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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12756 OF 2019

1. M/s Pranav Omprakash Khake Distilleries Pvt. Ltd.,
Through its Director Mr. Omprakash Babuappa
Khake, Age – 58 years, Occ – Business,
Office – 10, 11, 3rd Floor, Chinnar Building,
Opp – Krishi Bhavan, Near Sakhar Sankul,
Shivaji Nagar, Pune, 411 005
 2. Mr. Omprakash Babuappa Khake
Director M/s Pranav Omprakash Khake
Distilleries Pvt. Ltd.,
Office – 10, 11, 3rd Floor, Chinnar Building,
Opp – Krishi Bhavan, Near Sakhar Sankul,
Shivaji Nagar, Pune – 411 005
- PETITIONERS

VERSUS

1. The State of Maharashtra
Through the Secretary, Industries, Energy
and Labour Department, Mantralaya
Mumbai 400 032
2. The Commissioner of State Excise,
The Old Custom House, 2nd Floor,
Fort, Horniman Circle, Mumbai 400 001
3. The Assistant Commissioner (Alcohol and Molasses)
State Excise, The Old Custom House,
2nd Floor, Fort, Horniman Circle,
Mumbai – 400 001
4. The Superintendent, The Office of State Excise
Near Hotel Amarpreet,
Ajabnagar, Aurangabad 431 001
5. M/s Kokan Agro Marine Industries Pvt. Ltd.,
Regd Office : 226, Shree Ganesh Vandan,
Shivaji Nagar Hill Road, Nagpur 440 010,
Branch Office 1 : 12, Plot No. 250, Ground Floor,
Maa Bhagwati Complex, Ward DC-2,

Gandhidham, Kutch – 370 201

6. Union of India,
1, Tirthroop, Vikas Nagar,
Near Pavan Gas Service,
New Osmanpura,
Aurangabad 400 005

RESPONDENTS

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Mr. Mukul S. Kulkarni h/f Mr. Joslyn A. Menezes, Advocate for the petitioner

Mr. S. B. Yawalkar, AGP for respondent - State

Mr. Subodh Dharmadhikari, Senior Advocate i/b Mr. Bipinchandra K. Patil, Advocate for respondent No. 5

Mr. Y. B. Bolkar and Mr. Atul A. Mishra, Advocates for respondent No. 6

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WITH
WRIT PETITION NO.3119 OF 2020

1. M/s Pranav Omprakash Khake Distilleries Pvt. Ltd.,
Through its Director Mr. Omprakash Babuappa
Khake, Age – 58 years, Occ – Business,
Office – 10, 11, 3rd Floor, Chinnar Building,
Opp – Krishi Bhavan, Near Sakhar Sankul,
Shivaji Nagar, Pune, 411 005
2. Mr. Omprakash Babuappa Khake
Director M/s Pranav Omprakash Khake
Distilleries Pvt. Ltd.,
Office – 10, 11, 3rd Floor, Chinnar Building,
Opp – Krishi Bhavan, Near Sakhar Sankul,
Shivaji Nagar, Pune – 411 005

PETITIONERS

VERSUS

1. The State of Maharashtra
Through Desk Officer of Home Department,
Hyderabad House, Civil Lines, Nagpur 440 001
2. The Commissioner of State Excise,

The Old Custom House, 2nd Floor,
Fort, Horniman Circle, Mumbai 400 001

3. The Assistant Commissioner (Alcohol and Molasses)
State Excise, The Old Custom House,
2nd Floor, Fort, Horniman Circle,
Mumbai – 400 001
4. The Superintendent, The Office of State Excise
Near Hotel Amarpreet,
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Mr. Mukul S. Kulkarni h/f Mr. Joslyn A. Menezes, Advocate for the
petitioner

Mr. S. B. Yawalkar, AGP for respondent - State

Mr. Subodh Dharmadhikari, Senior Advocate i/b Mr. Bipinchandra
K. Patil, Advocate for respondent No. 5

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**[CORAM : SUNIL P. DESHMUKH AND
R. G. AVACHAT, JJ.]**

DATE : 29th OCTOBER, 2020

JUDGMENT (PER SUNIL P. DESHMUKH, J.) :

1. Rule. Rule made returnable forthwith and heard both
these writ petitions finally with consent of the parties.

2. Petitioners refer to that petitioner No. 1 is a company and petitioner No. 2 is its managing director. Petitioner No. 1 company had taken over the proprietary concern M/s Pranav Agrotec Industries along with its business, assets, liabilities, loan and debts. Petitioners claim that M/s Pranav Agro-tech Industries has CL-1 licence over lands bearing Gut No. 26 and 27 of village - Surewadi, Taluka - Gangapur, District - Aurangabad.

3. Petitioners state that due to an accident in manufacturing plant, they have suffered heavy losses and in the circumstances, their Financier - the Union Bank of India (the bank) had classified them as non performing asset (NPA). The bank had taken action pursuant to the provisions of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitization Act) and had preferred original application before Debts Recovery Tribunal, Aurangabad (DRT). During pendency of proceedings in DRT E-auction of the property of the petitioners had been held. Public notice had been reissued auctioning lands Gut No. 26 and 27 and respondent No. 5 had been successful bidder for the distillery, plant and machinery of the petitioners along with the land.

4. Petitioners contend, statement had been made before the Debts Recovery Tribunal (DRT) on behalf of the bank that sale

would not be finalized. The petitioners also fairly refer to that the statement could not be pointed out subsequently on their behalf and, as such, efficacy of interim relief had been depleted.

