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C I R C U L A R

No. CLR 1196/480/VII

Mumbai, 14th January, 2000.

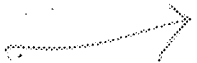
Several licensees filed civil suits in the courts of the concerned Civil Judges in respect of show cause notices issued to them under the provisions of the Bombay Prohibition Act, 1949, in respect of the serious breaches noticed. In view of the specific provisions of the Bombay Prohibition Act, the department took a stand by filing applications u/s 9A of the Civil Procedure Code, 1908 that the suits were not maintainable. Ultimately the matters reached the High Court and by the judgement dated 24th October, 1997 and 10.12.1997 in Second Appeal No.329 of 1996 Krushnarao s/o Vithalrao Gollar v. State of Maharashtra and other connected matters, the Hon'ble High Court specifically ruled, after examining the various provisions of the Act and after considering the concerned case law, that the Civil Court has no jurisdiction to take cognizance of a suit filed by the plaintiffs arising out of the orders passed by the Prohibition Officer under the Bombay Prohibition Act. It was ruled that Bombay Prohibition Act is a special statute which governs the law relating to the promotion and enforcement and carrying into effect the policy of Prohibition Act and also the Abkari Law in the State and the scheme itself provides for an effective remedy against the orders of the Prohibition Officer by way of appeal and revision (under sections 137 and 138 of the Act), which are sufficient and adequate to deal with the contingency. It was also observed that the whole attempt on the

ATM
for 21/9
u/s 9A/103A
PC 94
10/9/2A

part of the plaintiffs by taking recourse to civil courts was to scuttle the proceedings initiated under the Bombay Prohibition Act. Copy of the aforesaid judgement is enclosed herewith. Against this judgement one Smt. Indirabai widow of Devendra Jaiswal and others approached the Hon'ble Supreme Court by filing a Special Leave Petition (Civil) No.22792 of 1997, which was dismissed by the judgement and order dated 19.12.1997, copy of which is enclosed herewith. In view of the law settled by the Hon'ble High Court and the Apex Court, it is hereby directed that:

I. If Civil Suits are filed hereafter, an application u/s 9A of the Civil Procedure Code, 1908 should be filed immediately by the Superintendent of State Excise (and not by any junior officer) in consultation with the District Government Pleader, by taking objection to the jurisdiction of the Civil Court to entertain the civil suit and copy of the aforesaid High Court and Supreme Court judgement should be annexed with the application u/s 9A of the Civil Procedure Code. It should be submitted in the application u/s 9A of the Civil Procedure Code that parawise reply to the plaint will be submitted after the application u/s 9A is decided.

II. If civil suits are filed hereafter, copy of the plaint and other applications should be immediately forwarded by way of a D.O. letter to the Commissioner, informing that action for filing application u/s 9A is being taken. Thereafter, the matter should be pursued personally by the Superintendent with the District Government Pleader and the concerned Deputy/Joint



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Commissioner in this office.

III. In pending matters, in the Civil Court application u/s 9A immediately should be filed as directed in para "I" above. If any matters are pending in the District Court or the High Court, the copies of above judgements should be filed in the proceedings with affidavit.

IV. In case of any lapse, the Superintendent will be held personally responsible.

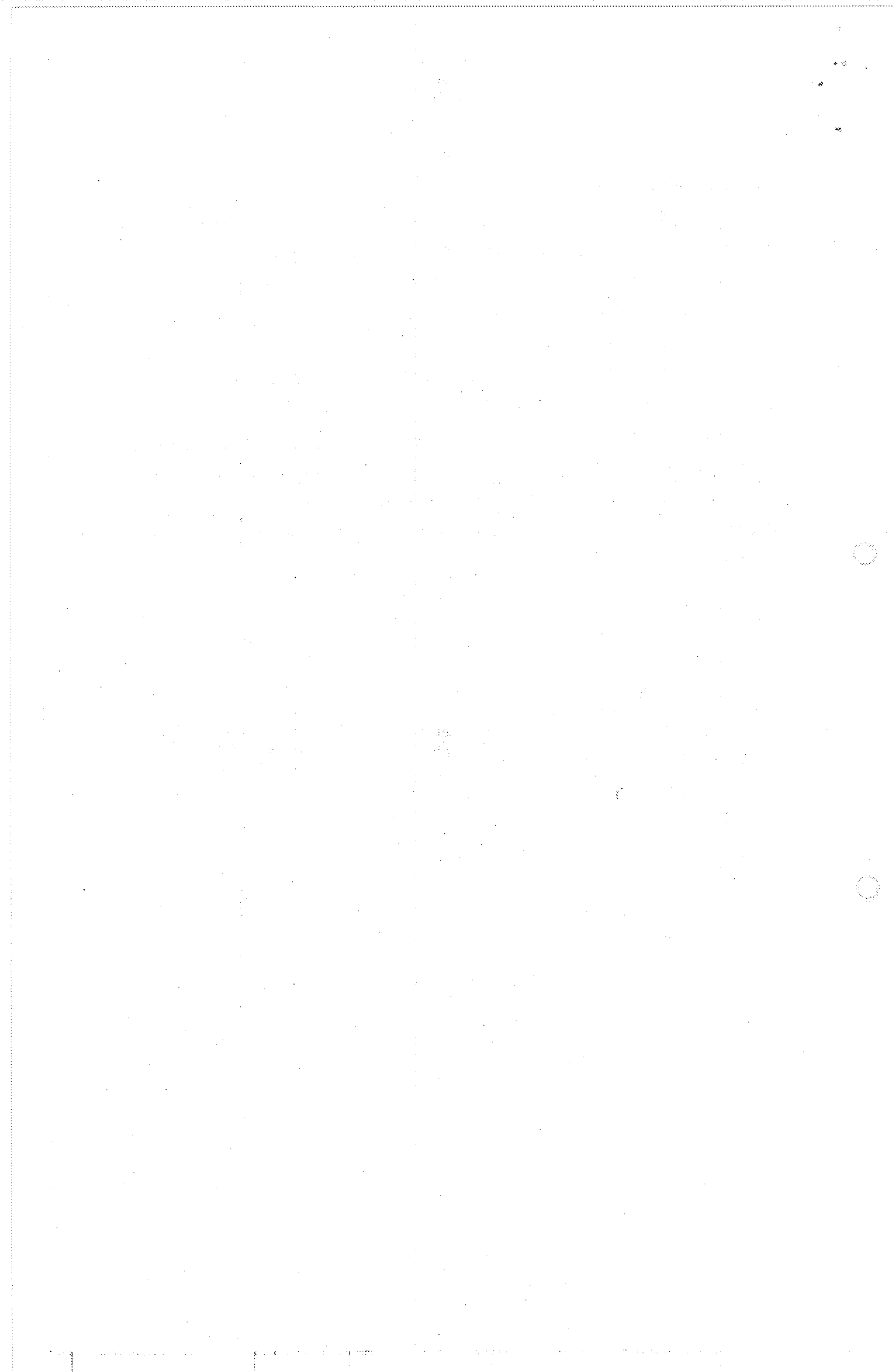
The Divisional Deputy Commissioners of State Excise should forward copies of this circular to the Superintendents within their jurisdiction within 7 days and thereafter, receipt of the circular should be communicated to this office immediately by the Superintendents of State Excise.

Encl. 1 to 47

B.G. Veer
(B.G. Veer)
Commissioner of State Excise,
Maharashtra State, Mumbai.

