

(2023) 01 BOM CK 0110

In the Bombay High Court

Case No : Writ Petition No. 12083 Of 2019

Rahul Giridhar Pathade

APPELLANT

Vs

Collector Of Nasik And Others

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 21, 227
Maharashtra Country Liquor Rules, 1973 — Rule 25
Maharashtra Land Revenue Code, 1966 — Section 44
Maharashtra Prohibition Act, 1949 — Section 54, 56

Citation : (2023) 01 BOM CK 0110

Hon'ble Judges : Milind N. Jadhav, J

Bench : Single Bench

Advocate : Veena B. Thadani, Vishal B. Thadani, P.G. Sawant, Santosh L. Patil, Shraddha Kadam

Final Decision : Dismissed

Judgement

Milind N. Jadhav, J

1. By the present Writ Petition, Petitioner takes exception to the orders dated (i) 20.09.2019 passed by Respondent No. 4 - State of Maharashtra, (ii) 08.02.2019 passed by Respondent No. 1 - Collector of Nasik and (iii) 04.12.2018 passed by Respondent No. 2 - The Commissioner State Excise.

2. Respondent No. 1 is the licensing authority under the Maharashtra Prohibition Act, 1949 (for short "the said Act"). Petitioner is the citizen of India and resident of Village Peth, District Nashik. Respondent No. 3 holds a CL III license under the said Act. Respondent No. 1 - Collector of Nasik passed order dated 08.02.2019 permitting Respondent No. 3 to shift his CL III license from the existing premises to the new premises. This permission was granted by the Collector after obtaining prior permission of the Commissioner on 04.12.2018.

3. Admittedly Respondent No. 3 is carrying on business of Restaurant and Bar in

the name and style of M/s Hotel Mohana Garden since 1996. The Excise Department has duly approved the plan of the said hotel with Restaurant and Permit Room on Plot No. 284. The said Restaurant and Bar was shut down pursuant to the order passed by the Supreme Court on 15.12.2016 since the same was abutting the National highway. Respondent No. 3 thereafter constructed a wall on three sides of Plot No. 284 in order to restrict the entry from the highway and thereafter made fresh Application to the Competent Authority seeking a license on the ground that the distance from the highway to the entrance of the restaurant was in excess of the ceiling permissible under the order passed by the Supreme Court.

4. Respondent No. 3 also procured a CL III license. Admittedly CL III license did not fall within the restricted distance from the highway and is unaffected by the Supreme Court judgment. Respondent No. 3, therefore, made an Application to the Competent Authority for allowing him to shift his license and conduct his business on the basis of CL III license separately from the Restaurant and Hotel namely Hotel Mohana Garden Bar & Restaurant which was in operation from Plot No. 284.

5. Though admittedly for the purpose of CL III license, the restriction of the distance from highway was not applicable, the Sub-Inspector of State Excise procured information from the Executive Engineer of the National Highway authority, who certified that the distance of the hotel premises was 235 meters away from the National Highway No. 848. A plan was also annexed to the certificate for distance dated 18.07.2017 issued by the Excise Department. Respondent No. 3 submitted an affidavit dated 19.06.2017 stating that the establishment was beyond the restrictive distance from 220 meters from the National Highway and also undertook to satisfy the other applicable conditions.

6. Petitioner is the resident of the area in the vicinity of Plot No. 284. On being asked, it is informed across the bar that Petitioner's residential house is at a distance of 500 meters from Plot No. 284.

7. It is Petitioner's case that several persons residing in the vicinity of Plot No. 284 have objected to the commencement of the Country Liquor Bar under CL III license issued to Respondent No. 3 by filing objections and complaints to the Statutory Authorities. Petitioner has thereafter referred to a series of correspondence between the officers of the Respondents Nos. 1 and 2. However, Petitioner's objection is to the fact that Respondent No. 3 has been permitted to operate his CL III license from the premises of Hotel Mohana Garden on Plot No. 284 where the Respondent No. 3 was also granted a FL III License.

8. By order dated 08.02.2019, Respondent No. 1 – The Collector of Nashik permitted Respondent No. 3 to shift his CL III license from Ozar, Taluka Niphad, District Nashik to Gat No. 233, Plot No 284 Taluka Peth, District Nashik after receiving prior permission from Respondent No. 2 – The Commissioner of State Excise on 04.12.2018.

9. Petitioner being aggrieved filed a Revision Application and Application for stay to the said order. Respondent No. 4 granted an interim order dated 14.08.2019 staying the orders passed by the Collector and the Commissioner State Excise. Thereafter, Respondent No. 4 heard the Revision Application finally and passed order on 20.09.2019 rejecting the same and vacated the interim stay order dated 14.08.2019 and upheld the orders viz. dated 04.12.2018 passed by Respondent No. 2 and 08.02.2019 passed by Respondent No. 1.

