

C.R.

P.B.SURESH KUMAR, J.

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WP(C).No.23625 of 2016

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Dated this the 17th day of November, 2016.

J U D G M E N T

The petitioner is a firm running a hotel. The petitioner firm holds a licence in Form FL-11 of the Foreign Liquor Rules ('the Rules') framed under the Abkari Act ('the Act'). On 03.07.2016, there was an inspection in the premises of the hotel of the petitioner by the excise officials. Ext.P2 is the mahazar prepared in connection with the said inspection. It is stated in Ext.P2 mahazar that the petitioner has converted the kitchen store shown in the plan submitted for the purpose of obtaining the licence, into a restaurant without obtaining prior permission of the Commissioner of Excise. A case was also registered against the petitioner immediately thereupon under Section 56(b) of the Act alleging violation of Rule 16 of the Rules. According to the petitioner, the alteration referred to in the mahazar does not amount to violation of Rule 16 of

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the Rules and registration of case under the Act for acts of this nature would hinder the smooth conduct of their business. The petitioner, therefore, seeks a declaration that alterations and modifications made in the hotel buildings except the alterations and modifications made to premises authorised for the sale or for possession and use of liquor, would not amount to violation of Rule 16 of the Rules. Though several other reliefs are also sought in the writ petition, the same were not pressed at the time of hearing.

2. A statement has been filed on behalf of the third respondent supporting the registration of the case.

3. Heard the learned Senior Counsel for the petitioner as also the learned Senior Government Pleader.

4. The learned Senior Counsel for the petitioner vehemently contended that the alteration referred to in Ext.P2 mahazar does not amount to violation of Rule 16 of the Rules. It was also contended by the learned Senior Counsel that in the light of the interpretation given to the Rule by the statutory authorities, the petitioner and similarly placed licensees are unable to make even trivial alterations and

modifications in their buildings, which are necessarily to be carried out for the convenience of their customers and in the interest of their business. Per contra, the learned Senior Government Pleader contended that the alteration referred to in Ext.P2 mahazar would amount to violation of Rule 16 of the Rules.

5. It is beyond dispute that a licensee under the Rules is authorised, as per the terms of the licence, to conduct the licensed activity only in accordance with the Rules. As such, the short issue falls for consideration is whether the alteration referred to in Ext.P2 mahazar would amount to breach of Rule 16 of the Rules. Rule 16 of the Rules reads thus:

"16(1) No premises shall be used for the sale or for possession and use of liquor without prior sanction of the Excise Commissioner.

(2) Excise Commissioner shall impose a fine of Rs.50,000 (Rupees fifty thousand only) for violation of alteration or modification of the building or premises to which the licence is granted. The imposition of a fine shall not however relieve the licensee from taking action against him under the Abkari Act or the rules made thereunder."

A close reading of the said Rule indicates beyond doubt that the expression 'the building or premises', referred to in sub-rule (2) refers to the building and premises authorised as per the terms of the licence to be used for the sale or for possession and use of liquor. In other words, prior sanction of the Excise Commissioner, as provided for under sub rule (1) of Rule 16, is required only for making alterations or modifications to the buildings and premises authorised as per the terms of the licence to be used for the sale or for possession and use of liquor. The relevant portion of Ext.P2 mahazar dealing with the alterations made by the petitioner in the hotel premises reads thus:

"തുടർന്ന് ടി ഹോട്ടലിന്റെ പ്ലാൻ പരിശോധിച്ചതിൽ ബഹു: കമ്മീഷണറുടെ 20/04/2007-ാം തീയതിയിലെ XC6-9531/05/D.Dis. പ്ലാനിൽ നിന്നും വിരുദ്ധമായി കിച്ചൻ സ്റ്റോറിലേക്കുള്ള വാതിൽ മാറ്റി സുരക്ഷിതമായി അടച്ച്, ടി കിച്ചൻ സ്റ്റോറിന്റെ വടക്ക് ഭിത്തിയിൽ പുതിയതായി ഡോർ പണിത് ടി കിച്ചൻ സ്റ്റോർ ഫാമിലി റെസ്റ്റോറന്റാക്കി മാറ്റിയത് കാണപ്പെട്ടു. ഇപ്രകാരം അബ്കാരി അക്ട് ഫോറിൻ ലിക്വർ റൂൾ പ്രകാരം ലൈസൻസ് വ്യവസ്ഥകൾക്ക് വിപരീതമായി ബഹു: എക്സൈസ് കമ്മീഷണർ അവർകളിൽ നിന്നും മുൻകൂർ അനുമതിയില്ലാതെ കൺസ്ട്രക്ഷൻ വർക്ക് നടത്തിയത് കുറ്റകരമാകയാൽ ടി കുറ്റം ടി ലൈസൻസിയെ

പറഞ്ഞു മനസ്സിലാക്കി ടി കുറുത്തിന് ടി ലൈസൻസിയെ നിയമാനുസരണം അറസ്റ്റ് ചെയ്യാൻ തയ്യാറാക്കി അറസ്റ്റ് ചെയ്ത് പ്രതിയായി കസ്റ്റഡിയിലെടുത്തു."

Ext.P2 mahazar does not recite that the alteration referred to therein is an alteration made to the building or premises authorised as per the terms of the licence to be used for the sale or for possession and use of liquor. No such case is advanced in the statement filed in this matter also. I have, therefore, no hesitation to hold that the alteration referred to in the mahazar does not amount to violation of Rule 16 of the Rules. Any other interpretation of the said Rule would lead to absurdity, for, insistence of prior permission of the Commissioner of Excise to make modifications or alterations to buildings and premises which has nothing to do with the possession, sale or consumption of liquor, would serve no purpose. I am also satisfied that the interpretation given to the said Rule by the statutory authorities would affect the right of the petitioner to carry on their business. The petitioner, in the circumstances, is entitled to the declaration sought in this matter.

In the result, the writ petition is allowed and it is

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declared that alterations and modifications made to the premises of the licensees under the Foreign Liquor Rules, except the alterations and modifications made to premises authorised for the sale or for possession and use of liquor, would not amount to violation of Rule 16 of the Rules.

Sd/-
P.B.SURESH KUMAR,
JUDGE.

Xvs/-

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