To

- 1) All Collectors with compliments.
- 2) All Superintendents of State Excise.
- 3) All Divisional Dy. Commissioner of State Excise. *Nagpur*
- 4) All Joint/Deputy Commissioners of State Excise and Director of Enforcement and Vigilance in this office, who should keep copies of this circular in the S.O. files of Desks under them.
- 5) Record section.



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Second Appeal No. 329 of 1996.

Krushmarao s/o Vitthairao Gollar.

Aged about 52 years, Occupation
Business, r/o. Gud Oil, Kamptee,

District, Nagpur.

APPELLANT

versus

1. State of Maharashtra through
Collector, Nagpur,
District, Nagpur.
2. The Superintendent of Police,
Nagpur Rural, Nagpur.
3. Collector,
Nagpur District, Collectorate
Compound, Civil Lines, Nagpur.
4. Prakash s/o Laxman Tallewar,
Aged 39 years, r/o Daloli,
Vitthal Rukhamini Nagar,
Ward No.5, Kamptee,
District, Nagpur.
5. Ramesh s/o Lingayya Panganttiwar,
Aged 42 years, r/o Tilak Nagar,
Ward No.7, Kamptee,
District, Nagpur.
6. Dashrath s/o. Papalal Kanojiya,

My
14/1/99

Aged 40 years, r/o. Bhaji Mandi,
Ward No.4, Kamptee,
District. Nagpur.

RESPONDENTS.

M/s. S.G.Jagtap & A.S.Kilor, Advocates, fir appellants.
Shri K.S.Dhote, A.G.P., for respondents 1 to 3.
Shri D.C.Chahande & Smt. S.W.Deshpande, Advocates for
respondent nos. 4 to 6.

Civil Revision Application No. 801 of 1997.

Rajesh s/o Jawaharlal Jaiswal,
aged adult, Proprietor of M/s. Vyankatesh
Sales Corporation, a Proprietary concern,
having its place of business at Ajni Pul,
Chuna Bhati, Nagpur.

APPLICANT

versus

The Commissioner of State Excise,
Maharashtra State, Mumbai, having its
office at Old Custom House, Mumbai.

NON- APPLICANT

SHRI V.C.DAGA & Miss J.D.Uttamani, advocates, for the
applicant.

Shri A.M.Gordey, Special Counsel for non-applicant.

Civil Revision Application No. 825 of
1997.

1. Smt. Indirabhai wd/o Devendra Jaiswal,
legal representative and representing
the interest of Shri Devendra Ramchandra
Jaiswal (since deceased) having her place
of business at Railway Station Road, Nagpur.
2. M/s. Quality Wine Shop, a registered
partnership firm through its Partner
Jagdish R. Jaiswal, aged about 45 years,
occupation business, resident of Bajaj
Nagar, Nagpur.
3. Smt. Shardabai Ramdulari Jaiswal, aged
about 65 years Occupation-business,
having her place of business at Lokmt
Chowk, Wardha Road., Nagpur.
4. Smt. Shakuntalabai w/o Himmatrai Saraykar,
aged about 50 years, Occupation-business,
having her place of business at Ajni Bridge,
Nagpur.
5. Madankumar Kishanlal Jaiswal, aged
about 44 years Occupation- business,
having his place of business at Khamla,
Nagpur.
6. Vijay s/o Janardhanrao Jichkar, aged
about 48 years, Occupation- business,

having his place of business at
Ajani Chowk, Nagpur.

7. Sanjay s/o Mahadeo Rekhunde, aged about 36 years, Occupation-business, legal representative and representing the interest of Smt. Manoramabai Rekhunde (since deceased) having his place of business at Gitti Khandan, Katol Road, Nagpur.
8. N.C.Nagdive, aged about 70 years, Occupation- business, having his place of business at Indora Chowk, Kamptee Road, Nagpur.
9. S.R.Jaiswal, aged about 65 years, Occupation business, having his place of business at Kamal Chowk, Panchpaoli, Nagpur.
10. Smt. Vaishali w/o Sanjay Jaiswal, aged about 23 years Partner of M/s. Sona Wines, having its place of business at Nandanwan Layout, Nagpur.
11. Dhananjay Srikant Jaiswal, aged about 24 years, Partner of M/s. Venkatesh Wines, having its place of business at Manewada Road., Nagpur.
12. Smt. Padma Ashok Mate, aged about 28

- years, Occupation- business, having his place of business at Ghat Road., Nagpur.
13. Anokhelal J.Naik, aged about 56 years, occupation-business, having his place of business at Ghat Road., Nagpur.
 14. Smt.Kamlabai Rambhau Kaikade, aged about 65 years, Occupation- business, having her place of business at Pardi, Bhandewadi, Lakdi Pul, Nagpur.
 15. Pandurang Eknath Charade, aged about 72 years, Occupation- business, having his place of business at Juni Mangalwari, Lakdi Pul, Nagpur.
 16. Smt. Lalita Manoharrao Mahure, aged about 48 years, Occupation- business at Subhash Road., Cotton Market, Nagpur.
 17. Bhaurao Marotrao Mohod, aged about 70 years, Occupation-business, having his place of business at ST Stand, Ganeshpeth, Nagpur.
 18. Suresh Krishnaji Lakudkar, aged about 37 years, Occupation- business, having his place of business at New Shukrawari, Nagpur.
 19. Yadaorao Govindrao Shirpurkar, aged

about 53 years, Occupation- business at
Itwari Old Motor Stand, Nagpur.

20. Smt. Savita M. Samarth, aged about 42 years,
Occupation- business, Proprietor of
M/s. Sumitra Wines at Golibar Chowk,
Nagpur.
21. Smt. Urmiladevi Shrikant Jaiswal,
aged about 49 years, Occupation- business,
Partner of M/s. Liberty Wine Shop, having
its place of business at Kamptee, Tahsil
and District Nagpur.
22. Smt. Chandrabhagabai Madhavrao Mahile,
aged about 65 years, Occupation- business,
representing interest of herself and
late Shri Madhavrao M. Mahile, having
her place of business at Kamptee,
Tahsil and District Nagpur.
23. Surendra Ramchandra Jichkar, aged
about 35 years, Occupation- business,
having his place of business at Katol,
District Nagpur.

versus

The Collector, State Excise,
having its office at Collectorate,
Civil Lines, Nagpur.

..... APPLICANTS

... NON-APPLICANT

Shri V.C.Daga and Miss J.D.Uttamani, advocates for the applicants.

Shri A.M.Gordey, Special Counsel for respondent.

CORAM: J.N.PATEL J.

DATED: 24/10/1997.

Oral Judgement

There is a common question involved in all these three matters relating to the jurisdiction of the Civil Court to deal with the matters arising out of the orders passed by the Prohibition Officer under the Bombay Prohibition Act, 1949. The Second Appeal No. 329 of 1996 is filed by Krishnarao Vitthalrao Gollar for considering whether any substantial question of law was involved, so that it can be admitted whereas in respect of the two C.R.As. i.e. C.R.A.No.801 of 1997 and 825 of 1997, this Court passes the order. Rule. Heard forthwith by the consent of the parties.

2. All the three matters were heard by the Court at length. Both the parties have relied upon various authorities and the three matters require detail consideration while being disposed of. Due to paucity of time and this being the last day of working before vacation, this Court is disposing of all the three

matters with short reasoning which are common and would give detail reasons after vacation.

3. Section 9 of the Code of Civil Procedure reads as under:

"9. Courts to try all civil suits unless barred.- The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

Explanation I: A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

Explanation II: For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place."

