



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

District: Aurangabad

WRIT PETITION NO.1358 OF 2024

Gulabsingh s/o. Gopichand Chavan,
Age : 44 Years, Occ.Business,
r/o. House No.12, Infront of Mahadeo Mandir,
Honaji Nagar, Jatvada Road, Aurangabad

..Petitioner

Vs.

1. The State of Maharashtra,
Through its Principal Secretary,
Food, Civil Supplies and Consumer Protection
Department, Mantralaya, Mumbai
2. The Hon'ble Minister,
Food, Civil Supplies and Consumer Protection
Department, Mantralaya, Mumbai
3. The Deputy Commissioner (Supply),
Aurangabad Division, Aurangabad
4. The District Supply Officer,
Aurangabad
5. Smt.Indubai w/o. Shankar Bhurewar,
age : 74 years, Occ. Nil,
r/o. Plot No.104, Near Saibaba Mandir,
Gajanan Nagar, Garkheda Parisar,
Aurangabad

..Respondents

Mr.P.S.Dighe, Advocate for petitioner
Mr.A.A.A.Khan, Advocate for respondent nos.1 to 4
Mr.S.D.Hiwrekar, Advocate for respondent no.5

CORAM : AJIT B. KADETHANKAR, J.
DATE : APRIL 01, 2026

ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. At the instance of the parties, heard them for final disposal of the Writ Petition.

2. Subject-matter :

"Quando aliquid prohibetur ex directo, prohibetur et per obliquum – What cannot be done directly, also cannot be permitted to be done indirectly". The case in hand necessarily evoke this famous principle of Law to be observed.

2.1 A Fair Price Shop License (hereinafter 'FPSL' for brevity) held by the licensee – Respondent No. 5 was sought to be transferred in the name of the Petitioner on the basis of a will deed while the Respondent No.5 is still alive. Government policies prohibit transfer of FPSL on the basis of Will Deed. The Authorities rejected the proposal.

2.2 However, the Honorable then Minister for Food, Civil Supplies and Consumer Protection, Govt. of Maharashtra, ordered that if the Petitioner has entered into partnership with the Respondent No.5, Petitioner's name could be incorporated in the FPSL with the Respondent No.5 as a partner, and later the name of Respondent No.5 can be deleted. Accordingly it was ordered so by the Honorable then Minister. Thus the subject-matter FPSL was transferred in Petitioner's

name on the basis of a 'partnership' deed. The transfer order eliminated the name of the Licensee- Respondent No.5 itself from the license.

2.3 In the extended round of litigation in Review Proceedings launched at the behest of the Respondent No.5, the subsequent Honorable Minister cured the error and recalled the order directing transfer of FPSL in the name of the Petitioner. The impugned order recalling the earlier FPSL transfer, manifestly say that the government policy doesn't allow transfer of FPSL on the basis of any Partnership deed.

2.4 Feeling aggrieved, the Petitioner is before this Court. The Petitioner justifies the procedure adopted by the Honorable earlier Minister and seeks for continuation of the FPSL in his name. The Petitioner alternatively seeks transfer of FPSL on the basis of a registered will deed purportedly executed by the Respondent No.5 in his favor, while the Respondent No.5 is still alive.

3. Facts in brief:

(a) Respondent No.5's husband was a licensee of FPSL No.74, allotted for the vicinity of Vishnunagar, Aurangabad (now Chhatrapati Sambhajinagar). Upon his demise, the FPSL devolved in the Respondent No.5 as per the prevalent Government policy. Its not in dispute that transfer of FPSL is permissible in such circumstances.

(b) The Petitioner was engaged by the Respondent No.5 as caretaker and assistant at the Subject-matter FPSL No.74.

(c) The Respondent No. 5 executed a will deed and got the same registered in the office of the Sub Registry Aurangabad on 05-10-2021 at Serial No.6341 of 2024. Vide the said will deed, the Respondent No.5 recorded her will to transfer the Subject-matter FPSL No.74 in the name of the Petitioner, consequent to her death. She recorded that the Petitioner was looking after her since after her both daughters married and as she was living alone. The will deed is at page 27: Exh.A of the Writ Petition.

(d) The petitioner further avers that the Respondent No.5 even executed a Partnership Deed with the Petitioner on 07-11-2022 there by agreeing to run the Subject-matter Fair Price Shop No.74 in partnership on the terms as mentioned therein. The said instrument seems to be a notarized one, an is annexed at page No.74 of the Writ Petition.

