IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9115 OF 2011

Shri. Vitthal Ambaji Kharatmol ...Petitioner

Versus

State Of Maharashtra Through Minister Of State Excise And Ors. ...Respondents

NAVNATH SITARAM WAGHMARE

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Ms. Hitasvi Sanghavi i/b Adv. Vinayak Salokhe for the Petitioner.
Mr. P.V. Nelson Rajan AGP the Respondent Nos. 1 to 3/State.

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CORAM : M.M. SATHAYE, J.

DATE : 17th AUGUST, 2026

P.C. :

1. Heard learned counsel for the parties.

2. The petitioner is taking exception to order dated 03.08.2011 passed by the Minister (State Excise), order dated 20.08.2010 passed by Commissioner of State Excise, Mumbai in Appeal No. 50 of 2010 and order dated 03.11.2006 passed by the Collector (Mumbai suburban area) by which the Petitioner was charged privilege fee for transfer of liquor license from one place to another.

3. FL-II license bearing No. 25 and CL-III license bearing No. 303 initially standing in the name of Rekha Ram Tahilramani, used for M/s. Ambar Wines for location of Shankar Deval, R.C. Marg, Chembur, Mumbai was sought to be transferred to a new place viz. CTS No. 238/222 & 223 Village Anik, Taluka Kurla, Vashi Naka, Chembur Mumbai. The order directing payment of privilege fees was passed on 03.11.2006 by the Collector directing the Petitioner to pay 3,99,500/- and 84,700/- for transfer of FL-II and CL-III licence respectively. The petitioner, after a long gap of about 4 years, filed Appeal No. 50 of 2010

in March 2010 challenging the said order. The Commissioner for State Excise dismissed the appeal on the ground of delay by order dated 20.08.2010. The petitioner challenged the said order by filing Revision No. FLR.1210/RA-60/EXC-2 before the Minister of State Excise who dismissed it, confirming the orders below, under impugned order dated 03.08.2011.

4. The petition was admitted on 25.01.2012. It is informed by learned counsel for the Petitioner that Petitioner has paid the amount under protest.

5. Learned counsel for the Petitioner submitted that the transfer of liquor shop was required due to notice received by the Railway Authorities as a result of an order passed by Court in Public Interest Litigation (PIL). She submitted that such notice was the cause of transfer and it was not a voluntary transfer and therefore the privilege fee could not have been charged. She contended that if for the purpose of development, any liquor license is required to be transferred, then it cannot be treated as voluntary transfer. She relied on copy of sale deed of shop and NOC granted by the owner dated 18.10.2003 in favour of licence holder to run the shop. She submitted that therefore Petitioner's occupation can not be treated as illegal. She prayed for setting aside the impugned order and refund of amount with interest.

6. On the other hand, learned AGP appearing for the Respondents relied upon the affidavit in reply dated 11.03.2026 filed by Superintendent of State Excise, Mumbai contending *inter alia* that the shop/premises from which the Petitioner was originally carrying on business was unauthorised on the Railway land and the Petitioner's occupation can not be considered as lawful for extending any benefit. She further submitted that the in P.I.L No. 1791 of 1998, this Court

issued specific directions for removal of encroachments falling within the safety zone i.e. upto 10 mtrs from the railway line, pursuant to which notice was issued by Railway to Petitioner causing the transfer. Relying on notifications dated 04.06.2009 & 07.07.2010 in respect of Rule 4 of Bombay Prohibition (Privilege Fees) Rules, 1954, it is contended that exceptions, if any, can not be applied retrospectively. She submitted that therefore, the impugned order is rightly passed.

7. I have considered the rival submissions and perused the record.

8. It is not disputed that Railway Authorities was required to issue notice to the Petitioner pursuant to direction given by this Court in a public interest litigation taking note of safety zone of 10 meter required to be kept around railway line. The notice dated 12.05.2005 issued by Railway Authorities is considered in the impugned order. It is held in the impugned order that when the original occupation of the Petitioner itself was illegal, then any benefit under the applicable policy about transfer (such as transfer necessitated by development work) cannot be granted to the Petitioner. Although the cause of action for the revision was rejection by the Commissioner on the ground of long delay, still the Minister has considered the contentions on merits. Be that as it may. Also, NOC granted by the owner of shop in favour of the Petitioner to run wine shop, per se, would not make the shop or construction legal.

9. In the facts and circumstances narrated above, considering that the Petitioner was required to transfer the shop because original place of business was held illegally within safety zone belonging to Railways which was directed to be vacated by order of this court, no benefit can be given to Petitioner. In such facts and circumstances,

transfer of licence, as required by the Petitioner, can not be considered as for 'development scheme' or eligible for any other exemption clause.

10. No fault can be found in the impugned order. The view taken is most probable one. There is no perversity in the impugned order. Hence no interference is required.

11. **Writ Petition is dismissed. Rule is discharged. No order as to costs**.

12. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)