction of which photograph was taken by GPS map camera. Even on 04.07.2024, it is incomplete nor there is any statue in the said temple.

20] It is alleged that the complaint and petition is filed by Shri Chetan Mahajan, the nephew of Sanjay Mahajan, who is owner of bar and restaurant situated adjacent to bar and restaurant of respondent No.3. It appears that the District

Committee for Issuance of Licence recommended to the Collector. The Collector has taken the decision. There is no infirmity or illegality in the licence issued on 29.11.2024 to respondent No.3 permitting to sell foreign liquor at Vishal Restaurant, village Madheli.

21] It apparently appears that the construction of Sai Mandir is motivated for stopping the Collector to grant licence to respondent No.3. There is no denial by the petitioner that there is already one bar, that he is not the nephew of Sanjay Motiram Mahajan, who is owner of bar and restaurant situated adjacent to bar and restaurant of respondent No.3. Admittedly, before the date of purchase by the said Girdhar Baba Kohpare, the construction is commenced. Not only this, there is fragmentation of plot without prior permission, there is no sanction to the said construction of temple. The registration of Trust is also received on 11.10.2024. Though said Girdhar Baba Kohpare said that he donated the said land by registered gift deed, however, the President of the Trust stated that the said land

was orally gifted. He has also admitted that construction is commenced before purchase of the plot and it is stayed by the order of the Tahsildar.

22] Learned Counsel for petitioner relied on *Keshav Mahadeo Mohane (supra)*, however, the facts are distinguishable from the facts involved in the matter. There is a Committee report recommending the issuance of licence in favour of respondent No.3.

23] Learned Counsel for petitioner also relied on *Hotel Shobha (supra)*, however, it is not applicable in the present set of facts and nor there is any points of delay. Moreover, distant factor will come into question only when it will be established that the said temple is legally constructed and was in existence prior to such application for issuance of licence.

24] Learned Counsel for respondent No.3 placed reliance on judgement in *Grampanchayat, Bardapur (supra)* in PIL No.92/2018 wherein phraseography of Section 137 has

discussed:

“By virtue of sub-section 5(2) of Section 137, all orders passed by the Collector and Commissioner are appealable to the Commissioner and State Government respectively at any time within 90 days from the date of the order complained of. The phraseology of Section 137 would undoubtedly indicate that, whoever would be aggrieved by orders passed by the Collector or the Commissioner, are entitled to prefer appeal. The petitioner, instead of preferring the appeal, has filed the present P.I.L. As already observed above, the respondents are justified to contend that the Sarpanch of the Village has preferred the present P.I.L. with an oblique motive since his brother runs a Bar at the village.”

25] Learned Counsel for respondent No.3 relied on *Borivali Education Society, Mumbai (supra)*, in support of his contention that if a matter involves disputed questions of fact then it is incapable of being resolved in summary proceedings under Article 226 of the Constitution of India.

26] As such, it appears that construction is admittedly illegal and only to restrict the Collector from issuance of licence to the respondent No.3. The petitioner started

construction without there being any sanction, legal transfer of plot just to restrain the Collector from issuing of license in favour of respondent No.3. There is no illegality in the order directing issuance of licence in favour of respondent No.3. As such, there is no substance in the petition and is liable to be dismissed. Accordingly, Writ Petition is dismissed.

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

27] At this juncture, learned Counsel for the petitioner requests for stay of this petition for another 30 days. However, in view of the detail orders passed in Writ Petition, I do not see any reason to stay effect and operation of this order. The application is hereby rejected.

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