5. However, despite the statement, the bank hastened to issue sale certificate and possession receipt in favour of respondent No. 5 on 27th September, 2018 and sale deed was executed on 29th September, 2018. Since then respondent No. 5 has been a party to the proceedings before the DRT.

6. Petitioners contend that under rule 3 of Maharashtra Country Liquor Rules, 1973, Letter of Intent (LOI) is pre-requisite for CL-1 licence. After purported purchase of property, respondent No. 5 appears to have moved authorities for grant of LOI and the State Government had issued approval to the same on 21st June, 2019 and the same had been objected to by the petitioners on 29th June, 2019.

Petitioners were issued communication dated 31st July, 2019 by Deputy Superintendent of State Excise, Aurangabad calling for hearing on 7th August, 2019. Petitioners contend, on 8th / 9th August, 2019, they had placed before the Deputy Superintendent of State Excise, Aurangabad a detailed objection requesting not to issue LOI to respondent No. 5 without hearing

them, as petitioners were holding licence over lands Gut No. 26 and 27 and that dispute regarding said property is pending before the DRT.

Without hearing the petitioners, the Deputy Superintendent of State Excise had purportedly carried out inspection and had submitted report on 13th August, 2019 and the Superintendent of State Excise made a report on 21st August, 2019. According to the petitioners, both the reports refer to the impediment of CL-1 licence and unless the licence issued to the petitioner is cancelled, new licence cannot be granted in favour of respondent No. 5.

Petitioners submit that they had approached the Commissioner on 27th August, 2019 raising objection to issue LOI to respondent No. 5 intimating that no hearing had been granted to them and had also communicated, under letter dated 29th August, 2019 to respondent No. 3 that interim order had been granted by the DRT.

Petitioners refer to that communication dated 6th September, 2019 has called them for hearing before Section Officer, Home Department, on 11th September, 2019, which had subsequently been rescheduled to 13th September, 2019.

Petitioners had appeared before the Hon'ble Minister on said date and sought time and documents. On 17th September, 2019, petitioners submitted representation to seek time, to engage advocate and also for certain documents and requested Hon'ble Minister not to issue licence in favour of respondent No. 5 without hearing them.

Petitioners contend that they had filed an application under the Right to Information Act and it was only on 17th September, 2019, petitioners became aware that respondent No. 5 had been granted LOI. Petitioners apprehended grant of approval for issuance of licence and respondent No. 2 will be bound to issue licence and the same would be without hearing the petitioners.

7. Thus, the petitioners have moved writ petition No. 12756 of 2019 referring to grounds, *inter alia*, the bank had purportedly sold lands of petitioners under gut No. 26 and 27 of Surewadi, admeasuring 4 *Hectare*, 73 *Are* to respondent No. 5, however, possession receipt shows total area of 6 *Hectare*, 1 *Are* and the action has been challenged under Securitization Act before DRT; the petitioners are in possession of licence and are occupying parts of lands gut No. 26 and 27, there would be conflict of interest between petitioners and respondent No. 5 and further that in the absence of valid cancellation of licence, new licence

would be illegal; the petitioners had approached the authorities, raising objections to LOI, LOI has been issued without hearing the petitioners, despite knowledge that the petitioners are holding licence No. 15 over disputed property, and also being holding CL-1 licence on concerned lands. Policy of government under circular dated 31st August, 2009 of not to issue new licence has been unaltered and no new circular has been issued disrupting the policy. The State government is farcically conducting proceedings in respect of hearing of objections raised by petitioners for issuance of LOI and licence.

8. In aforesaid writ petition, petitioners seek directions to grant opportunity of hearing to the petitioners in accordance with notice dated 6th September, 2019 in response to their objections and to restrain respondents No. 1 to 4 from issuing licence to respondent No. 5 with reference to letter of intent (LOI) dated 21st June, 2019, till decision on the objections by the petitioners and to quash and set aside approval to LOI dated 21st June, 2019 and LOI dated 15th June, 2019.

9. The petitioners contend that while in aforesaid writ petition, notice had been issued and respondents had put in appearance and hearing was being scheduled, it was only on 20th / 21st February, 2020, it came to the light that as a matter of fact

petitioners' licence has been cancelled with approval to grant licence to respondent No. 5.

10. It appears that this court, on 21st February, 2020 had posted the matter on 18th March, 2020 directing to maintain *status quo* as on the date, till then.

11. Writ petition No. 3119 of 2020 has been moved by petitioners contending that during pendency of writ petition No. 12756 of 2019, despite respondents were served, respondent No. 1 had passed order granting sanction / approval in favour of respondent No. 5 and has simultaneously proceeded to cancel licence in favour of the petitioners, without affording opportunity of hearing to them.

Securitization application No. 30 of 2018 before DRT had been in respect of description of area of property and the tribunal had passed orders on 13th April, 2018, 5th October, 2018, 6th November, 2019 and 23rd December, 2019, referring to that on 6th November, 2019, the tribunal had passed an order of *status quo* in favour of the petitioners.

The bank had hurriedly issued sale certificate in respect of 4 Hectare, 1 Are land along with entire plant and machinery, in favour of respondent No. 5, however possession receipt has been

issued of entire land admeasuring 6 *Hectare*, 73 *Are*.

