

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Writ Petition No. 1759 (M/S) of 2017**

Praveen Aggarwal .....

Petitioner versus

Mohan Singh & others ..... Respondents

Mr. U.K. Uniyal, Sr. Advocate assisted by Mr. Sandeep Kothari, Advocate for the petitioner.

**U.C. Dhyani, J. (Oral)**

By means of present writ petition, the petitioner seeks to set aside / quash the impugned order dated 19.07.2017, passed by learned District Judge, Dehradun, in Misc. Civil Appeal no. 42 of 2017, Varsha Badoni vs Praveen Aggarwal, whereby, hearing *ex parte* of appeal, the effect and operation of the order dated 14.07.2017, passed by the learned Civil Judge (Jr. Div.), Dehradun, in O.S. no. 196 of 2017, Praveen Aggarwal vs Mohan Singh and others, has been stayed (Annexure 10 to the petition).

2) Plaintiff-petitioner filed a civil suit in the court of Civil Judge (Jr. Div.), Dehradun, for a relief of permanent prohibitory injunction directing the defendants, their agents or any of their representatives not to stage *dharna* within a periphery of 500 meters of the suit property.

3) An application under Order 39 Rules 1&2 CPC was also filed along with the plaint. Learned trial court heard the plaintiff on 6C-2 (temporary injunction

application) and granted interim relief to the plaintiff, *vide* order dated 14.07.2017. On 17.07.2017, the plaintiff moved an application for police assistance. On such application, Station House Officer, P.S. Nehru Colony, was directed to ensure the compliance of order dated 14.07.2017.

4) On 19.07.2017, an application was moved on behalf of defendant no. 2-respondent no. 2 to recall the order dated 17.07.2017. On 19.07.2017, learned trial court clarified that the police should enforce the order dated 14.07.2017 only in respect of suit property and not beyond that.

5) On the selfsame day, defendant no. 2-respondent no. 2 filed a misc. civil appeal, being M.C.A. no. 42 of 2017, before learned District Judge, Dehradun, who directed issuance of notice to the respondent (plaintiff-petitioner herein) and stayed the operation of order dated 14.07.2017 till 27.07.2017. The next date fixed before the learned lower appellate court is 27.07.2017. Such an order is under challenge before this Court in present writ petition.

6) Plaintiff-petitioner has admittedly been given a license to run a country made liquor shop at Shastri Nagar. As a licensee, plaintiff-petitioner entered into a contract with District Magistrate, Dehradun to run such shop. Thus, it cannot be said that he is not a licensee, who is not authorized to run the country made liquor shop. He has a legal right to run the shop. Since, some local people were

claiming to be affected with such running of the shop and are obstructing the functioning of said shop, therefore, learned trial court directed that no *dharna*, agitation etc. shall be staged within a periphery of 200 meters of the suit property. To enforce such an order, the application for police assistance was allowed, *vide* order dated 17.07.2017. Defendant no. 2-respondent no. 2 sought to recall that order under Order 39 Rule 4 CPC and, therefore, learned trial court, *vide* order dated 19.07.2017, clarified that the order dated 14.07.2017 be enforced only in respect of the suit property and not beyond that. There was no problem to this extent because once an order is passed by the trial court, the same has to be enforced by the District Administration. There appears to be no infirmity in all these orders. Moreover, 26.07.2017 is already fixed by the trial court. On that day, the defendants / respondents will have the occasion to file objections against the temporary injunction application and then, the trial court will be at liberty to dispose of application paper no. 6-C and objections thereon, on merits, in accordance with law.

7) There were two options available to the defendants-respondents if they were aggrieved with the order dated 14.07.2017 –(i) to file a misc. civil appeal under Order 43 Rule 1-r CPC, which they have done in the instant case but, at the same time, they have sought modification in the order dated 17.07.2017, without seeking recall / modification in the order dated 14.07.2017; and (ii) or wait till 26.07.2017, file their objections and pressed for vacation of stay / disposal of application paper no. 6C.

8) Probably, order dated 17.07.2017, passed by the trial court and subsequent clarification by the selfsame court, was not brought to the notice of learned District Judge in misc. civil appeal. Had these facts been brought to the knowledge of District Judge, he would have certainly elaborated on the issue and would not have passed the order under challenge. The only ground, on the basis of which, learned District Judge has stayed the order passed by the trial court is that the suit property has been shown in Shastri Nagar, whereas the agreement entered into by the plaintiff-petitioner with District Administration was in respect of property situated at Dharampur Danda. Learned Senior Counsel for the petitioner submitted that judicial notice may be taken that Dharampur Danda falls under Excise Area Shastri Nagar.

9) Normally, this Court would have issued notices to the respondents first and, only thereafter, would have proceeded to hear the petitioner in present writ petition, but the fact of the matter is that the plaintiff-petitioner is licensee to run a country made liquor shop and the trial court has passed an order only to that effect that no agitation or demonstration shall be staged within a periphery of 200 meters of the suit property and Police assistance was also provided to enforce the order dated 14.07.2017. Nobody is expected to sabotage any public property. Damage to public property is damage to the nation. Considering this fact alone, this Court proceeded to hear learned Senior Counsel for the petitioner, otherwise, the petitioner would have been relegated to the court below.

Considering the peculiar facts and circumstances of the case, the order passed by learned District Judge on 19.07.2017 is interferable only upto 27.07.2017.

10) Since 27.07.2017 has been fixed by the learned District Judge for hearing of misc. civil appeal, therefore, this Court is inclined to stay the effect and operation of the order impugned dated 19.07.2017, passed by learned District Judge, Dehradun, in Misc. Civil Appeal no. 42 of 2017, only till that date, for the reasons stated in the foregoing paragraphs. On 27.07.2017, it will be open to the District Judge to receive the objections filed by the plaintiff-petitioner and pass an appropriate order, in accordance with law.

11) Order accordingly.

12) The only modification which this Court feels appropriate is that periphery of 200 meters be substituted by 50 meters, i.e., no demonstration shall be staged within a periphery of 50 meters of the suit property. This is with the consent of learned Senior Counsel for the petitioner. Peaceful *dharna*, agitation is *sine qua non* of a vibrant democracy. The said right of demonstration cannot be curtailed, but at the same time, care should be taken to see that no damage is caused to the public property and a person who has obtained valid license to run a shop is not unduly interfered with.

13) Writ petition thus stands disposed of at the admission stage.

[Stay application no. 8678 of 2017 is also disposed of.]

14) Since present writ petition is being decided without notice to the respondents, therefore, they are at liberty to move for recall of this order, if they feel aggrieved with the same.

15) Let a copy of the order be supplied to learned counsel for the petitioner today itself on payment of usual charges.

**(U.C. Dhyani, J.)**

**Dt. July 20, 2017**

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