

THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.7123 of 2022

ORDER:

This writ petition has been filed to declare the action of the respondents No.1 to 4 in granting licence of a liquor/wine shop for sale of alcoholic beverages along with permit room to respondent No.5 in residential area/locality as illegal and arbitrary and contrary to the provisions of the Telangana Excise Act, 1968 (for short 'the Act') and the Telangana Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 (for short 'the Rules') and the order dated 07.01.2022 passed by this Court in WP(PIL).No.64 of 2017. The petitioner also sought a consequential direction to cancel the licence issued in favour of the respondent No.5.

2. It is stated that the petitioner is a resident of Fortune Green Homes, 'Golden Oriole', which consists of 245 apartments and had been authorized by the flat owners to file this writ petition. The wine shop along with permit room of the respondent No.5 is located right adjacent to many apartments like BRC Sri Hemadurga Siva Hills (consisting of more than 500 residents) and other stand alone apartment with almost 100 families residing.

3. Learned counsel for the petitioner contended that the respondents No.1 to 4 failed to apply their mind and without undertaking proper survey of the locality, granted licence to the respondent No.4 in residential area consisting of almost 1000 families. Recently, a Bench of Hon'ble the Chief Justice passed order in WP(PIL).No.64 of 2017 dated 07.01.2022 directing the concerned authorities to make sure that wine shop with permit room should not be permitted in residential area. The respondents No.1 to 4 failed to comply with the directions given by this Court and permitted the respondent No.5 to establish wine shop with permit room in a residential area.

4. Learned counsel for the petitioner submitted that apart from Fortune Green Homes consisting of 245 apartments, there are two big gated communities one right adjacent and one exactly opposite to the wine shop cum permit room of respondent No.5 and many other stand alone apartments. BRC Sri Hemadurga Siva Hills, which is right adjacent and shares a common wall boundary with the wine shop cum permit room, has almost 500 families residing and there are two more blocks under construction which will accommodate another 200 families, once completed. BRC Sri Hemadurga Siva Hills also has a temple inside the community. There is a gated community with 245 flats opposite to the wine shop cum permit room of the respondent No.5. If the respondent No.5 completes

construction of the shop and is permitted to commence business, it will create law and order problem, traffic congestion, problem of safety for women, children and elderly people residing in the area. It will also cause nuisance, accumulation of garbage, dirty smell etc.

5. The respondent No.4/District Prohibition and Excise Officer, Shamshabad, filed a counter opposing the writ petition. It is stated that during the drawal of lots of A4 shops on 20.11.2021, the respondent No.5 was found to be successful applicant of A4 shop of Gazette Sl.No.SSB065 of Manikonda Municipality, Ranga Reddy District. The respondent No.5 selected premises bearing Sy.No.192 situated at Puppalaguda for establishment of A4 shop in the name and style of M/s. S.S.S Wines for the license period 2021-2023. The said premises was obtained on lease by the respondent No.5. The respondent No.5 submitted representation along with lease deed and blue prints of the proposed premises and requested for issuance of A4 and A4(B) licences. During inspection of the premises, it was found that A4 shop was located on the main road leading Narsingi to Shaikpet, Dargah (Mehdipatnam main road), which is in commercial area and it was in conformity with Rule 25(3) of the Rules. Hence, the Station House Officer, Shamshabad, has recommended for grant of licences in Form-A4 and A4(B) in favour of the respondent No.5.

6. It is further stated that A4 shop and permit room of the respondent No.5 are located in commercial area and not in residential area and it is in conformity with Rule 25(3) of the Rules. The respondents have followed the orders passed by this Court in WP(PIL).No.64 of 2017 dated 07.01.2022. The respondents have also granted two licences of 2B Bars and one licence of A4 (wine) shop on the main road leading from Narsingi to Shaikpet, Darga (Mehdipatnam main road) at Puppalguda and they are running business without any objection from local people. The residents of Sri Hemadurga Siva Hills, BRC Infra and Green Space Grand made a representation to the Commissioner on 13.01.2022 for removing the shop of the shop of the respondent No.5 contending that it will cause nuisance, traffic interruption, disturb peaceful atmosphere and will adversely influence teenagers and adults and it is close to place of worship, namely, Sri Lakshmi Narasimha Swamy Temple and Shiva Temple. The said temples are not registered with the Endowments Department.

7. Learned Government Pleader for Prohibition and Excise submitted that the licence for the wine shop and permit room of the respondent No.5 was issued in accordance with Rules. The business premises of the respondent No.5 is situated in commercial area. All precautions are being taken by the respondent No.5 to ensure that no nuisance is caused to the residents of BRC Sri Hemadurga

Siva Hills and other nearby apartments in the residential area. The excise officials have inspected the premises before granting licence and on being satisfied that the premises is situated in commercial area and not residential area, granted licence to the respondent No.5. The order of this Court in WP(PIL).No.64 of 2017 dated 07.01.2022 is duly followed by the authorities before granting licence.

