(2013) 03 AP CK 0065

In the Andhra Pradesh High Court

Case No : Writ Petition No. 20967 of 2012

Md. Sadiq APPELLANT

Vs

Commissioner of Prohibition and Excise of A.P. and Others RESPONDENT

Date of Decision : 20-03-2013

Acts Referred:

Citation : (2014) 4 ALD 309 : (2014) 2 ALT 709

Final Decision : Disposed Off

Judgement

C.V. Nagarjuna Reddy, J.—The petitioner, who claims to be a private employee and worshiper in Masjid-E-Qutub Shahi Mosque (for short "the mosque"), filed this writ petition for a mandamus to declare the action of respondent Nos. 1 to 3 in granting licence to respondent No. 4 in Form - A4 to sell liquor in retail in the premises bearing No. 3-3-40, Kachiguda, Hyderabad, as illegal, arbitrary and in violation of Rule 25 of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2012 (for short ''the Rules''). The petitioner has objected to the grant of licence to respondent No. 4 for selling liquor in retail on the sole ground that the mosque is situated within 100 metres of the licensed premises and therefore, the same is hit by the provisions of Rule 25 of the Rules. Respondent Nos. 3 and 4 filed separate counter-affidavits, wherein they have disputed the plea of the petitioner with respect to the distance between the mosque and the licensed premises in which respondent No. 4 is running the liquor business. This Court has appointed an Advocate Commissioner to measure the distances in terms of Rule 25 of the Rules and submit a report. Accordingly, the Advocate Commissioner has submitted her report.

2. Under Rule 25(1) of the Rules, the premises in which the licensed shop is run shall be at least 100 metres away from the places of public worship, educational institutions and hospitals and 50 metres away from the highways. Under sub-rule (3) thereof, the distances shall be measured from the midpoint of the entrance of the licensed premises along with the nearest pathway, by which pedestrians ordinarily reach to the midpoint of the nearest gate of the institution or place of

worship if there is a compound wall and if there is no compound wall, to the midpoint of the nearest entrance of the institution or place of worship.

3. A perusal of the Advocate Commissioner''s report shows that the mosque has two entrances, that one entrance which is described as the first one has door No. 3-3-853 and is situated in Badi Chowdi street and the second entrance is available at the new compound wall situated in Qutbiguda street. It is further stated that a graveyard lies between the new compound wall and the entrance to the mosque. As per the measurements taken by the Advocate Commissioner, the distance from the midpoint of first entrance (Badi Chowdi street) and the midpoint of the licensed premises through the nearest pathway is 205 metres, from the midpoint of the second entrance (middle gate) of the mosque till the midpoint of the licensed premises through the nearest pathway is 125 metres and from the midpoint of the immediate entrance to the graveyard (at the new compound wall) to the midpoint of the licensed premises through the nearest pathway is 48 metres. These observations recorded by the Advocate Commissioner are more or less in consonance with the averments contained in the counter-affidavit filed by respondent No. 3.

4. Sri A. Prabhakar Rao, learned counsel for the petitioner, submitted that the gate at new compound wall situated at Qutbiguda (back gate) by the Advocate Commissioner in her report is used as a common entrance to the graveyard as well as the mosque and that therefore, the distance has to be measured from that gate to the licensed premises.

5. Learned Assistant Government Pleader for Prohibition and Excise appearing for respondent Nos. 1 to 3 and learned counsel for respondent No. 4 opposed this submission and stated that as could be seen from the Advocate Commissioner''s report and also the counter-affidavit filed by respondent No. 3, a graveyard intercepts the mosque and the outer point at Qutbiguda entrance and that the actual distance from the mosque to the licensed premises shall be measured from the entry point into the mosque from the graveyard.

6. I have carefully considered the respective submissions of the learned counsel for the parties. The main intention behind prescribing the minimum distance under Rule 25 of the Rules is to see that the persons who offer prayers in the religious places and those who are associated with the educational institutions shall not be disturbed. Therefore, a practical and realistic approach needs to be made while applying this Rule to each case. Admittedly, Qutbiguda gate will open into the graveyard and after crossing the graveyard, people who intend to reach the mosque can enter the mosque through a gate which is described as middle gate (back gate) by the Advocate Commissioner in the report. Therefore, the gate, which is referable with reference to Rule 25 of the Rules, is the middle gate (back gate) after crossing the graveyard and not the entrance which opens into the graveyard. It is not in dispute that if the distance is calculated from the gate which opens into the mosque, the same is around 125 metres as per the Advocate Commissioner''s report and 112 metres as per the counter-affidavit

filed by respondent No. 3, In either case, the distance is beyond 100 metres as prescribed under Rule 25(1) of the Rules.

7. For the aforementioned reasons, I do not find any illegality in granting permission to respondent No. 4 to run the liquor shop at the premises in question.

8. The Writ Petition is accordingly dismissed. As a sequel to dismissal of the writ petition, W.P.M.P. No. 26860 of 2012 filed by the petitioner for interim relief shall stand disposed of as infructuous.