It transpired that respondent No. 5 had applied for LOI in December, 2018 and government had granted approval for LOI on 21st June, 2019, behind their back to which petitioners had raised objection on 29th June, 2019 and again on 5th July, 2019 requesting not to grant LOI without hearing the petitioners. It has been specifically referred to in the writ petition that while the petitioners were called upon for hearing under communication dated 31st July, 2019, they had placed forth before the Deputy Superintendent detailed objections requesting not to issue LOI without hearing being given to them. Despite the same, without hearing and deciding objections, inspections had been carried out reporting that there is impediment to issue LOI due to CL-1 licence of petitioners and without its cancellation, no new licence can be granted.

While the petitioners were called upon for hearing under communication dated 6th September, 2019, petitioners had solicited documents on 17th September, 2019 and thereafter, there had been no response from the Hon'ble minister.

Petitioners submit that impugned order dated 20th December, 2019 appears to be passed on the basis of

communication of commissioner dated 20th September, 2019. Granting sanction / approval for issuance of licence to respondent No. 5 being administrative, and also being aggrieved by cancellation of licence in favour of the petitioners, they have approached the court on the grounds, *inter alia*, that order dated 20th December, 2019 is without jurisdiction and is in breach of principles of natural justice; respondent No. 1 has no competence to cancel licence of petitioners; order is without any reasons contravening section 54 of Maharashtra Prohibition Act, 1949 (Prohibition Act). Cancellation of licence is not by authority designated under the Prohibition Act and is by the desk officer. While the subject matter pertains to the State excise department but home department has cancelled licence, the order of cancellation of licence is without hearing the petitioners and without issuing notice. So is the case in respect of approval / sanction for issuance of licence to respondent No. 5, while the petitioners were called for hearing and they had solicited documents and no further action has been taken. While notice had been issued and served in writ petition No. 12756 of 2019, there is impropriety in passing order on 20th December, 2019 and had been issued despite *status quo* order of DRT. Without decision on objections of petitioners, proposal dated 20th September, 2019 has been processed.

12. Petitioners, as such, seek writ of certiorari against order dated 20th December, 2019 cancelling licence of petitioner and granting approval / sanction to issue licence in favour of respondent No. 5.

13. In the response to the two writ petitions, respondents No. 1 to 4 purport to point out that the issue involved in the matter relates to Form I, a distillery licence to manufacture spirit pursuant to Rule 3 of the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966 (Distillation Rules, 1966) and not under Rule 3 of the Maharashtra Country Liquor Rules, 1973. It has been specifically referred to that contention of the petitioners that they have CL-1 licence over the property in issue, is not correct. Form I licence is for constructing and working a distillery for manufacture of spirit and is not under the Maharashtra Country Liquor Rules, 1973.

Form I licence relates to unit purchased by respondent No. 5 under auction and claimed CL-1 licence over the same is fallacious. It is contended that petitioners have not come to the court with clean hands and have deliberately skipped to refer to relevant facts and, as such, do not deserve any consideration in equities.

It has been referred to that respondent No. 5 after purchasing property, plant and machinery had applied to the authorities for LOI for grant of Form I licence. Thereupon, show cause notice had been issued to petitioners on 5th February, 2019 by registered post in respect of Form I licence adhering to section 54 (1) (b) of the Maharashtra Prohibition Act, 1949 and the same had returned unclaimed. Respondents specifically refer to that notice had been issued to the petitioners at the registered address by registered post and has been returned to the sender being unclaimed. After scrutiny of the application and relevant documents and on examining relevant aspects, approval to issue LOI had been given for grant of Form I licence on 21st June, 2019. On 29th June, 2019 objections to said approval were purportedly submitted. After verification of relevant aspects, LOI had been issued to respondent No. 5 on 15th July, 2019.

14. It has been referred to by the State authorities in their affidavits in reply that the Deputy Superintendent of State Excise, under communication dated 31st July, 2019 had called the petitioners on 7th August, 2019 to submit a detailed say and objection on grant of Form I licence to respondent No. 5 and cancellation of its licence with a view to enquire into the matter. Petitioners had been evasive in accepting notice, entailing its

affixation. Petitioner No. 2 had appeared before Deputy Superintendent on 9th August, 2019 and had made detailed submissions objecting to grant of Form I licence to respondent No. 5. Deputy Superintendent had visited factory and ascertained facts and had prepared report on 13th August, 2019 and submitted to respondent No. 4 – Superintendent State Excise, Aurangabad. Deputy Superintendent had suggested cancellation of Form I licence of petitioners while granting proposal for grant of Form I licence to respondent No. 5 as it pertains to property involved in the matter. Respondent No. 4 has made a report to respondent No. 2 on 21st August, 2019.

After considering peculiar facts, verifying the reports, objections and other material, respondent No. 2 forwarded the same to respondent No.1. Respondent No. 1 issued a notice dated 6th September, 2019 to petitioners calling upon them for hearing on Form I licence, in the office of the Commissioner on 11th September, 2019, rescheduling the same on 13th September, 2019. Petitioners had accordingly attended hearing on 13th September, 2019 and had canvassed submissions. It is further referred to that on 17th September, 2019 petitioners had filed a letter referring to that they do not have anything to add to what had earlier been stated. According to respondents, this deflates

claim of the petitioners that no hearing had been conducted.

15. According to the respondents, as petitioners did not intend to add anything and while the matter had already been heard on 13th September, 2019, with reference to the foregoing events and having regard to facts, reports submitted, objections raised and the material before it and the factual position that there had been no payment of licence fees by the petitioners, respondent No. 2 had submitted a detailed proposal on 20th September, 2019 to respondent No. 1 for grant of Form I licence to respondent No. 5 and cancellation of Form I licence of the petitioners.