Under section 9 of the Code of Civil Procedure, the Court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Therefore, a suit is expressly barred if the particular statute provides in excess terms bar of jurisdiction of civil courts. It is impliedly barred if the statute creates certain rights and liabilities relating to the subject matter it governs and prescribes a particular action, penalty or punishment for breach or contravention of its provisions and a special remedy is provided to seek redress

against it. Generally, there is a presumption against exclusion of jurisdiction of a civil court is limited in point of area, subject matter and value. Whether the jurisdiction of the Civil Court is barred expressly or impliedly will have to be examined by considering the averments in the plaint read with the substantive reliefs sought in relation to the particular subject matter.

4. In these three matters, the action taken by the Prohibition Officers came to be challenged before the Civil Courts mainly on the grounds that Prohibition Officers have acted under badfaith, the action taken by them is bias and mala fide. That they have violated the principles of natural justice and the order passed by them is a nullity. Respondent State of Maharashtra raised a preliminary objection to the jurisdiction of Civil Court to deal with the matter. The Courts below have found that the jurisdiction of the Civil Court is impliedly barred in view of the express provisions of the Bombay Prohibition Act under sections 317, 138, 145 and 146-A.

5. The preamble of the Bombay Prohibition Act, 1949 (for short the Act) reads as under:

" An Act to amend and consolidate the law relating to the promotion and enforcement of and carrying into effect the policy of prohibition and also the Abkari law in the State of Bombay."

Under the scheme of the Act, Chapter I deals with the preliminary, short title, extent, commencement and definitions.

It has been laid down as to the application of the Act to the State of Maharashtra and various definitions which have to be read and understood in reference to the various provisions of the Act. In Chapter II, it further provides for the establishment of the Act and Chapter III provides for various prohibitions in respect of manufacture, sale, export, import, transport of liquor, intoxicating drugs, sweet toddy, opium, charas, denatured spirit etc. It provides for prohibition of allowing any premises to be used as common drinking house and then authorises Registered Medical Practitioners for issuing prescriptions. It also deals with the various other prohibitions relating to the soliciting use of intoxicant or hemp or publication of advertisement relating to intoxicant etc. It provides for distilleries and warehouses where intoxicants can be prepared and other necessary restrictions and regulations, its import, etc. and transport through passes. Then it provides for licence of various nature and in case of the present subject matter, we are more concerned with Section 34 which provides for vendors's licence, which reads as under:

"S. 34:- Vendors' licences:- 1) The State Government may, by rules or an order in writing, authorises an officer to grant a vendor's licence for the sale of foreign liquor.

2) A vendor's licence shall be granted on the following conditions:-

(i) the stock of foreign liquor with the licensee (except what is permitted for the disposal of the shop) shall be

- kept by him at godown approved by Government;
- (ii) (deleted).
- (iii) the licensee shall pay all rent, costs, charges and expenses incidental to warehousing and supervision;
- (iv) the licensee may sell any part of the stock of foreign liquor to foreign liquor licensees or to chemists, canteens, messes and clubs, holding licences in the State or to any persons outside the State, subject to such conditions as the Commissioner may impose;
- (v) the licensee shall be permitted to sell foreign liquor only to holders of permits or authorisations;
- (vi) the licensee shall be entitled to keep in his shop such quantity of liquor as may be required by him from time to time for retail sale;
- (vii) the licensee shall keep accounts and shall dispose of foreign liquor according to such instructions as may be given by the Commissioner."

These sections are to be read alongwith the relevant rules provided under the Bombay Foreign Liquor Rules, 1953. In respect of grant of licences of country liquor, the same is governed by Rule 14 of the Maharashtra Country Liquor Rules, 1973, which reads as under:

"14. Grant of Licence (1) On receipt of an application under rule 13, the Superintendent shall verify the particulars given therein and satisfy himself that the building or rooms of the warehouse for the purpose of sale of country liquor

by wholesale conform to the requirements of rule 15. He may make such other inquiries as he deems necessary in respect of the proposed warehouse premises and matters incidental thereto and shall forward the application to the Commissioners, with his remarks.

(2) On receipt of the application under sub-rule (1), the Commissioners may if he deems proper on recovery of the licence fee inclusive of consideration of Rs. 65,000/- (Rupees sixty five thousand) grant the applicant a licence in Form CL.II with the previous sanction of the State Government (hereinafter referred to as the wholesale licensee).

(3) No licence under sub-rule (2) shall be granted for a period beyond 31st March next following the date of the commencement of the licence. Provided that in respect of licence granted prior to the 1st day of April, 1973, the period of the licences shall extend upto 31st March, 1974.

(4) When licence under sub-rule (2) is granted, due intimation shall be given to the Superintendent and the Collector, concerned. Also such intimation shall be given to the authorities of the Food and Drugs Administration in the State.

(5) Any licence granted under sub-rule (2) shall be renewed by the Commissioner for a period not exceeding one year at a time on payment of renewal application fee of Rs. 25/- and licence fee as prescribed in sub-rule (2) of rule 14, unless

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the Commissioner has reason to believe that there has been a breach of any of the terms and conditions of the licence, or that the licence has not been working properly.

The licences to sell foreign liquor and country liquor under the said Act are regulated by various provisions and particularly sections 53 and 53-A. Section 54 deals with power to cancel or suspend licences and permits, which reads as under:

"54. Power to cancel or suspend licences and permits:"

- (1) The authority granting any licence, permit, pass or authorisation under this Act may for reasons to be recorded in writing cancel or suspend it;
 - (a) if any fee or duty payable by the holder thereof is not duly paid;
 - (b) if the purpose for which the licence, permit, pass or authorisation was granted ceases to exist;
 - (c) in the event of any breach by the holder of such licence, permit, pass or authorisation or by his servant or by any one acting with his express or implied permission on his behalf of any of the terms and conditions of such licence, permit, pass or authorisation or of any licence, permit, pass or authorisation previously held by the holder;
 - (d) if the holder thereof or any person in the employ of such holder or any person acting with his express or implied permission on his behalf is convicted of any offence under this Act or if the holder of the licence, permit, pass or authorisation is convicted of any cognizable and non-

bailable offence or anyof offence under the Dangerous Drugs Act, 1930 or under the Drugs Act, 1940 or under the Bombay Drugs (Control) Act, 1952 or under the Indian Merchandise Marks Act, 1889, or of any offence punishable under section 482 to 489 (both inclusive) of the Indian Penal Code, or of any offence punishable under Article 8 of the schedule to Section 167 of the Sea Customs Act, 1878;

(e) if the licence, permit, pass or authorisation has been obtained through wilful misrepresentation or frauds.

(2) Where a licence, permit, pass or authorisation held by any person is cancelled, under sub-section (1), the authority aforesaid may cancell any other licence, permit, pass or authorisation granted or deemed to have been granted to such person under this Act.

(3) Notwithstanding anything contained in this section, the State Government may, for reasons to be recorded in writing, suspend or cancel any licence, permit, pass or authorisation.

Section 56 of the Act provides for cancellation for other reasons, which reads as under:

"56. Cancellation for other reasons.- (1) Whenever the authority granting a licence, permit, pass or authorisation considers that it should be cancelled for any cause other than those specified in section 54, he may cancel it either-

(a) on the expiration of not less than fifteen days' notice in writing of his intention to do so; or

(b) forthwith without notice, recording his reasons in writing for doing so.

(2) Where a licence, permit, pass or authorisation is cancelled under sub-section (1), a part of the fee for the licence, permit, pass or authorisation proportionate to the unexpired portion of the term thereof and the deposit made by the holder thereof in respect of such licence, permit, pass or authorisation shall be refunded to him after deducting any amount due from him to the State Government.