(e) Consequent to the Will-Deed No.6341 of 2024, an application was moved on behalf of the Respondent No.5 to the District Supply Officer, Chhatrapati Sambhajinagar on 08-06-2022 seeking transfer of the Subject-matter FPSL in the name of the Petitioner on the basis of the Will-Deed No.6341 of 2024.

(f) Vide order dated 21-06-2022, the District Supply Officer, Chhatrapati Sambhajinagar rejected Respondent No.5's application for want of any policy and provision to transfer a FPSL on the basis of a Will-Deed. The authority relied upon the Government Resolutions dated 22-12-1997, 07-06-2000 and 11-06-2015 to reject Respondent No.5's application.

(g) A revision under Clause 4 of the Maharashtra Scheduled Commodities (Regulations and Distribution) Order 1975 [hereinafter 1975 Order] was filed on behalf of Respondent No.5 before the Deputy Commissioner, Civil Supply Department, Aurangabad Division. (page 39:Exh.C).

(h) The Revisional Authority concurred with the findings of the District Supply Officer, Chhatrapati Sambhajinagar. The Dy. Commissioner re-affirmed that FPSL can not be transferred on the basis of the instrument relied upon by the Respondent No.5. Consequently, the Respondent No. 5 suffered rejection of the revision application vide order dated 30-11-2022 (page 52).

(i) On 04-12-2022, a further revision under clause 4 of the 1975 Order came to be filed on behalf the Respondent No. 5, before the Honorable then Minister for Food, Civil Supplies and Consumer

Protection, State of Maharashtra (for the sake of brevity, hereinafter referred as 'the Minister').

(j) The Honorable Minister partly allowed Respondent No.5's revision petition vide order dated 13-12-2022. Transfer of FPSL on the basis of Will-Deed was not accorded in view of the government policies referred in the Government Resolutions dated 22-12-1997, 07-06-2000 and 11-06-2015.

However, it was ordered that Petitioner's name be incorporated in the FPSL No.74 on the basis of the Partnership Deed. Pertinent to note, It was further directed to strike off Respondent No.5's name from the Subject-matter FPSL No.74, upon insertion of Petitioner's name on the basis of the Partnership Deed. (Page 69: Exh.F).

(k) Record show that consequent to the order dated 13-12-2022 passed by the Honorable then Minister, the authorities acted upon it. Petitioner's name alone was recorded as Licensee of the Subject-matter FPSL No.74, Vishnunagar, Chhatrapati Sambhajinagar on 13-01-2023.

(l) It appears that some differences cropped between the Petitioner and the Respondent No.5, that triggered the Respondent No.5 to file Review application before the Honorable Minister.

(m) Respondent No.5 disputed genuineness, legality and validity of the so called Partnership Deed dated 07-11-2022 as also the Will-Deed No. 6341/2022. Respondent No.5 submitted that both the documents were canceled by her. The Will deed was canceled on 06-07-2023. She submitted that, while the Will-Deed was got executed from her under undue influence, the partnership deed itself was a bogus document. The Respondent No.5 submitted that none of the proceedings were actually filed by her, but it was shown by the Petitioner to have been filed by her. As such, the Respondent No.5 prayed to recall the earlier order dated 13-12-2022 and to restore the Subject-matter FPSL No.74 in her name.

(n) The authorities as also the Petitioner submitted their response. The Petitioner disputed Respondent No.5's allegations, and prayed to reject the review proceedings. He submitted that the impugned transfer of the Subject-matter FPSL No.74 was effected at the behest of the Respondent No.5, and that she can not turn away from her initiative at such belated stage and on frivolous grounds.

(o) The Honorable Minister heard the parties and passed the order dated 29-01-2024 impugned in this Writ Petition. Vide the impugned order, the Honorable Minister recalled the order dated 13-12-2022 and restored the FPSL no.74 in Respondent No.5's name.

As against, the Petitioner is before this Court vide present Writ Petition.

4. Submissions:

Per Petitioner: Mr. P.S. Dighe, learned Counsel for the Petitioner strenuously criticized the impugned order with the following submissions:

1st The Honorable Minister erred in exercising the jurisdiction for reviewing the order passed by the earlier Honorable Minister.

2nd The Petitioner was not given proper opportunity of hearing in the Review proceedings. The necessary documents of the review proceedings were not served on the Petitioner. That, the hearing was concluded hurriedly and in hasty manner without responding the genuine request of the Petitioner for an adequate opportunity to collect the case documents, to go through, and to respond accordingly.

3rd The petitioner himself had filed intervention application learning that the Respondent No. 5 has moved the review application.