10. Mrs. Thadani, learned Advocate appearing for Petitioner would submit that the orders impugned are bad in law in view of the following reasons:

(i) that they are passed in contravention of considering the restricted distance of the subject premises from the National Highway; that infact the subject premises are abutting the National Highway and after grant of license, Respondent No. 3 has demolished the wall on the southern side thereby having direct access to the subject premises from the National Highway; that in view of this, the subject premises which also house Mohana Garden permit room under the FL III license now stands abutting the National Highway;

(ii) that Peth Nagar Parishd has not given its NOC to Respondent No. 3 for commencement of a Country Liquor Bar from Plot No. 284 and in the absence of the same the license ought not to have been granted;

(iii) that by virtue of shifting of the CL III license, Respondent No. 3 has violated the distance condition from the National Highway in respect of the FL III license;

(iv) that by virtue of the impugned orders, Respondent No. 3 has been permitted to commence the business of selling Country Liquor in a predominantly residential area and as per government regulations, commercial activity is prohibited in premises abutting the road which is less than 12 meters; that there is violation of the conditions mentioned in government resolution dated 21.11.2018;

(v) that Respondent No. 3 has produced a bogus NOC of the Nagar Parishad and relied upon bogus documents to procure permission for his CL III license;

(vi) that as a concession for only licenses affected by the Judgment of the Supreme Court, on 07.06.2017 the Government issued a Circular exempting licenses affected by the said Judgment from procuring "NOC of the local body" as mandated in Rule 25, if the licence was being shifted in the same District. A period of one year was given for obtaining NA certificate for the premises etc.;

(vii) that the mandatory requirement in Rule 25 of the Maharashtra Country Liquor Rules, 1973 for obtaining "No Objection of the Municipal Council" was sought to be relaxed by the State Government by a mere Circular, which is not legally tenable;

(viii) that in view of the above submissions the impugned orders deserve to be set aside and that the CL III license granted to the Petitioner be cancelled.

11. PER CONTRA, Mr. Patil, learned Advocate for Respondent No. 3 has made the following submissions:-

(i) that the Petitioner has no locus to file the present Petition as he is neither concerned with the license of this Respondent or license of Mr. Kanade and therefore, the Petition though styled as Writ Petition is actually a P.I.L. not public interest litigation but personal interest litigation and therefore, the same is liable to be dismissed with heavy costs;

(ii) that the main objections raised by the Petitioner is distance from State highway less than 220 mtrs; however the Engineer from the PWD department has submitted his report and the same is neither challenged not the subject matter in the Petition;

(iii) that Petitioner has in the course of his submission stated that his layout is near the premises of the Respondent. However, he has not produced any documents to that effect but actually resides more than 2 km. away from the premises of the Respondent wherein Respondent is carrying on his business peacefully;

(iv) that it is alleged that there are several complaints filed in respect of Respondent's premises but it is pertinent to note that under the jurisdiction of Peth Municipal Council area there are 1 CL-III and 4 FL-III licenses which are functioning. Petitioner has no objection for functioning of the said licenses in the Municipal Council Area and this clearly shows that the Petitioner has not approached this Court with clean hands and also suppressed material facts from this Court;

(v) that it is alleged that Commercial NA is not submitted by the Respondent. In this regard, it is stated that Commercial NA for Plot No. 284 was granted by the Sub-Divisional Officer Nashik on 10.01.1996. Further the Chief Officer Peth Municipal Council vide its order dated 31.03.2021 granted Commercial NA permission to Survey No. / Gat No. 233 (old 337) Plot No. 284 admeasuring 495 sq. mtrs. Thereafter by exercising powers under Section 44 of the Maharashtra Land Revenue Code, 1966 the Sub-Divisional Officer Dindori vide its order dated 19.01.2022 granted the permission of change of user from residential to commercial of the said area;

(vi) that in the event if the license holder commits any breach or violation in provisions in that event Section 54 of the Maharashtra Prohibition Act empower the licensing authority to suspend or cancel the license and Section 56 of the said Act empowers the licensing authority to cancel the license by recording reason in writing. Since the Respondent is carrying business strictly in accordance with the Maharashtra Prohibition Act 1949, the Maharashtra Country Liquor Rules 1973 and circular issued from Government of Maharashtra, Commissioner of State Excise and Collector of Nashik, no action under Sections 54 or 56 has been initiated till date.