The subject matter of Regular Civil Suit No.1797 of 1995 filed by Krishnarao son of Vitthalrao is that he is the holder of a valid liquor licence which was renewed upto 31.3.1996 and by virtue of this licence issued by the Collector, Nagpur, District Nagpur, the plaintiff is permitted to sell country liquor on retail basis, which came to be sealed on 20.9.1995 at about 5 P.M. by the officials without assigning any reason during the subsistence of the licence, which was in exercise of powers under section 56 of the Act read with Rule 27 of the Maharashtra Country Liquor Rules, 1973.

6. In respect of C.R.A.No.801 of 1997 filed by Rajan son of Jawarharlal Jaiswal, who had filed Civil Suit No.36 of 1997 seeking declaration and permanent injunction against the respondent/original defendant- Commissioner of State Excise, Maharashtra State, Bombay. The concentration of the applicant is that he is the proprietor of M/s. Vyankatesh Sales Corporation, having its business at Ajani Pul, Chuna Bhatti,

Nagpur and holds a country liquor licence issued by the respondent with the previous sanction of the State Government under Rule 14(2) of the Maharashtra Country Liquor Rules, 1973, which is popularly known as "CL-II" licence. He has been issued with a show cause notice dated 2nd November, 1996, calling to show cause as to why licence should not be cancelled. The said show cause notice was followed with another show cause notice dated 17.12.1996 received by the applicant on 20.12.1996, which are the subject matter of the challenge in the suit and the applicant has prayed that the two show cause notices be declared as ab initio void, illegal, without any authority of law and without jurisdiction and violative of the Articles 14 and 21 of the Constitution of India and also in breach of provisions of the Act and principles of natural justice. The applicant claimed a decree for permanent injunction to injunct the respondent and/or any other officer/s authorised by him to proceed with any of the proceedings initiated under the two show cause notices.

7. In C.R.A.No. 825 of 1997 filed by Indirabai widow of Devendra Jaiswal and 23 others, the regular civil suit is filed before the Civil Judge, Senior Division, Nagpur and came to be registered as Regular Civil Suit No. 2108 of 1996. This suit also seeks a declaration declaring that the show cause notice purported to have been issued by the respondent dated 19th July, 1996 followed by a notice dated 19.11.1996, is bad, illegal and issued without any authority of law and as such in breach of the principles of natural justice and fair play and has been issued

in colourable exercise of powers and does not stand to scrutiny of law and as such the same is vague and prayed for permanent injunction restraining the respondent from proceeding with upon the said notice.

8. All these applicants are holding country liquor licences under the provisions of the Bombay Prohibition Act, particulars of which are furnished in the scheduled annexed to the plaint, which shows that the plaintiffs are country liquor licensees and some are holding foreign liquor licences under different rules framed under the Act and they have been issued with combined show cause notices which are the subject matter of challenge in the said suits. The action is purported to have been taken under section 54 and 56 of the Act.

9. I need not refer to the other provisions of the Act relating to the control and regulation of reasons mentioned in Section 21-A to prevent the use of intoxicating liquor. Chapter IV-B (Sections 59C and 59D), Chapter V (Section 60) relating to Mhowra flowers, and Chapter VI (Sections 61 to 63) in respect of control and regulations of molasses, provisions relating to offences and penalties under Chapter VII (Sections 65 to 104A) and provisions relating to Excise Duty provided under Chapter VIII (Sections 105 to 114) and provisions relating to powers and duties of officers and procedure under Chapter IX (Sections 115 to 135). The main concern of this Court is to examine whether the Bombay Prohibition Act provides for any remedy against the impugned orders which came to be challenged by filing suits in

civil Courts and answer is "Yes". Chapter X (Sections 137 and 138) provides for appeals and section 138 provides for revisions. Section 137 of the Act reads as under:

"S. 137. APPEALS. - (1) All orders passed by any Prohibition Officer other than the Collector or Director under this Act, shall be appellable to the Collector at any time within sixty days from the date of the order complained of.

(2) All orders passed by the Collector and Director shall be appellable to the Director and the State Government respectively at any time within ninety days from the date of the order complained of, provided that no appeal shall lie against an order passed by the Director on appeal.

(3) Subject to the foregoing provisions, the rules which the State Government may make in this behalf shall apply to appeals under this section."

Section 138 of the Act reads as under:

"S.138. REVISION- The State Government may call for and examine the record of any proceeding before any Prohibition Officer, including that relating to the grant or refusal of a licence, permit, pass or authorisation under this Act, for the purpose of satisfying itself as to the correctness, legality or propriety of any order passed in, and as to the regularity of, any such proceeding and may, when calling for such record, direct that the order be not given effect to pending the examination of the record. On examining the record, it may either annul, or pass such other order as

it may deem fit.

10. In the case of Second Appeal filed by Krishnarao Gollax, the order of the Collector was questioned under which the Collector has passed an order on 20.9.1995 directing the appellant to close his shop for the period of one month acting on the report of the Superintendent of Police dated 7.9.1995 by exercising his powers under Section 56 of the ACT r/w Rule 27 of the Maharashtra Country Liquor Rules, 1973. In the other two cases, the show cause notice has been issued by the concerned Prohibition Officer as to why the licence of the applicants should not be cancelled for violation of the permit. There is no dispute of the fact that the orders which came to be challenged by way of filing the suit in the civil court, were arising out of the powers exercised by the Prohibition Officer under the Act and as the Act provides for sufficient and adequate remedy in the form of appeal and revision under Sections 137 and 138 of the ACT by necessary implication, the jurisdiction of the Civil Court is barred. The Civil Courts below have arrived at proper findings while passing the impugned orders though this Court may not be approve all the reasonings given in the impugned orders particularly when the Courts below have relied upon Sections 146 and 146-A of the Act to infer that the jurisdiction of the Civil Court is expressly as well as impliedly barred. Sections 146 and 146-A of the Act provide for bar of proceedings and limitation for prosecution or suits against the officers and it has nothing to do with the question of conferring or barring the jurisdiction. Section 146

and 146-A are in the nature of immunity and protection extended to the Prohibition officer. These sections actually offer protection to the Prohibition Officer who are public servants from frivolous, vexatious or false litigations and prosecutions for the offences alleged to have been committed by them while acting or purporting to act in the discharge of their official duties. By plain reading Section 146-A of the Act one can see that it does not offer complete immunity from prosecution/action and lays down certain requirements to be fulfilled before such prosecution/action is initiated. This Court, therefore, agrees with the submissions made by the learned counsel for the appellant/applicants that the reliance placed on Sections 146 and 146-A of the Act by the lower Courts for coming to the conclusion that the jurisdiction of the Civil Court is barred was misconstrued.

