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Sardarmal Vs. State of Raj. and Ors

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Court : Rajasthan Jodhpur

Decided On : Dec-16-2015

Appellant : Sardarmal

Respondent : State of Raj. and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER
: (1) S.B.CIVIL WRIT PETITION No.168/2015 Sardarmal Vs State of Rajasthan & ORS.::: (2) S.B.CIVIL WRIT PETITION No.149/2015 Smt.Kamla Devi Vs State of Rajasthan & ORS.Date of Order :: 16th December 2015 PRESENT HON'BLE MR.JUSTICE P.K.LOHRA Mr.G.R.Punia, Sr.Advocate assisted by Mr.Rajesh Punia for the petitioners Mr.S.S.Ladrecha, Additional Advocate General with Mr.Vikas Choudhary for the State Mr.Shreedhar Mehta for Dr.Sachin Acharya for the Excise Department BY THE COURT: In both these writ petitions, common question of law and facts are involved, therefore, both are heard together and disposed of by this common order.

The facts necessary and germane to the matter are that both the petitioners are licensee for vending Indian Made Foreign Liquor (IMFL)/Beer & Country Liquor respectively issued by the Excise Department.

The petitioner Sardarmal in CWP No.168/2015 was issued licence to operate shop No.3 at Zone No.5, Opposite Umaid Mill at Jodhpur-Pali road for the year 2014-15 whereas the petitioner Smt.Kamla Devi in CWP No.149/2015 was issued licence to operate shop located at Ward No.35 of Municipal Council, Pali for the year 2014-15.

Both the petitioners have made a positive assertion in the writ petitions that the shop in question is involved in vending of liquor 2 for the last more than a decade and earlier both these shops were owned by one Mahendra Kumar who was issued licence by the Excise Department for vending of country liquor.

The location of the liquor shops of both the petitioners was the cause of annoyance and the same culminated into a Public Interest Litigation (PIL) laid by one Mohd.Rafiq Gauri.

The Public Interest Litigation i.e.D.B.Civil Writ Petition No.2847/2014 was filed by Mohd.Rafiq Gauri and the same was disposed of by the Division Bench on 05.11.2014.

The operative portion of the order passed by the Division Bench reads as under:- Having regard to the complaint and the statutory provisions, providing prohibition or opening the IMFL and the Country Liquor Shops within prohibited distance of 200 metres, we direct that if the petitioner files an appropriate representation with complete details of the shops, its distance from the public places, alongwith requisite annexures as also the complaints made by affected persons to the District Magistrate, Pali, he will place it in the District Level Committee for a decision within a period of one month from the date such complaint is made.

Before taking any decision on the complaint, appropriate enquiries shall be made and the opportunity will be given to affected persons.

The decision taken by the District Magistrate shall be communicated to the petitioner.

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Pursuant to the directions issued by the Division Bench in PIL aforesaid, Mohd.Rafiq Gauri submitted a representation (Annex.4) before the District Collector & District Magistrate, Pali-Marwar on 20.11.2014.

The petitioner Sardarmal craved right of audience by laying application under Order I Rule 10 CPC.

The District Magistrate in order to thrash out the afflictions of Mohd.Rafiq Gauri within the meaning of Rule 75 of Rajasthan Excise Rules, 1956 (for short the Rules of 1956) made sincere endeavour to solicit the reports from the concerned Sub-Divisional Magistrate, Pali and the Superintendent of Police, Pali.

That apart, a factual report was also solicited from the District Excise Officer, Pali.

After considering the 3 requisite reports, the District Magistrate, Pali passed the order dated 31.12.2014 and a consequential order is passed by the District Excise Officer, Pali on 05.01.2015 which are annexed as Annex.13 and 14 respectively in CWP No.168/2015.

In CWP No.149/2015, the orders passed by the District Magistrate, Pali and consequential order passed by District Excise Officer, Pali of even date are annexed as Annex.10 and 11 respectively.

The impugned orders passed in both the petitions are in the nature of directions to the petitioners to shift their liquor shops as they are located within the prohibitory zone in terms of Rule 75 of the Rules of 1956.

The petitioners have raised many issues in the writ petitions more particularly the mode of measuring the distance.

It is also submitted in the writ petitions that there are serious contradictions and discrepancies in the reports of the District Excise Officer, Sub-Divisional Officer and Superintendent of Police which have not been considered by the District Magistrate while passing the impugned order.

An attempt is also made by the petitioners to show that both these shops are located at a distance of more than 200 metres from the main gate of Umaid Mill.

In the preliminary reply submitted by the respondent - Excise Department, the impugned orders are stoutly defended.

The respondent - Excise Department has submitted that in compliance of the impugned order, both the petitioners have relocated their liquor shops without any demur and, therefore, they are now estopped from raising any plea and the petitions merit dismissal on this count alone.

An objection is also sought to be raised on behalf of Excise Department that against the impugned order passed by 4 the District Excise Officer, Pali, alternative and efficacious remedy of appeal is available to the petitioners under Section 9A of the Rajasthan Excise Act, 1950 (for short the Act) and, therefore, the writ petitions are not maintainable.

The respondent - Excise Department has also questioned the maintainability of the writ petitions by urging that both the petitions involve disputed question of fact.

On merits also, the impugned order is defended on the anvil of Rule 75 of the Rules of 1956.

The respondent No.3 - District Magistrate has also in its brief reply submitted that the order passed by the District Magistrate is in accordance with law and shifting was ordered on noticing the fact that both the shops are located at a distance of less than 200 metres from the main gate of Umaid Mill.

With this plea, it is urged that petitions merit dismissal.

I have heard learned counsel for the parties and perused the materials available on record.

At the outset, it may be observed that impugned action was initiated against both the petitioners pursuant to the directions issued by the Division Bench while disposing of D.B.Civil Writ Petition (PIL) No.2847/2014 and the District Magistrate upon examining the representation submitted by the writ petitioner of the PIL has passed the order with objective consideration.

Pursuant to the order passed by the District Magistrate, consequential order has been issued by the District Excise Officer, Pali.

The District Magistrate, Pali has made sincere endeavour to solicit the reports from all concerned and thereafter recorded its finding that both the shops are located within 200 metres from the main gate of Umaid Mill, Pali and accordingly ordered for relocation of both the shops.

A finding of fact recorded 5 by the District Magistrate cannot be made subject matter of judicial review and this Court in exercise of its extraordinary jurisdiction is not expected to make roving and fishing enquiry about the distance of the liquor shops of both the petitioneRs.more particularly when there is an adveRs.finding against both of them by the District Magistrate.

Moreover, when pursuant to the impugned ordeRs.both the liquor shops have been relocated and the petitioners have agreed for relocation of their shops withut any demur, it is not desirable to interfere in the matter.

The compliance of Rule 75 of the Rules of 1956 is mandatory and there is no quarrel in the legal position that vending of liquor is not a fundamental right of an individual.

Therefore, in totality, I am not persuaded to interfere with the impugned orders in both the writ petitions in exercise of extraordinary jurisdiction of this Court.

Resultantly, both the petitions fail and are hereby dismissed.

A copy of this order be placed in CWP No.149/2015.

(P.K.LOHRA),J.

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