16. Having regard to the proposal submitted by respondent No. 2 to respondent No.1, on 20th December, 2019, respondent No. 1 granted sanction to issue Form I licence to respondent No. 5 and had cancelled Form I licence of the petitioners.

17. It has been specifically referred to in the reply that authority to grant approval to issue and cancellation of Form I licence is with the State comprising home department and, as such, it is not the case that order is not passed by competent authority. There is no substance in the contention of the petitioners that the impugned order has been passed without jurisdiction, authority or competence.

18. It is submitted that in the proceedings before DRT the State had not been a party and those proceedings are progressing on a different footing and would seldom have any bearing on the proceedings for licence.

19. It has been contended on behalf of the respondent – State that according to rules, licence issued is valid only for a year and is required to be renewed every year by paying certain fees and in case the same is not renewed after a year, there is no valid licence, pointing out further that petitioners had not paid any fees and had not renewed licence in accordance with rules and, as such, their licence had been rendered invalid and inoperative and had lapsed. It is sought to be pointed out that while licence had been issued to petitioners in 2009, same could not be operative beyond March, 2011 and inactivity for a long period has caused huge losses to the state exchequer.

20. It is contended that while licence of the petitioners lapsed automatically, all these years, the petitioners had not come forward for renewal or had paid licence fees to keep licence alive. The petitioners became active only after bankers have sold out the assets and procedure to issue licence to the purchaser was being followed.

21. Respondents submit that simultaneously, proceedings, for grant and cancellation, of Form I licence were being proceeded with and the same have been deliberately skipped to be referred to. Petitioners' efforts have been to keep away from the court that the proceedings before the authorities were going on in respect of Form I licence.

22. It is contended that the matter had been considered at multiple stages and multi level. It is, thus, submitted that having regard to the foregoing facts, circumstances, events and the relevant aspects involved in the matter, there is no substance in the contention raised on behalf of the petitioners that the orders being in breach of principles of natural justice or for that matter without hearing and/or that the same had been mechanically passed.

23. It is, thus, urged that the writ petitions be dismissed.

24. Respondent No. 5, in its response to the writ petitions, contends that the petitions are replete with *ex facie* false, baseless and frivolous averments and petitioners have not approached the court with clean hands and have concealed crucial facts. It is contended that the averments in the writ

petitions are distorted versions of the events and, as such, do not deserve any indulgence at all, much less in equity.

25. Respondent No. 5 purports to make it clear that the impugned orders dated 21st June, 2019, 15th July, 2019 and 20th December, 2019 do not at all pertain to grant of CL-1 licence under rule 3 of Maharashtra Country Liquor Rules 1973. It is stated that the claim of the petitioners about holding CL-1 licence over the property in issue is absolutely false, as the petitioners do not at all hold CL-1 licence on the premises in question. Form I licence is for constructing and working a distillery for manufacture of spirit under rule 3 of Distillation Rules, 1966.

26. It is being referred to by respondent No. 5 that petitioner No. 1 had been a proprietary concern namely M/s Pranav Argotech Industries, Aurangabad and petitioner No. 2 had availed loan of Rs.24 crores from Union Bank of India, mortgaging lands bearing Gut No. 26 and 27 of Surewadi totally admeasuring 6 *Hectare*, 1 *Are* along with distillery plant, machinery and building over the same. Upon conversion of proprietary concern into a company, entire assets, liabilities, debts, etc. were transferred to the new entity – petitioner No.1 with consent of financier – Union Bank of India. It is being referred to that proper deed of

transfer of ownership had been executed on 18th June, 2010. Union Bank of India had charge over entire 6 *Hectare*, 1 *Are* from Guts No. 26 and 27.

Subsequently, security of a portion of land has been substituted with FDRs and charge of Union Bank of India over said portion of land admeasuring 3 *acre*, 7 *guntha* had been released. Petitioner No. 1 had set up a liquor bottling plant over released portion of land mortgaging the same for taking financial assistance from Canara Bank. A mortgage deed has been executed by petitioner No. 1 for the same. Petitioners refer to and rely on Annexure-R-2 and submit that properties mortgaged with two financiers are distinct and separate.

While petitioners defaulted repayment of loan of Union Bank of India, action under Securitization Act ensued. The bank had taken over secured assets in 2011 and while it came to taking over possession, petitioners had refused and proceedings were taken up before DRT, at the instance of Union Bank of India, bearing Original Application No. 37 of 2013 and under judgment and order dated 31st July, 2014, the original application had been allowed by DRT directing recovery of Rs. 38.76 crore with interest @ 14% at monthly rests, permitting attachment and sale of movable and immovable

assets/properties. During the proceedings, possession of the land had been taken over by Union Bank of India on 13th February, 2014. It is being referred to that in the meanwhile, several auctions had been moved, however, without achieving purpose.

27. In the e-auction dated 26th February, 2018, respondent No. 5 had become a successful bidder. Petitioners had preferred securitization application No. 30 of 2018, purporting to be under section 17 of the Securitization Act before DRT on the ground that e-auction wrongly mentioned property in question to be situated at Babargaon. In said proceedings, the Union Bank of India had put in appearance and had sought time to file reply, making a statement on 13th April, 2019 that it shall not confirm sale pursuant to the auction till next date.