11. There was a common argument canvassed by the learned counsel appearing for the appellant as well as the appellants that the nature of the jurisdiction vested in the Civil Courts is such that it could look into all questions arising out of the matter in dispute and particularly when the suits are based on the ground that the action of the concerned Prohibition Officer was mala fide/bias. It was also expressed that the hierarchy of authorities provided under the Act to deal with the appeals under Section 137 and revision under Section 138 of the Act are interested persons being Prohibition Officers exercising powers under the said Act or representing the interest of State and

there is all likelihood that they will not interfere with the impugned orders and, therefore, a citizen cannot expect justice from them. It was specifically submitted by Mr. Daga, the learned counsel appearing for the applicants in the two Civil Revision Applications that there is no remedy provided under the Act for a citizen against the issuance of the show cause notice and what has been challenged by the applicant is authority and jurisdiction of the officers concerned for issuance of such order. This can be no reason to confer jurisdiction on the Civil Court as instances where the show cause notices were issued by the concerned Prohibition Officers, the State Government is vested with the powers of revision under section 138 of the Act and under these powers the State Government can call and examine the record of any proceedings before any Prohibition Officer including that relating to grant or refusal of a licence, permit or authorisation under the Act for the purpose of satisfying itself as to the correctness, legality and propriety of any order passed. What is contemplated under these provisions viz. that of appeal and revision under the Act is that the parties who are aggrieved by the orders passed by the Prohibition Officers have a remedy and when the statute provides for a specific remedy which encompasses reliefs of all nature arising out of the exercise of powers by the Prohibition Officers then by necessary implications, the jurisdiction of the Civil Court is barred. The Prohibition Officer, while exercising these administrative powers under sections 54 and 56 of the Act, are under duty to act fairly

and under the scheme of the Act, any order and/or proceeding can be examined by the authorities under section 137 by way of appeal, and under section 138 in exercise of the powers of revision by the State Government and obviously these are judicial acts and rules of natural justice would squarely apply. The authorities acting judiciously are under obligation taken by the authorities in the appeal/revision is subject to judicial review. The aggrieved person can approach the High Court under Article 226 of the Constitution of India. These, in my opinion, are sufficient safeguards provided to an aggrieved person under the Act. Therefore, this Court finds that there is no substantial question of law to be considered in Section Appeal No.329 of 1996. 12. The second appeal No.329 of 1996 is dismissed. The Rule is discharged accordingly. There will be no order as to costs. As this Court is yet to give detailed reasons in the matter, it will be proper if the respondents do not proceed with the hearing of the show cause notices till 20.11.1997.d

Note

13. (By judgement dated 24.10.97, this Court has already disposed of these matters by giving short reasons. In my opinion, it is necessary to consider the arguments advanced by the learned counsel for the parties before the court in reference to the various authorities cited at the bar for the purpose of examining whether the Civil Court has has no jurisdiction to take cognizance of a suit filed by the appellants-applicants arising out of the orders passed by the Prohibition Officer under the

Bombay Prohibition Act and for that reasons I had reserved my further detail reasons in the matter which now I propose to deal with and hence these further detail reasons in the matter which be read in continuatino as part of the judgement dated 24.10.1997).

14. Mr. Bobde, the learned counsel appearing for Krushnarao Vithhalrao Gollar- the appellant in Second Appeal No0.329/96 submitted that the various substantial questions of law are involved in the matter, amongst other questions raised by him, Mr. Bobde first assailed the impugned order on the ground that whether the provisions of section 146 and 146-A of the said Act bar to prefer a suit against the action of the Prohibition Officer under the Bombay Prohibition Act. He submitted that the whole approach of the two courts below is erroneous in considering sections 146 and 146-A of the Bombay Prohibition Act, as the basis for barring the jurisdiction of the Civil Court to entertain a suit arising out of certain orders passed by the Prohibition Officer under the Bombay Prohibition Act. Mr. Bobde submitted that unless there is an express provision in a statute barring jurisdiction of the Civil Court, no such inference can be drawn from the plain reading of sections 146 and 146-A of the said Act.

15. Mr. Bobde relied upon the case of Ballarpur Industries Ltd. v. Union of India (reported in 1984 Mh. L.J., 182) Mr. Bobde submitted that in the said case, stand was taken that section 40 of the Central Excises and Salt Act, 1944, provides for exclusion

of jurisdiction of the Civil Court and the Division Bench of Bombay High Court held that it is not so, that the section merely enacts immunity or protection against the claims of damages against the Government itself or any of its officers for acts done in good faith under the Act. The question of collection of illegal duty and/or its recovery or refund are not the questions covered by the said provision. He submitted that sections 146 and 146-A of the Bombay Prohibition Act are couched in the same language and as such the findings of the trial court that in view of the sections 146 and 146-A of the said Act excludes the jurisdiction of the Civil Courts, is not proper. In order to strengthen his arguments, Mr. Bobde submitted that exclusion of the jurisdiction can be considered if the section expressly bars the jurisdiction of the Civil Court as in the case of section 60 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, which reads as under:

"60. Bar of suits- No civil court, shall entertain any suit which forms or which may form the subject matter of a complaint or application to the Industrial Court or Labour Court under this Act; or which has formed the subject of an interim or final order of the Industrial Court or Labour Court under this Act."

Mr. Bobde submitted that sections 146 and 146-A of the said Act, do not lay down either in express terms or impliedly the exclusion of the jurisdiction of the civil court and to that extent the impugned order suffers from illegality. Mr. Bobde also

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referred to the case of Ratnakar Tanbaji Itankar v. Union of India (reported in 1994 Mh.L.J. 634) and submitted that in the said case the court was required to examine the maintainability of the claim before the Rly. Claims Tribunal and the court finds that as the accident in which the person lost his life and suffered personal injury on falling down from bogie and then got caught between platform and running train, cannot be considered by the Rly. Claims Tribunal as it was not a case of train accident and held that the appropriate forum would be civil court by observing that the civil court being the court of general jurisdiction, exclusion of jurisdiction should not be readily inferred. Exclusion must either expressly or clearly implied and burden of proof showing ouster of jurisdiction is upon the person who claims its ouster and the provision relating to ouster have to be strictly construed. Mr. Bobde submitted that, therefore, findings of two courts below that sections 146 and 146-A lead to the exclusion of the jurisdiction of the civil court are erroneous. Mr. Bobde submitted that the nature of the claim filed by the appellant before the trial court is such that it requires to be tried so as to give an opportunity to the appellant to prove its case when the appellant has come up with the specific case attributing mala fides to the authorities and it would be only civil court where this can be decided.

16. Mr. Dhote, the learned A.G.P. submitted that the Bombay Prohibition Act is a special enactment which deals with the law relating to the promotion and enforcement of and carrying into

effect the policy of Prohibition and also the Abkari law in the State of Bombay. He submitted that the appellant has been issued licence under the Maharashtra Country Liquor Rules, 1973 which has been framed under the Bombay Prohibition Act and the impugned notice has been issued by the Prohibition Officer in exercise of his powers under section 56 (1) (b) of the said Act and against which specific remedy is provided to the aggrieved persons in the form of appeal and revision under section 137 and 138 of the said Act, and that the appellant can not take recourse to the civil court by merely attributing mala fides on the part of the respondents. Mr. Dhote submitted that even otherwise, the appeal has become infructuous as order has been complied with and so the challenge does not survive. Mr. Dhote submitted in so far as sections 146 and 146-A of the said Act is concerned that they very well go to show that the jurisdiction of civil court is excluded.

17. Mr. Dhote placed reliance on the case of Gulabdas Anantram Singh Thakur v. Collector, Amravati and others, (reported in 1996 (1) Mh.L.J., 549) in which this court refused to entertain the writ petition filed by the petitioner against cancellation of his liquor licence by the Collector without giving notice and the court observed that "the Bombay Prohibition Act provides for a remedy by way of appeal in case of any order passed under section 56 of the said Act and that the petitioner could have filed an appeal and pointed out to the authority concerned that there was absolutely no reason why the notice

should not have been issued to him under section 56(1)(a) of the said Act." According to Mr. Dhote, the decision of this court in Gulabsing's case (cited supra) clearly indicates that the remedy which is made available to the appellant under the Bombay Prohibition Act should have been availed of rather than the petitioner rushing to the court for invoking its writ jurisdiction. Mr. Dhote submitted that even on facts no case of mala fides has been made out and as such the courts below were justified in rejecting the plaint on the ground of want of jurisdiction.