4th There is a gap of three months between the date on which the Judgment was reserved and the date on which the Judgment is delivered. That, the gap shows that the Honorable Minister could not have applied his mind judiciously to the merits in the review case.

5th The Honorable Minister did not consider the vital aspect of the matter that the Will-Deed was a registered one, and it held strong presumptive value. He submits that the Petitioner must get the FPSL on the basis of the will deed, if not by the partnership deed.

6th The Honorable Minister failed to consider the ground reality that the Petitioner alone has taken whole care of the Respondent No.5 and hence, the Respondent No. 5 has cautiously executed the Will-Deed and the Partnership deed to confer the Subject-matter FPSL No.74 in the name of the Petitioner.

7th Mr. Dighe, learned Counsel for the Petitioner would conclude his argument by submitting that the Honorable Minister has passed utterly an un-reasoned order. He has strong objection as to the silence maintained by the Respondent No.5 for a considerable time after the FPSL was effected in his name, and the subsequent turn about by the Respondent No.5. As such, he prays to allow the Writ Petition and restore back the Subject-matter FPSL No.74 in his name. He lastly argues for alternate directions at least relegating back the parties for re-hearing in the Review Proceedings.

Per Respondent No.5

1st Mr. S.D. Hiwrekar, learned Counsel for the Respondent No. 5 advocates the impugned order passed by the Honorable Minister.

2nd He submits that the Honorable Minister has rightly corrected the mistake committed caused by the earlier order impugned in the review proceedings.

3rd He counters the objection of Mr. Dighe that opportunity of hearing was not given to the Petitioner by the Honorable Minister in the review proceedings.

4th Learned Counsel Mr. Hiwrekar submits that authorities in the earlier round of litigation that was taken up in the name of the Respondent No.5 were rightly turned for want of government policies. That, its only after the order dated 13-12-2022 passed by the Honorable then Minister, the authorities had to act upon.

5th It is lastly submitted on behalf of the Respondent No. 5, that all the facts are before this Court. That, the FPSL could not be transferred devoid of provisions and rules. That, in-fact the order dated 13-12-2022 itself is unjustifiable which has been rightly cured by the presently impugned order.

Per State Authorities:

1st Mr. Khan, learned Assistant Government Pleader would fairly submit that on the same count on which the earlier order was

passed by the Honorable then Minister allowing transfer of the FPSL, the order presently impugned in the Writ Petition also stands on the same reasoning, but from different perspective.

2nd Mr. Khan submits that he prefers to go by the record. He relies upon the various orders passed by the authorities, would rely upon the government resolutions referred herein, and prays to pass an appropriate orders.

5. Consideration:

I heard learned Counsels for the respective parties and the learned Assistant Government Pleader. With their able assistance I went through the pleadings of the respective parties and the annexures relied upon by them. I called upon learned Counsel for the Petitioner to argue on the merits of his case. Accordingly, Mr. Dighe, learned Counsel argued at full length on every point raising every argument in support of the order dated 13-12-2022 passed by the Honorable then Minister. On the last occasion, even time was also sought by him to take further instructions from his client. Mr. Dighe, besides demonstrating merits of his case, also countered the contents of the reply affidavit filed by the other side. His argument is recorded above categorically.

I also called upon Mr. Hiwrekar and Mr. Khan for the Respondent No. 5 and the State authorities also argued on all available grounds. Their defenses are also recorded above.

In light of the real controversy noted by me, I frame the core issues for adjudication as follows. These issues go to the root of the rights and liabilities of the parties:-

- (i) Whether the Will-Deed in question was and is enforceable in law?
- (ii) Whether the Partnership Deed in question can be used to replace the name of original licensee by insertion of a transferee's name?

I record my observations and findings as follows:

5.1 Will deed is defined at Section 2(h) of the Indian Succession Act 1925. It provides that a "Will" is a declaration of the intention of a person with regards to his property, assets etc.

5.2 Two basic principles govern enforceability of a Will under the Act of 1925 i.e. Firstly, the Will becomes operational and effective only after the death of its scribe/author.

Secondly, until his/her death, the scribe/author of the Will can create, cancel, revoke, improve any number of wills. The last Will prevails over the earlier Will(s). Although a will deed is not a compulsorily registrable document u/s 17 of the Indian Registration

Act, proof of will and its contents are governed by the principles of Law of Evidence.

5.3 In the case in hand, admittedly the Respondent No.5 is still alive. Hence discussion on the rights and liabilities of parties on the basis of such Will deed executed by Respondent No.5 would be preposterous. As such, a right claimed by the Petitioner relying upon the questioned Will is rejected at threshold. No right is accrued in favor of the Petitioner on the basis of the Will, nor the Respondent No.5 incurred any liability or could be held to have waived/transferred any right in favor of the petitioner vide the said Will.