Since discrepancies were noticed, the Union Bank of India had cancelled auction dated 28th February, 2018. A fresh e-auction notice had been issued albeit therein discrepancy in respect of area had occurred. Miscellaneous application No. 87 of 2018 had been preferred by petitioners against said notice. On 31st March, 2018, e-auction had been conducted and yet again respondent No.5 had been successful bidder. As referred to above, since a statement on behalf of Union Bank of India on

13th April, 2018 had been made, the bank had not confirmed the sale. Eventually, on 21st September, 2018 self restraint under the statement by advocate, had come to an end. For said purpose order dated 21st September, 2018 of DRT is relied on. Thereafter, on 27th September, 2018, Union Bank of India had issued sale certificate pertaining to property admeasuring 4 *Hectare*, 73 *Are* as against 6 *Hectare*, 1 *Are*, being referred to and harped upon on behalf of the petitioners and accordingly possession of property had also been handed over along with plant, machinery and building over the same to respondent No. 5. Subsequently, on 29th September, 2018 a registered sale deed had been executed in respect of the same. Thereupon, the petitioners have amended the securitization application No. 30 of 2018.

28. Respondent No. 5 refers to that after LOI had been granted to respondent No. 5, Deputy Superintendent of State Excise had invited the petitioners to its office on 7th August, 2018 for submissions on the objection to grant Form I licence to respondent No. 5. Petitioner No. 2 had appeared before Deputy Superintendent on 9th August, 2019 and had made detailed submissions objecting to grant Form I licence to respondent No.5. Thereafter, Deputy Superintendent had made a report on

13th August, 2019 addressing the same to respondent No. 4 – Superintendent, proposing to grant Form I licence to respondent No. 5 ensuring cancellation of Form I licence of petitioners, since being pertaining to the property in question. Respondent No. 4, had, thereafter, made a report to respondent No. 2 – Commissioner on 21st August, 2019. Respondent No. 2, considering all relevant aspects in the case, on 20th September, 2019 had submitted a detailed proposal for grant of Form I licence. Upon considering proposal submitted by respondent No. 2, respondent No. 1 on 20th December, 2019 had passed an order sanctioning Form I licence to respondent No. 5 over the concerned land and cancelled Form I licence of the petitioners. In view of the same, writ petition No. 12756 of 2019 has been rendered infructuous.

29. Respondent No. 5 purports to clarify and make it categorical that communications dated 6th September, 2019 and 9th September, 2019 are the communications with reference to cancellation of Form I licence of petitioners and an attempt to project that the same is with reference to the objection to approval to LOI is not proper and is fallacious.

30. It is being emphatically stated that it is utterly an ingracious attempt on the part of the petitioners to contend that

they were not afforded of any opportunity of hearing before cancellation of licence and have deliberately concealed facts pertaining to the proceedings for cancellation of Form I licence.

31. It is referred to that contention on behalf of the petitioners that sale certificate issued to respondent No. 5 by Union Bank of India despite order of *status quo* dated 6th November, 2019 is incorrect on the face of record. It is being referred to that orders dated 6th November, 2019 and 23rd December, 2019 by DRT were issued after more than a year of issuance of sale certificate and without attention of DRT being drawn to its order dated 21st September, 2018.

32. While the petitioners were stretching the matter, they have indeed been heard over Form I licence and proceedings culminated into order dated 20th December, 2019. It has been further specifically referred to that respondent No. 5 has purchased and has taken over possession only of an area of land admeasuring 4 *Hectare*, 73 *Are*, which had been mortgaged and under charge of Union Bank of India. Though it was sought to be projected that CL-1 licence is concerned, it has seldom anything to do with the property purchased by respondent No.5. It has further been referred to that petitioners have not come before the court with clean hands and have remained idle for over nine

years and had not done anything to stall statutory lapsing and cancellation of licence.

33. Additionally, respondent No. 5 purports to refer to that after it had become NPA *vis-a-vis* Union Bank of India in 2011, there had been no attempt on behalf of the petitioners to repay amount or settle the matter with Union Bank of India. It is being referred to that the petitioners' sister concern namely Mallikarjun Distilleries Pvt. Ltd., wherein petitioner No. 2 is a director, has also indulged into improper conduct and DRT Aurangabad had passed an order on 9th August, 2017 in interlocutory application No. 544 of 2016 in securitization application No. 98 of 2018 observing that company had abused process of law, with a view to prolong recovery of admitted dues of Rs.37.50 crore.

34. Respondent No. 5 has invested huge amount in purchase of property with a view to do business and had accordingly applied for grant of Form I licence, as per Distillation Rules 1966. On 6th December, 2018 *Talathi* had also issued certificate about the land being non-agriculture use.

35. It is being referred to that respondent No. 5 had parted with amount of Rs.9 crores in purchase of plant and unit and had further expended additional Rs. 7 crores towards repairs and

modifications of plant and said expenditure is accumulating interest. Respondent No. 5 has to bear with recurring expenses of Rs.20 lac towards salary, security and other ancillary expenses and under fraudulent conduct of petitioners, running/operation of distillery which is in the interest of society, which would generate employment, develop ancillary business is being detained.

36. According to respondent No. 5, present proceedings for grant of licence after purchase of property by respondent No. 5 are not impermissible and cannot be detained and eventually, if the sale of property under adjudication of DRT, fails, law will take its own course. Petitions are wholly misconceived and are baseless. In the circumstances, petitioners have no case on any count and the petitions deserve to be dismissed in limine. It has been prayed that petitions be dismissed with exemplary costs.