18. In reply, Mr. Bobde submitted that the case of Gulabsing relied upon by the learned A.C.P. does not help the respondents as there is an earlier judgement of this court in the case of Nilesh alias Narayan Y. Jadhav v. State of Maharashtra and others (reported in 1991 Mh. L.J., 770) wherein in similar case the court has observed that in the given facts and circumstances of the case, the High Court can very well interfere in its writ jurisdiction in challenge being made of order passed by the Prohibition Officer.

19. I have given my cautious consideration to the submissions made by Mr. Bobde and the authorities relied upon by him and also that of the learned A.C.P. in the matter. In my judgement dated 24.10.1997 in para 10, I have observed that the two courts below have misconstrued the provisions of sections 146 and 146-A while deciding that these provisions of the Bombay Prohibition Act exclude the jurisdiction of the civil court to entertain any suit

arising out of the orders passed by the Prohibition Officer. The case of Gulabsing (cited supra) only makes it clear that when the statute itself provides for the remedy to the petitioner, the court would be slow in exercising its writ jurisdiction under articles 226 and 227 of the Constitution of India and in the case of Nilesh alias Narayan (cited supra) in those peculiar facts and circumstances of the case, the court found that in a given case the court can very well exercise the jurisdiction under article 226 of the Constitution. Both these authorities relied upon by the learned counsel for the parties do not suggest that the aggrieved person can approach the civil court against the order passed by the Prohibition Officer under the provisions of the Bombay Prohibition Act. I do not find any substance in the submissions of Mr. Bobde that because the mala fides are attributed against the Prohibition Officer in passing the impugned order, this will arm the appellant to approach the civil court as the case of the appellant is such that under the scheme of the Bombay Prohibition Act, the appellant is provided with the remedy to approach the authority by filing appeal under section 137 of the said Act.

20. I will now proceed to consider the submissions made by Shri Daga the learned counsel appearing for the applicants in C. R. A. No. 801/97 and 825/97. Mr. Daga the learned counsel appearing for the applicants submitted that the court will have to appreciate the case of the applicants by referring to the pleadings of the parties. In the present two cases, Mr. Daga

submitted that the relief sought by the applicants is for declaration that the show cause notices issued by the Prohibition Officer are in breach of the principle of natural justice, issued in colourable exercise of powers and do not stand to the scrutiny and as such the notices are bad, illegal and ultra vares and that the Court by a decree of permanent injunction to injunct the defendabts and or any officers acting under them from proceeding with the said notices. Mr. Daga submitted that these declarations and permanent injunctions are sought by the applicants on various grounds as pleaded in the plaint tiled before the trial court. Mr. Daga draw attention of this court to para 6 of the plaint filed in Reg. C.S.No.2108/96 by M/s. Quality Wine Shops and others in which plaintiffs have spelt out that the impugned notice issued by the authority purported to be for and on behalf of the Collector, is absolutely bad and illegal much less without authority of law and the said notices are clearly in breach of principle of natural justice and fair play. Similar is the suit filed by Rajesh Jawaharlal Jaiswal (Reg. C.S. No.36/97) wherein also the impugned notices have been challenged on various grounds. In the plaint, the show cause notices have been assailed on various grounds including that in Rajesh Jawarharlal's case, the authorities went to the extent that he has committed an offence under sections 65(B), 83, 90 and 108 of the Bombay Prohibition Act and particularly pointed out that the notice is bad in law as it alleges that the licensee has committed the offences and particularly under section 83 of the

said Act which is a penalty for conspiracy. Mr. Daga submitted that how could the Prohibition Officer conclude that the plaintiff has committed these offences when the trial is yet has relied upon the various authorities which I propose to discuss below.

Mr. Daga submitted that his first ground for assailing the impugned order is the ground of bias which has been made out from the pleadings of the case. He submitted that as the Prohibition Officers are bias against the applicants, any appeal or revision against the same body or persons as provided under sections 137 and 138 of the Bombay Prohibition Act would be a futile exercise and relied upon the case of Dr. G. Sarana v. University of Lucknow and Others (reported in AIR 1976 Supreme Court 2428). Mr. Daga submitted that the Prohibition Officer who has issued the show cause notices has acted wholly without jurisdiction or patently in excess of jurisdiction and the Prohibition Officer before whom the applicants have appeared through their counsel, has been conducting the proceedings before it in such a manner that it is contrary to the rules of natural justice and rules of procedure as no fair opportunity is being given to the plaintiffs which facts have been specifically pleaded in the two complaints filed before the trial court and that the applicants are satisfied that they will not get justice by following the procedures to be held and concluded. This is a glaring example of the act of the Prohibition Officer being bias and the show cause notices have been issued with an ulterior motive and are mala fide. Mr. Daga

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submitted that the nature of the suit filed by two set of applicants before this court and the reliefs sought by them in the form of declaration and permanent injunction, shows that such reliefs can be sought and granted by a person in civil court after full-fledged trial and that the grievances made by the applicants and the reliefs sought in the two suits can not be dealt with by the appellate/revisional authority provided under the Bombay Prohibition Act. Mr. Daga submitted that unless the parties are permitted to lead evidence, they will not be able to establish their case and claim necessary reliefs which fall within the jurisdiction of the civil court and as the Bombay Prohibition Act does not provide for such remedy, one can not read exclusion of jurisdiction of the civil court in the matter.

21. In order to demonstrate that the civil court will have jurisdiction in the matter, Mr. Daga laid down under the Bombay Prohibition Act and as such they were left with no alternative than to file the civil suits and in this context the court should consider whether the civil court will have jurisdiction or not. Mr. Daga submitted that an appeal or revision under the Bombay Prohibition Act is not an effective remedy considering the case of the applicants and submitted that in the case of Ram and Shyam Company v. State of Haryana and Others (reported in AIR 1985 Supreme Court, 1147), the Supreme Court has observed as under:

"Before we deal with the larger issue, let me put out of the way the contention that found favour with the High Court in rejecting the writ petition. The learned Single Judge as

well as the Division Bench recalling the observations of this court in Assistant Collector of Central Excise v. Jalson Hosiery Industries (1979) 4 SCC 22; (AIR 1979 SC 1889) rejected the writ petition observing that "the petitioner who invokes the extra ordinary jurisdiction of the court under Art. 226 of the Constitution must have exhausted the normal statutory remedies available to him. We remain unimpressed. Ordinarily it is true that the court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Art. 226 where the party invoking the jurisdiction has an effective, adequate alternative remedy. More often, it has been expressly stated that the rule which requires the exhaustion of alternative remedies is a rule of convenience and discretion rather than rule of law. At any rate it does not oust the jurisdiction of the Court. In fact in the very decision relied upon by the High Court in the State of Uttar Pradesh v. Mohammed Nooh 1958 SCR 595: (AIR 1958 SC 86), it is observed that there is no rule, with regard to certiorari as there is with mandamus that it will lie only where there is no other equally effective remedy. It should be made specifically clear that where the order complained against is alleged to be illegal or invalid as being contrary to law, a petition at the instance of person adversely affected by it, would lie to the High Court under Art. 226 and such a petition cannot be rejected on the ground that an appeal lies to the higher officer or the

State Government. An appeal in all cases cannot be said to provide effective remedy keeping aside the nice distinction between jurisdiction and merits. Look at the fact situation in this case. Power was exercised formally by the authority set up under the Rules to grant contract but effectively and for all practical purposes by the Chief Minister of the State. To whom do you appeal in a State administration against the decision of the Chief Minister? The clinche of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself. Therefore, this is a case in which the High Court was not at all justified in throwing out the petition on the untenable ground that the appellant had an effective alternative remedy. The High Court did not pose to itself the question, who would grant relief when the impugned order is passed at the instance of the Chief Minister of the State. To whom did the High Court want the appeal to be filed over the decision of the Chief Minister? There was no answer and that by itself without anything more would be sufficient to set aside the judgement of the High Court."