5.4 So far as transfer of Subject-matter FPSL on the basis of Partnership Deed is concerned, it is to be seen that the License under the 1975 Order is a grant of permission to run a Fair Price Shop, which is issued to a person or a body of persons subject to fulfillment of the requisite qualification as laid down by the government policies.

5.5 Partnership is governed by the Indian Partnership Act 1932. Section 4 of the 1932 Act provides the definitions as follows:

"4. Definition of "partnership", "partner", "firm" and "firm name".—"Partnership" is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm name"."

So also, a partnership deed is an understanding by the 'partners' of the 'firm' reduced into writing agreeing the terms and conditions of the 'Partnership'.

5.6 There does not seem to be any prohibition if a FPS Licensee enters into partnership with anybody to run the shop/business. But the partnership itself shall not prevail over the Government policy of transferring the FPSL regulated by the 1975 Order and the Government Resolutions. The FPSL remains in the name of the Licensee itself. The State Government doesn't identify and recognize the Partnership Firm or the Partners over the FPSL.

5.7 I put a specific query to Mr. Khan, learned Assistant Government Pleader as to whether if a Licensee of FPSL enters into a trade relationship with others, whether the State Policy permits transfer of the FPSL on the basis of such trade relationship i.e. Partnership in this case. Mr. Khan, learned Assistant Government Pleader clarified that FPSL can not be transferred in the name of the trade association (Partnership in this case), nor names of the members of the Trade association could be incorporated in the license.

5.8 The response advanced by Mr. Khan, learned Assistant Government Pleader is absolutely logical. As observed supra, grant of

FPSL is corresponding to the individual qualification and competency. An individual means a single person as also an association/body of persons recognized by Law. If the Partnership firm of Petitioner and the Respondent No.5 could get an independent or fresh FPSL, it may be granted by the State authorities subject to the terms of 1975 Order and the Government Resolutions laying down terms of allotment.

5.9 However, 'transfer of existing FPSL' is altogether a different thing. I have cautiously read the order dated 13-12-2022 passed by the Honorable then Minister. It is ordered that "name of the present Petitioner be incorporated in the FPSL on the basis of the Partnership with the present Respondent No.5, and later name of the original licensee i.e. present Respondent No.5 be deleted". This is what the Petitioner wants to be restored by this Writ Petition, and this is what the Law and the Government policy does not allow.

5.10 I do not comprehend with the argument of Mr. Dighe, learned Counsel for the Petitioner that the order dated 13-12-2022 be restored. Firstly, a FPSL can not be transferred in the name of a Partnership Firm. Secondly, name of a Partner can not be recorded as a joint licensee. And thirdly, name of original licensee can not be annihilated from the license itself. The Honorable then Minister explored this innovative way to transfer the FPSL in the name of the

Petitioner taking exception to the Law and the Government policy. This way of exercising the power to revise the orders passed by the Authorities under the 1975 Order can not be approved. This is why, the maxim "*what you cannot do directly, you even can not do it indirectly*" needs to be applied in this case. That way, the order dated 13-12-2022 passed by the Honorable then Minister can not be restored, otherwise it would be permitting perpetuity of illegality.

5.11 Thus, I find that despite the controversy raised by the Petitioner on a number of grounds raised (supra), in no case the Petitioner could achieve any benefit on the basis of the questioned instruments i.e. the Will Deed and the Partnership Deed. I see that although the presently impugned order dated 24-01-2024 is not adequately worded with the craved reasons, yet the order dated 13-12-2022 passed by the Honorable then Minister (Food, Civil Supply and Consumer Protection), Government of Maharashtra can not be sustained for the reasons recorded by me above.

6. In my view, the Writ Petition does not hold any merit for the prayers made herein. In the light of the observations made above after hearing the Petitioner at full length on each fact and objection, no occasion remains for relegating the parties back before the Honorable Minister. The petitioner may have his independent remedy for

settlement of account against the Respondent No.5 in respect of his alleged 'partnership', but fate of such claim would depend upon the circumstances, the law and the evidence. But transfer of FPSL or any claim of the Petitioner over the Subject-matter FPSL No. 74 can not be even a subject matter in such claim.

7. In view of above discussion, I pass following order:

ORDER

- I. The Writ Petition stands dismissed.
- II. Rule stands discharged.
- III. No costs.

[AJIT B. KADETHANKAR, J.]

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KBP