37. Mr. Mukul S. Kulkarni, learned advocate appearing with Mr. Joslyn A. Menezes for the petitioners, refers to a few dates in the matter, viz., approval to LOI of 21st June, 2019; objections on 29th June, 2019; LOI of 15th July, 2019; communication of 31st July, 2019 inviting petitioners to make submissions on 7th August, 2019; petitioners' opposition and objections on 9th August, 2019; inspection by deputy superintendent and his report on 13th August, 2019; subsequent report by the

superintendent on 21st August, 2019.

38. He contends, entire procedure for granting approval to LOI dated 21st June, 2019, had taken place keeping the petitioners in dark and without deciding their objections, the LOI has been issued on 15th July, 2019. He submits that this could not come to their notice until 17th September, 2019.

39. Mr. Kulkarni attacks submitting that while inspections were conducted on two occasions, without hearing the petitioners or deciding objections, yet, reports dated 13th August, 2019 and 21st September, 2019, particularly refer to that the property is encumbered with licence to the petitioners and unless the situation is dealt with accordingly, further process of granting licence to respondent No. 5 would hardly be possible. No new licence can be granted in favour of respondent No. 5 without its cancellation considering their objections.

40. On 13th September, 2019, he fairly refers to that, petitioner No. 2 had attended proceedings, however, had sought time to have proper professional engagement in order to objectively put opposition and had also sought certain documents. Communication dated 17th September, 2019, he submits as well would evince the same.

41. While no hearing was being conducted in respect of their objections to issue LOI, when it came to light on 17th September, 2019, that LOI has been issued, writ petition No. 12756 of 2019 had been preferred and while said matter had been on board in February, 2020, order dated 12th December, 2019 cancelling their licence and granting approval to issue licence in favour of respondent No. 5 surfaced and accordingly writ petition No. 3119 of 2020 had been filed.

42. Mr. Kulkarni, during the course of hearing purported to contend that notice issued in February, 2019 had not been received at petitioners' end and they had not been aware of the same having been issued, may be since upon the proceedings under Securitization Act, they could not continue to occupy the lands Gut No. 26 and 27.

43. It is contended that on 13th September, 2019 and 17th September, 2019, petitioners had sought accommodation, while documents were required by the petitioners, thereafter, no further hearing had taken place, as such, it is intriguing as to how proposal could be processed on 20th September, 2019, without decision on the objections of the petitioners.

44. Mr. Kulkarni contends, order dated 20th December, 2019 is

of administrative nature and that even administrative orders are to be passed adhering to noble principles of natural justice, referring to paragraphs No. 35, 36 and 37 of judgment of the Supreme Court in the case of *“Dharampal Satyapal Limited Vs Deputy Commissioner of Central Excise, Gauhati and Others”* reported in (2015) 8 SCC 519.

45. He contends that impugned orders have not been passed in keeping with spirit of principles of natural justice.

46. He further submits that apart from the order dated 20th December, 2019 being unreasoned, same even if it is assumed to have been passed with reference to reports and proposal dated 20th September, 2019 of respondent No. 2 – Commissioner, yet, proposal of the Commissioner itself shows that until licence of the petitioners is cancelled, which pertains to the same property purchased by respondent No.5, further process of granting licence would have to be kept in abeyance.

47. He submits that proceedings would reveal that order dated 20th December, 2019 cancelling licence and granting approval to issue licence to respondent No. 5 is not in consonance with letter of law, particularly section 54 of the Prohibition Act, which ordains that if a licence is to be cancelled, same can be possible

only with reasons in writing and is high handed.

48. Mr. Kulkarni, during the course of submissions, purports to contend that there are quite a few errors in the conduct of sale. He submits that while sale certificate issued to respondent No. 5 is with respect to 2 *Hectare*, 50 *Are* from land Gut No. 26 and 2 *Hectare*, 23 *Are* from Gut No. 27, along with plant and machinery over said property, yet possession receipt issued is of entire area of gut No. 26 admeasuring 3 *Hectare*, 36 *Are* and gut No. 27 admeasuring 2 *Hectare*, 65 *Are*. Proceedings in respect of the same are pending before DRT under Securitization Act, and orders have been passed on 13th April, 2018, 5th October, 2018, 6th November, 2019 and 23rd December, 2019.

49. Over and above this, he contends that it is queer as to how Home Department of the State could cancel licence of petitioners when the subject matter is province of State excise department. He submits that whole proceedings have been taking place under aegis of ministry of home affairs, whereas the authorities under the Prohibition Act ought to be from the State Excise Department. He purports to refer to a few conditions appended to Form I (15) licence granted in 2009 favour the petitioners. He contends that the Home Department would not have any power, authority or jurisdiction to deal with the process of cancellation

of licence. He submits that the authority for granting or cancelling licence, pursuant to provisions of the Prohibition Act rests with respondent No. 2 – Commissioner. Whereas, the impugned order dated 20th December, 2019 shows that the same to have been passed by department of home affairs and under the signature of desk officer. He, contends that proceedings have been carried out highhandedly without power, jurisdiction and competence and with a view to favour respondent No. 5 and causing damage in the process to the interest of the petitioners.

