

(2013) 11 AP CK 0008

Andhra Pradesh High Court

Case No: W.A. No. 581 of 2013

Sadiq

APPELLANT

Vs

Commissioner of Prohibition and
Excise of A.P.

RESPONDENT

Date of Decision: Nov. 21, 2013

Citation: (2014) 3 ALD 76 : (2014) 2 ALT 473

Judgement

Kalyan Jyoti Sengupta, C.J.

This writ appeal has been preferred against the judgment and order of the learned Trial Judge dated 20.3.2013 in WP No. 20967 of 2012. The petitioner before the learned Trial Judge prayed for the following relief:

To declare the action of the respondents in issuing Form-A4 licence in favour of the 4th respondent to run retail wine shop notified at Gazette No. 89 in premises bearing No. 3-3-40, Kachiguda, Hyderabad, within 100 meters of the mosque known as Masjid-E-Qutub Shahi in premises bearing H. No. 3-3-853, Imlibun, Qutbiguda, Kachiguda, Hyderabad, in contrary to Rule 27 of A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005, as illegal, arbitrary and consequently to direct the respondents to take appropriate steps for shifting of the retail wine shop located in premises bearing No. 3-3-40, Kachiguda, Hyderabad, belonging to the 4th respondent 100 metres away from the mosque.

The learned Trial Judge while entertaining the writ petition at the time of hearing, in order to ascertain the distance between the location of the wine shop for which licence has been granted to respondent No. 4 and the mosque in question, appointed an Advocate Commissioner, who submitted her report to the Court. The report of the Advocate Commissioner has not been challenged. Therefore, the learned Trial Judge has correctly relied on the report of the Commissioner.

2. The learned Trial Judge, while relying on the report of the Advocate Commissioner, has found that if the distance is calculated from the gate which leads

directly to the mosque, and wine shop the same is around 125 metres, 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 Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2012 (for short "the Rules").

3. The learned Counsel for the appellant while impugning the judgment and order of the learned Trial Judge, submits that the learned Trial Judge has not followed the legal provision in measuring the distance as mentioned in sub-rule (3) of Rule 25 of the Rules.

4. Sub-rule (3) of Rule 25 of the Rules (which is in operation now) reads as under:

The distances referred above shall be measured from the midpoint of the entrance of the licensed premises along the nearest path by which a pedestrian would ordinarily reach the midpoint of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the midpoint of the nearest entrance of the institution/place of public worship.

5. Learned Counsel for the appellant further submits that the mosque is having two gates; through one gate one can get direct access to the mosque itself and through another gate one cannot have access to the mosque directly unless one passes through the graveyard portion of the compound wall. According to him, the second gate, which is having immediate access to the graveyard, has to be taken into consideration as per the language mentioned in sub-rule (3) of Rule 25 of the Rules. The Commissioner's report clearly says that the distance between mid point of the entrance of the wine shop and the mid point of the second gate is less than 100 meters, i.e., 48 meters. The learned Trial Judge should have taken note of this fact and His Lordship has committed a grave error and as such the impugned judgment is perverse.

6. The learned Counsel for the respondents supported the judgment of the learned Trial Judge and submitted that as per the intention of the aforesaid sub-rule the gate which is having direct access to the mosque has to be taken into consideration and there is no scope for taking into consideration the second gate when particularly, through this gate, immediate access to the mosque is not available, rather, to the graveyard is available.

7. After hearing the learned Counsel for the parties in this appeal, the only question arises is whether the learned Trial Judge has applied the aforesaid distance norms as mentioned in sub-rule (3) of Rule 25 of the Rules, based on the report of the Advocate Commissioner.

8. The Commissioner's report is undisputed and the learned Trial Judge has recorded that the distance 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.

9. We are of the view that in order to give meaningful and objective interpretation to the Rules, the distance has to be calculated keeping in view the location of the mosque because the whole intention is to save the mosque from alcoholic defilement.

10. Admittedly, the second entrance gate, through which direct access to the mosque is not available and one has to travel through graveyard, which cannot be part and parcel of the mosque. Benefit is not intended to be given to the graveyard, but the mosque. Therefore, the space covered by the graveyard has to be included with this distance factor and it should not be treated as part of the mosque. We are unable to accept the contention of the learned Counsel for the appellant that the distance has to be calculated from the midpoint of the licensed premises to the midpoint of the second entrance of the mosque, which is immediate entrance to the graveyard. Under the circumstances, when the learned Trial Judge has taken one plausible view, we cannot substitute our own view. The findings of the learned Trial Judge cannot be said to be irrational or absurd so as to be interfered with. Accordingly, we dismiss the writ appeal. There will be no order as to costs.

Consequently, miscellaneous petitions pending, if any, in this appeal, shall stand dismissed.