8. Mr. P. Venugopal, learned senior counsel, representing Mr. T.V. Kalyan Singh, learned counsel for respondent No.5, submitted that the retail outlet of the respondent No.5 is functioning since almost more than one year and at no point of time there was any complaint lodged against the respondent No.5 from any quarter. The Government, before granting licence, conducts survey and comes to a conclusion with regard to the number of shops to be allocated in an area, which depends upon the population. The wine shop of the respondent No.5 is not in a residential locality but it is a commercial locality. Under Rules 25 and 26 of the Rules, there is no prohibition to grant licence in a residential locality but the licence should not be granted within 100 meters of place of worship, educational institutions, hospital and within 50 meters of Highway. None of such conditions are attracted in case of the respondent No.5. Moreover, the temple is inside the residential complex and not recognized by Endowments Department

and it is not for general public, as such, the petitioner cannot object for the same. The A4 and A4(B) licence was granted to the respondent No.5 on 24.01.2022.

9. The learned counsel for the petitioner submitted that the temple is admittedly situated inside the apartment complex and not registered with the Endowments Department and thus, the prohibition under Rule 25 of the Rules is not attracted. The learned counsel fairly submitted that the point of establishment of wine shop within 100 meters distance of temple is not being pressed and is being withdrawn.

10. Heard learned counsel for the petitioner, learned Government Pleader for Prohibition and Excise and Sri P. Venugopal, learned senior counsel representing Mr. T. Kalyan Singh, learned counsel for the respondent No.5.

11. The Telangana Excise (Grant of Licence of Selling by Shop and Conditions of Licence) Rules, 2012 issued under G.O.Ms.No.391 dated 18.06.2012 were challenged in WP(PIL).No.64 of 2017 as being illegal and unconstitutional. The Bench of the Hon'ble the Chief Justice, having considered various provisions of the Telangana Excise Act, 1968 and Rules 2012, disposed of the PIL by order dated 07.01.2022 with the following observations:

"In the present case, no arbitrariness or no illegality has been brought to the notice of this Court insofar as statutory provisions are concerned and the State Government was well within its power to frame the statutory provisions governing the field which provides for establishment of permit room. The Excise Act read with the Rules, 2012 provide for certain checks and balances and therefore, the State Government shall carry out Audit in respect of all the liquor shops to ensure that the shops are established keeping in view the statutory provisions as contained in the Rules and the State Government shall also ensure that no shop is established in a residential locality along with permit room, near hospital, near religious institution or near school as well as other prohibited places as provided under the Rules. In case, there is a violation of the Excise Act and the Rules framed under the aforesaid Act, the State Government shall close down the shops forthwith after conducting Audit in respect of all shops in the State of Telangana. The exercise of conducting Audit in respect of all shops in respect of the location be concluded within a period of two months from today and a Compliance Report be submitted to the Registrar General of this Court."

12. Learned counsel for the petitioner heavily relied upon the above observations of the learned Division Bench and contended that despite the aforesaid order, the respondent authorities have not carried out audit in respect of all the liquor shops. The mandate of the Court directing the respondents to ensure that no shop along with permit room is established in residential locality is violated by the official respondents.

13. It is not in dispute that there are several residential apartments in the immediate vicinity of the wine shop cum permit room of the respondent No.5. It is also not in dispute that the BRC Sri Hemadurga Siva Hills apartment shares boundary with the shop of the respondent No.5. Several multi-storied residential apartments have been constructed in the adjacent plots of the wine shop of the respondent No.5. Photographs have been filed by the petitioner in proof of construction of such huge apartment complexes and the same is not denied by the learned counsel appearing for the respondents. It may be that that the Narsingi to Shaikpet road, where the respondent No.5 has established wine shop, is a commercial road/locality. However, residential apartments were constructed much prior to the establishment of wine shop of the respondent No.5. It is evident from the photographs, which are part of the record that the respondent No.5 has started the wine shop in a temporary structure. The wine shop is not located in a commercial building. Even if Narsingi main road is earmarked for commercial purposes, still the official respondents knew that there were residential buildings/apartments in the adjacent lands and nearby vicinity. The learned Division Bench of this Court passed order in WP(PIL).No.64 of 2017 on 07.01.2022 and without adhering to the directions issued by the Division Bench, licence was issued to the respondent No.5 on 24.01.2022.

14. Though it is submitted by the learned Government Pleader for Prohibition and Excise that audit is being conducted, as directed by the learned Division Bench in WP(PIL).No.64 of 2017 dated 07.01.2022, no material is placed before this Court with regard to the said audit in spite of two months granted by the learned Division Bench. Be that as it may, there was a specific direction by the learned Division Bench to the State Government to ensure that no wine shop along with permit room is established in a residential locality. The respondents have not complied with the order of learned Division Bench.

15. The official respondents ought not to have permitted a wine shop in an area where there are several residential buildings/ apartments. The authorities should have applied their mind and considered the nuisance and inconvenience that would be caused to women and children particularly. The discretion, if any, the authorities had for permitting a wine shop at a particular place, should have been exercised judiciously and reasonably and in all fairness the officials should have avoided granting licence at the subject premises which is predominantly surrounded by residential apartments and buildings.

16. In view of the above observations, the writ petition is partly allowed by directing the respondent No.5 to shift his A4 shop along

with permit room to any other locality within a period of one month from today.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

January 19, 2023
DSK

B. VIJAYSEN REDDY, J