50. He submits that while during the course of hearing certain citizen charter is being relied on, the same is incompatible with provisions of Prohibition Act, particularly sections 54 and 56, hardly are referable to home ministry. He submits that it is also not the case that hearing had been dispensed with. He submits that while the reports continually, right from the one dated 13th August, 2019 to proposal dated 20th September, 2019 refer to independently consider cancellation of licence of the petitioners, impugned order dated 20th December, 2019 does not refer to its disagreement over the same.

51. He submits that DRT proceedings and orders thereunder refer to that the sale shall be subject to outcome of proceedings before DRT, the impugned order is silent on the same. It is

contended that while *status quo* order passed by DRT is subsisting, sanction / approval to issue licence in favour of respondent No. 5 is erroneous. Under the circumstances, impugned order tends to render said proceedings otiose.

52. Learned advocate goes on to submit that respondent No. 5 alone is not the owner of lands Gut No. 26 and 27. In the circumstances, without consent of co-owner, licence cannot be granted in favour of respondent No. 5.

53. He submits that cancellation of licence has civil consequences and without granting hearing and affording opportunity to the petitioners, the cancellation is invalid and illegal. He submits that lapsing of licence being argued on behalf of respondents in view of rule 3 (5) of Distillation Rules 1966, yet, it would have to be considered that it is incompatible with sections 54 and 56 of the Prohibition Act. He submits, those make it abundantly clear that principles of natural justice are *sine qua non* even in administrative orders having civil consequences and while the act envisages *quasi* judicial proceedings, natural justice principles having not been followed impugned order is untenable.

54. It is being contended that though it is referred to that

notice, pursuant to section 54 of the Prohibition Act had been issued to the petitioners, the decision had been taken without hearing them and without rendering reasons in writing.

55. He, therefore, urges to allow the writ petitions and quash and set aside impugned LOI and order dated 20th December, 2019 passed by respondent No. 1.

56. Opposing petitions, learned Additional Government Pleader (AGP) Mr. S. B. Yawalkar on behalf of the State vehemently submits that the petitioners have not come to the court with clean hands.

57. He submits that in the first place, while the proceedings have seldom anything to do with CL-1 licence, yet petitions are based on the same. Petitioners have deliberately skipped to refer to that in present proceedings, Form I licence is of relevance. With a view to keep this vital aspect back, copy of Form I (15) licence had not been produced.

58. He submits that pursuant to order passed by DRT in the proceedings initiated by the financier of the petitioner, namely Union Bank of India, auction of the property of the petitioner had taken place and respondent No. 5 has purchased the same. In the litigation at the instance of the petitioner before DRT, State

was not a party. He submits that respondent No.5, having purchased land, plant and machinery for manufacture of spirit and alcohol , had approached the authorities seeking licence, pursuant to Rule 3 of Distillation Rules, 1966, according to the procedure preceding grant of licence.

59. The plant and machinery and the land being not with the petitioners and having been purchased by respondent No.5, the request of respondent No. 5 for licence, after taking stock of the situation, was being processed.

60. He submits that there is no substance in the contention on behalf of the petitioners about there being breach of principles of natural justice. Ample opportunity had been afforded to the petitioners and the petitioners had also participated in the proceedings and are estopped from veering around and say that orders have been passed in breach of principles of natural justice.

61. On 5th February, 2019, show cause notice had been issued to the petitioners, referring to section 54 (1) (b) of the Prohibition Act, which had been returned unclaimed. He submits that though it is being contended that the notice had not been served on the petitioners, it has been revealed that same had

been sent by RPAD on the very same address as is shown by the petitioners in the title clause of present writ petitions, yet, the same had been returned unclaimed.

62. The petitioners have skipped to appear before the authorities at any time before end of June, 2019. Accordingly, approval to LOI had been issued on 21st June, 2019. Subsequently, purported objection on 29th June, 2019 is shown to have been taken. The department, by way of abundant precaution, on 31st July, 2019 had called upon them to make submissions over Form I licence and the same had been responded to on 8th August, 2019 by the petitioners. Thereafter, reports had been submitted on 13th August, 2019 and 21st August, 2019, albeit, referring to that process of granting licence over the property be processed cancelling Form I (15) licence of the petitioners.

63. Upon said reports, the State government had considered to give an opportunity to the petitioners and accordingly, on 6th September, 2019, petitioners were called upon for hearing on 11th / 13th September, 2019 in respect of Form I licence and not at all LOI, as is fallaciously claimed by the petitioners. He submits that subject in all those communications depicts the same. Not only this but also the petitioners have objected to

addressed themselves accordingly. Their written submission testifies that hearing on 13th September, 2019 was with regard to Form I licence. It is further being referred to that the petitioners being not convinced on their own resistance and to keep the issue lingering over, intended to obfuscate matter and had issued a communication on 17th September, 2019 purporting to request for time and solicit certain documents. However, the very same communication particularly refers to that they have nothing particular to add to their submissions dated 13th September, 2019. He submits that having regard to it being a dilatory tactic and no further hearing was required and when the petitioners had made it clear that they had nothing to be added, the matter was further processed and a proposal came to be submitted and accordingly, order dated 20th December, 2019 had been issued. Ample opportunity of hearing had been granted to the petitioners. Proper procedure, in the process, had been followed. The petitioners, since having not come to the court with clean hands, do not deserve consideration, particularly in the discretionary and equitable jurisdiction of this court.