Mr. Daga, therefore, submitted that if the applicants are not permitted to have access to the jurisdiction of the civil court for redressal of their grievances on the grounds that the Bombay Prohibition Act provides for appeal and revision which will be nothing but the denial of justice to the applicants as they will have to agitate the matter before the State functionaries.

22. Mr. Daga placed reliance on the case of Dhulabai v. State of M.P. and another (reported in AIR 1969 Supreme Court, 78) and submitted the principles laid down by the Supreme Court in Dhulabai's case (cited supra) will have to be followed while examining the case of the applicants before the civil court is that the Prohibition Officer having not complied with and acted in conformity with the procedures laid down under the Bombay Prohibition Act for issuance of the show cause notice as in the present case, the joint show cause notices have been issued to the applicants and followed by subsequent show cause notice after the applicants were heard by the concerned Prohibition Officer and, therefore, the applicants were justified in challenging the action of the Prohibition Officer by filing the suits. Mr. Daga also drew attention of this Court to the case of The Jullundur Cantonment Board v. Firm Hindu Khandan Mushtarka Munsri Ram Sri Ram and others (AIR 1976 Punjab and Haryana, 265) wherein it is held that;

"As to the maintainability of the suit, a bare perusal of the provisions of Section 272 of the Act, which is reproduced below, would show that it does not bar a suit challenging the validity of any order passed by the Board or its functionaries:

"272. Protection of Board, Executive Officer etc. No suit or prosecution shall be entertained in any Court against any Board or against any Officer Commanding a Station or against any member of a Board, or against any officer or servant of

a Board, for anything in good faith done, or intended to be done, under this Act or any rule or bye-law made thereunder". What it prohibits is a suit against the Board or its functionaries for its mala fide action in passing any order under the provisions of the Act and the rules made thereunder. In other words, the provisions of Section 272 of the Act are enacted to grant immunity to the Board and its functionaries mentioned therein regarding any action taken by it under the Act and the Rules in a bona fide manner".

Mr. Daga, therefore, submitted that in spite of there being a specific provision prohibiting the suit against the Board or its functionaries, still in this case, the Court held that it does not bar the suit challenging the validity of any order passed by the Board or its functionaries and there is no reason why the applicants should not be permitted to prosecute their case before the trial court. Mr. Daga submitted that in the case of Calcutta Discount Co. Ltd. v. Income Tax Officer, Companies District I, Calcutta and another (AIR 1961 Supreme Court, 372), it was held that though a remedy is provided under section 66(2) of the Income Tax Act, it is not sufficient for refusing a party quick relief by a writ or order prohibiting the authority acting without jurisdiction from continuing such action and as in the present case the prohibition authorities are proceeding in the matter against the applicants with a bias mind which can only be challenged in civil suit, the applicants can not be denied their

right to prosecute the suit and seek relief as prayed for. Mr. Daga submitted that the applicants have a grievance against the Prohibition Officers that in issuance of the show cause notices their action is unlawful, illegal, arbitrary and unjust, which can be only examined on merits and unless the applicants are given an opportunity to prosecute their case and prove the allegations which can be only done in civil suits, there is no reason to deprive the applicants from prosecuting their civil suits on the ground that they have a remedy by way of appeal or revision under the Bombay Prohibition Act. Mr. Daga relied upon the case of Magulu Jal and others v. Bhagaban Rai and others, (AIR 1975 Orissa 219), in order to emphasize that even though the jurisdiction of the civil court may be excluded, the civil court can examine the impugned orders passed by the Prohibition Officer which are unfair, arbitrary or capricious. Mr. Daga submitted that in so far as the reliance placed by the courts below on sections 146 and 146-A is concerned, for excluding the jurisdiction of civil court, the same cannot be sustained and for this purpose, Mr. Daga made a reference to the case of State of Maharashtra v. Sheoshankar Bachhooram Pande, (1964 Mah. L.J., 561) particularly paras 11 and 12. In respect of this I have already observed that the courts below have misconstrued sections 146 and 146-A as the provision which excludes the jurisdiction of the civil court, as such there cannot be any quarrel over the issue. Mr. Daga also relied upon the case of Girish Manohar Wazalwar v. Purushottam Parasram Kotangale (reported in 1996 (4)

Bombay Cases Reporter, 88) wherein this Court held that the jurisdiction of civil court can not be said to be barred in view of the provisions contained in section 286(5) and 287 of the Corporation Act. In the said case, the court was dealing with the question of jurisdiction in respect of demolition of a building at the instance of the owner. Mr. Daga submits that though the jurisdiction of the civil court is barred under section 287 of the Corporation Act, the parties were permitted to seek recourse in the civil court against the demolition of the building. Mr. Daga submitted that in the Bombay Prohibition Act there is no express provision excluding the jurisdiction of the civil court nor there is any implied bar and, therefore, there is no reason why the suits instituted by the applicants be not allowed to be dealt with by the civil court. Mr. Daga has referred to the case of M.P. Electricity Board, Jabalpur v. M/s. Vijaya Timber Co. (1997 (1) U.J. (S.C) 218 wherein it has been held that:

"It is well-settled that the exclusion of jurisdiction of civil cannot be readily inferred and the normal rule is that civil courts have jurisdiction to try all suits of a civil nature except those of which cognizance by them is either expressly or impliedly excluded."

Mr. Daga, therefore, submitted that various authorities cited by him at bar rather goes to support his contention that the jurisdiction of the civil court cannot be ousted mainly because certain remedy is provided under the statute. He submitted that

the impugned order deserve to be set aside and the applicants should be permitted to prosecute their suits in the civil court otherwise it would result in injustice to them if their suits are thrown out of the court at the very threshold.

23. Shri Gordey, the learned counsel appearing for the State submitted that there can be no quarrel over the principle that the civil court has jurisdiction to try all the suits of civil nature except the suits of which cognizance is either expressly or impliedly barred. Shri Gordey submitted that this is a case where the parties are challenging the orders issued under section 54 and the show cause notices issued under section 56 of the Bombay Prohibition Act. Mr. Gordey submitted that in so far as the challenge to the show cause notices by filing civil suits is concerned, is immature because what the authorities propose to do is to take appropriate action after giving the applicants a fair opportunity and it is for that purpose the show cause notices have been issued against the applicants. Mr. Gordey submitted that this is nothing but an attempt to scuttle the enquiry into the breaches committed by the applicants who are the holders of the licence under the Bombay Prohibition Act. Mr. Gordey submitted that in case of any order issued under section 54 and 56 of the Bombay Prohibition Act by any of the Prohibition Officer, the same is subject to appeal and revision if the order is of such nature that it is appealable then section 137 provides for complete and effective remedy and in case of the applicants who are aggrieved by the show cause notices, they have a remedy