12. Mr. Patil and the learned AGP appearing for the Respondents have both supported the impugned orders and submitted that the transfer application of Respondent No. 3 was thoroughly inquired into and verified by Respondent No. 1 through the Inspector for State Excise who opined that the subject premises were situated at a distance of 235 meters away from the National Highway No. 848; that there is no educational or religious institution or statue of any national leader within the distance of 100 meters from the subject premises; that construction of the proposed subject premises was complete in all respect; that in the case for shifting of license in the case of Respondent No. 3, it was permissible if the rules, guidelines and circular were adhered to and as such the Petition was devoid of merit and deserved to be dismissed.

12.1. That apart, it was contended that the Petition filed by the Petitioner is not maintainable since the Petitioner did not object to the application for shifting of Respondent No. 3's CL III license to the subject premises and it is only after the same was allowed, the Petitioner has filed the present Petition seeking a Writ of Certiorari.

12.2. That the petition filed by the Petitioner is a malafide and colourable exercise of power borne out of jealousy and an extortionist reason without the Petitioner having any nexus whatsoever with the Respondent No. 3.

12.3. Hence the Respondents have prayed for dismissal of the Petition.

13. I have heard the learned Advocates appearing for the parties and with their able assistance, perused the record and pleading in the present case.

14. At the outset, it is seen that the locus of the Petitioner in filing the present Petition is required to be seen. The Petition is not filed as a Public Interest Litigation. Though it is argued across the bar that having a Country Liquor bar in the predominantly residential area is detrimental to the residents of the area, the said submissions however do not find mention in any of the pleadings. Challenge to the Petitioner's CL III license is on account of non-compliance of certain statutory conditions by Respondent No. 3. However, whether the Petitioner is entitled to maintain the said challenge and whether the proceedings under the Article 227 of the Constitution of India are maintainable is the moot question which needs to be addressed at the outset. The impugned order for granting license is passed by the Collector. Respondent No. 2 Commissioner has given his consent to Respondent No. 1 after following the due process of law to grant the license. Respondent No. 1 is the licensing authority who has granted the license. Admittedly, Petitioner never objected or was not a party to the original Application seeking transfer of the CL III license from Ozar to the subject premises in Peth. The Petition as seen is not filed by the Petitioner in a representative capacity on behalf of the residents in the area. Therefore, the Petitioner has no locus standi to file the present Petition.

15. That apart perusal of record clearly reveals that the manner in which the Petition is drafted is an abuse of the process of law. It is seen that the Petition

proceeds on the basis of the violation of fundamental rights of the Petitioner under Article 14 and Article 21 of the Constitution of India. However, Petitioner has not given any event or incident as to how his fundamental rights are violated. On the contrary the Respondent No. 3's right under article 19(1)(g) to carry on trade and business by following the due process of law is in fact hampered on the allegations of the Petitioner. Record clearly indicates that the Licensing Authority has followed the due process of law in granting the license. The entire gamut of documentary material i.e. Application, NOC, permissions etc. have all been enumerated in the affidavit-in-reply filed by Respondent No. 3 and is confirmed by Respondent Nos. 1, 2 and 4 in its affidavit-in-reply dated 12.03.2021. All such necessary documents namely Application, NOC, permission, affidavits, orders, etc. are all appended to the affidavit-in-reply of the Respondent No. 3. That apart, the Statutory Authority has confirmed on affidavit that the transfer application in respect of Respondent No 3 was thoroughly inquired into by Respondent No. 1 only after following the due process of law the same has been issued. Record also indicates that Respondent No. 3 has received N.A. Permission for Plot No. 284 in the year 1996 and copy of the same is produced on record. Hence, this objection of the Petitioner also does not survive. Record clearly indicates that the FL III license premises and CL III license premises are both running independently from Plot No. 284 with separate entrances and there is no violation of any conditions or rule by Respondent No. 3. That both the premises are separate and distinct. Needless to state that if there is any violation by Respondent No. 3 of any rules under the Maharashtra Country Liquor Rules 1973, the Statutory Authorities shall take cognizance and action in accordance with law.

16. In view of the above observations and findings, Writ Petition fails and deserves to be dismissed with costs. Petitioner is directed to pay costs of Rs. 10,000/- to the Kirtikar Law Library, High Court, Mumbai as costs for filing the present Writ Petition. The Cost shall be paid within a period of one week from today failing which the same shall be recovered as arrears of land revenue by the Collector Nashik from the Petitioner.

17. Writ Petition is dismissed. Though the Writ Petition is dismissed, list the Petition on board on 01.02.2023 for compliance of payment of costs by the Petitioner. To be placed under the caption 'for Compliance'.