to prefer revision under section 138 of the Bombay Prohibition Act and all their contentions raised in the civil suits filed by them can be examined and heard by the appellate as well as revisional authorities. Mr. Gordey submitted that the case of the appellant/applicant is not that the Prohibition Officers have no jurisdiction to pass such orders or issue show cause notices and as there is no jurisdictional error on their part, their action cannot be challenged in civil court. Mr. Gordey submitted that the Bombay Prohibition Act provides for a suspension/cancellation and for which specific provisions are there in the Bombay Prohibition Act and what the Prohibition Officers have done in the present case is in accordance with the provisions of the Bombay Prohibition Act. Mr. Gordey submitted that the show cause notices under challenge have been issued under section 54 and 56 of the Bombay Prohibition Act which confer jurisdiction on the authority granting any licence, permit or authorisation under the said Act, to cancel or suspend the licence or permit and what the authorities have done in this case is that they have issued show cause notices against the applicants to give them an opportunity to explain as to why their licence should not be cancelled and against which the Act provides for specific remedy in the form of sections 137 and 138 i.e. if the parties are aggrieved by any such order of the Prohibition Officer, they can prefer an appeal or revision as the situation demands. Mr. Gordey submitted that the applicants/appellants before this court have taken recourse to

the civil court by filing suits challenging the very issuance of the show cause notices by the Prohibition Officers with the sole object of prolonging the matter as the civil court would take years to decide the dispute. He submitted that once the statute provides for remedy, then the civil court's jurisdiction is barred. Mr. Gordey submitted that if the applicants are allowed to prosecute the civil suits, it would be nothing but an abuse of the process of the court.

24. Mr. Gordey relied upon the case of Anwar v. Ist Addl. District Judge, Bulandshahr and others (reported in AIR 1986 Supreme Court, 1785), in order to substantiate that the jurisdiction of the Prohibition Officers under the Bombay Prohibition Act is exclusive in character and it is not open to a civil court to issue an order of injunction restraining the Prohibition Officer from proceeding with the hearing of the show cause notices issued to the applicants. Mr. Gordey gave an illustration in respect of the case arising under the Land Acquisition Act and submitted that as the Land Acquisition Act being a complete scheme relating to the acquisition of the land and for making award and grant of compensation, the jurisdiction of the civil court to take cognizance of the cases arising under the Act by necessary implication stood barred. He has placed reliance in the case of Laxmi Chand and others v. Gram Panchayat, Kararia and others (reported in AIR 1996 Supreme Court, 523) wherein the Supreme Court has held if the scheme is complete in itself and thereby the jurisdiction of the Civil Court to take

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cognizance of the cases arising under the Act, by necessary implication, stood barred, the civil court thereby is devoid of jurisdiction to give declaration on the invalidity of the procedure contemplated under the Act. ~ The only right an aggrieved person has is to approach the constitutional Courts viz. the High Court and the Supreme Court under their plenary power under Articles 226 and 136 respectively with self imposed restrictions on their exercise of extraordinary power. Barring thereof, there is no power to the Civil Court. Mr. Gordey submitted that as the Bombay Prohibition Act itself provides for the complete scheme to deal with the matters arising out of grant and cancellation of licence, permit or pass, the jurisdiction of the civil court is barred. He further submitted that in the case of M/s. Vora Automotives Pvt. Ltd. v. Gopalrao Namdeorao Pohra and others (AIR 1993 Bombay 151), this Court while dealing with the provisions of the Maharashtra Municipalities Act, viz. sections 189, 308 and 304, held that under the scheme of the Acts, there is ouster to the jurisdiction of the civil court by necessary implication and, therefore, the suit for injunction restraining a person to construct building as per plan is, therefore, untenable and liable to be dismissed.

25. Mr. Gordey submitted that in the case of Har Shankar and others v. The Deputy Excise and Taxation Commissioner and others (reported in AIR 1975 Supreme Court 1121), the Apex Court has held that:

"There is no fundamental right to do trade or business in

intoxicants. The State, under its regulatory powers, has the right to prohibit absolutely every form of activity in relation to intoxicants- its manufacture, storage, export, import, sale and possession. In all their manifestations, these rights are vested in the State and indeed without such vesting there can be no effective regulation of various forms of activities in relation to intoxicants. The wider right to prohibit absolutely would include the narrower right to permit dealings in intoxicants on such terms of general application as the State deems expedient. Since rights in regard to intoxicants belong to the State, it is open to the Government to part with those rights for a consideration".

In this circumstances, the Supreme Court held that any right arising out of these matters will have to be regulated in accordance with the Punjab Excise Act which was being dealt with and considered by the Supreme Court in the said case. Therefore, according to Mr. Gordey, the applicants before this court can not claim any vested rights beyond what has been conferred to them under the Bombay Prohibition Act. Mr. Gordey submitted that in the recent case of Punjab State Electricity Board and another v. Ashwani Kumar (1997) 5 Supreme Court cases 120) it has been held that:

"When the provision for appeal by way or review has been provided by the statutory instructions and the parties are directed to avail of the remedy, the authorities are

enjoined to consider all the objections raised by the consumer and to pass, after consideration, a reasoned order in that behalf, so that the aggrieved consumer, if not satisfied with the order passed by the Board/appellate authority, can avail of the remedy available under Art. 226 of the Constitution. Therefore, by necessary implication, the appropriate competent authority should hear the parties, consider their objections and pass the reasoned order, either accepting or negative the claim, of course it is not like a judgement of a civil court".

Mr. Gordey submitted that the Supreme Court in this recent judgement (cited supra) observed that in case the authorities under the statute neither required to hear the parties nor give reasoned order and, therefore, parties cannot precluded to avail of the remedy of a suit, cannot be accepted as the ground for approaching civil court. He submitted that it is the contention of the applicants that they will not be given fair hearing by the Prohibition Officers in the matter, cannot be accepted as a ground to approach the civil court and as such the impugned order does not call for any interference.

26. In my judgement dated 24.10.1997, I have already arrived at the conclusion that in matter arising out of the Prohibition Act, the civil court will have no jurisdiction as their cognizance is impliedly barred. I have also reproduced the relevant provisions of the Bombay Prohibition Act in order to highlight the object and purpose for which Bombay Prohibition Act has been enacted and

the scheme by which it regulates the various activities
intoxicant such as liquor etc. This is a spl. statute which
governs the law relating to the promotion and enforcement and
carrying into effect the policy of Prohibition Act and also the
Abkari Law in the State of Bombay and the scheme itself provides
for an effective remedy against the orders of the Prohibition
Officers by way of appeal and revision (under sections 137 and
138 of the said Act), which are sufficient and adequate to deal
with the contingency. The Bombay Prohibition Act provides for
an effective machinery to deal with the breach of the various
provisions of the Act and Rules which govern the filed by
providing hierarchy of authorities and I do not find that the
proposed action against the appellants initiated by the
Prohibition Officers suffers from any jurisdictional error. The
Prohibition Officers are very well invested with these powers and
their conduct in initiating the impugned orders in the suits
filed by the parties i.e. the order and show cause notices cannot
be termed as nullity in the eyes of law. As rightly submitted
by Mr. Gordey, the whole attempt on the part of the
appellant/applicants by taking recourse to civil court is to
scuttle the proceedings before the Prohibition Officers initiated
under the Bombay Prohibition Act and as such I do not find any
merits in the contentions of the appellant and applicants that
the impugned orders before this court are erroneous or illegal.

Pronounced on 10.12.1997

C.C. expedited.

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Oral application on behalf of the appellant-applicants for
extention of time is rejected.