64. Mr. Yawalkar submits that there is no substance in the contention advanced on behalf of the petitioners that home department has no power, jurisdiction or authority to intervene

in the matter of cancellation of licence, as the same concerns state excise. He submits that various departments in the State work under the aegis of home department *viz*; police, state excise, etc. He further submits that Prohibition Act does not make distinction between home department and state excise. He further goes on to submit that the petitioners are estopped from taking such a ground in the present matter in respect of licence. F-I licence has been issued to petitioners by the home department and the petitioners have enjoyed the same. Petitioners had not objected to the proceedings while notices were being issued through home department and have in fact participated in the same. He refers to citizens charter issued by home department, Government of Maharashtra and points out clause No. 3 thereunder, making reference to police, state excise, etc. Clause No. 5 thereunder, he submits, specifically refers to state excise among others, being under the aegis of home department. Pointing out schedule I, he refers to that under caption 'home department', various ministries are referred to, including state excise, transport etc. He, therefore, submits that it would not be a case that the matter has been dealt with without any power or jurisdiction.

65. Over and above this, Mr. Yawalkar refers to that licence

would show that it was renewed only up to 31st March, 2011 and there had been no further renewal nor the petitioners had made any effort to have it renewed at any point of time nor any renewal fees after 2011 till this date had ever been tendered or paid by the petitioners. He draws attention to rule 3 of Distillation Rules, 1966. Licence, as such, had expired and had lapsed. Even after notice dated 5th February, 2019 or approval to LOI had been issued in favour of respondent No. 5 on 21st June, 2019, petitioners had neither moved nor had made any effort to relive the licence.

66. While notice pursuant to provisions had been issued to petitioners and petitioners would not make out any case showing that situation is not covered by section 54 (1) (b) of the Prohibition Act, nor had come out of the same. He, therefore, submits that action and resistance to issue licence to respondent No. 5 and cancellation in the proceedings is imbued with *malafides* and is a dilatory tactic. State has been deprived of its legitimate revenue all these years. He, thus, submits that there is no substance in the writ petitions and those deserve to be dismissed in limine.

67. Learned senior advocate Mr. Subodh Dharmadhikari, appearing with Mr. B. K. Patil, for respondent No. 5, vehemently

submits that all the relevant facts have been kept back from the court by the petitioners making quite a few fallacious claims. He submits that, in the first place, impression sought to be created that CL-1 licence related to the entire property has been improper. Nor CL-1 licence has anything to do with the property purchased by respondent No. 5.

68. He submits that petitioners have suppressed factual position that while initially property admeasuring 6 *Hectare*, 1 *Are* from lands bearing Gut No. 26 and 27 had been in security with Union Bank of India, subsequently, there had been separation of the property and was divided into parts and the part having area of 4 *Hectare*, 73 *Are* comprising lands from both the guts *viz.*, 26 and 27, had been in security with Union Bank of India. Whereas, rest of the land was given in security to Canara Bank by petitioners for security of loan to bottling plant. Form I licence has no concern with property mortgaged with Canara bank. He submits that this vital aspect involved in the matter has been kept away from the court by the petitioners with a view to induce the court to believe that Form I (15) licence relates to entire property.

69. He submits that after separation of securities, as repayment of loan had been defaulted by the petitioners, the

financier-Union Bank of India had taken action pursuant to provisions of the Securitization Act, culminating into sale of property to respondent No. 5.

70. He submits that much capital is sought to be made out of little errors creeping in making reference to property in auction. Securitization application No. 30 of 2018 had been moved and in the same, a statement initially had been made on behalf of the bank that sale certificate and further process would not take place till the next date. He submits, on 21st September, 2019, the record would reveal that, restraint on bank under the statement on behalf of the bank had come to an end. Thereafter, sale certificate had been issued as well as sale deed had been executed on 27th September, 2019 and 29th September, 2019, respectively. Huge amount had been invested in purchase of property, with a view to generate business for which licence is required. Accordingly, an application had been made to the authorities by respondent No.5.

71. Learned senior advocate goes on to submit that hearing before approval to LOI or granting LOI is not required nor any rules or procedure in this respect provide for the same. It is a matter of authority's satisfaction, about capability and competence of the applicant to have licence and carry on

business, that matters. Petitioners would hardly have any say in the same and, as such, there is no substance in writ petition No. 12756 of 2019.

72. While the matter being falling under clause (b) of sub section (1) of section 54 of the Prohibition Act, a notice had in fact been issued to the petitioners, which has not been disclosed by the petitioners anywhere. It had to be pointed out in the reply filed by the authorities. He submits that all along, effort on the petitioners' side is to keep away from the court that communications from time to time for hearing were issued to the petitioners, were in respect of Form I licence and not anything else. Conduct of the petitioners, according to learned senior advocate, is reprehensible.

73. He submits that contentions on behalf of the petitioners on the ground of principles of natural justice are vacuous. Ample opportunity had come their way, however, since their intention being not clean, baseless and worthless objections are being frequently resorted to.

74. He refers to a decision of the Supreme Court in the case of *"Managing Director, ECIL, Hyderabad and Others V/s B. Karunakar and Others"* reported in (1993) 4 SCC 727 and points out paragraph No. 21 from

the same and contends that rules of natural justice would not be gauged by strait jacket formula and would have to be considered having regard to context, facts and circumstances of each case.

75. Apart from aforesaid, he submits that the *mala fides* of the petitioners are writ large, they have started acting only after approval to LOI had been issued and are bent on to procrastinate grant of licence to respondent No. 5 with a view to wear out respondent No. 5.

76. He further submits that petitioners had skipped to refer to that Form I (15) licence granted to the petitioners is under the signature of official of home department and that is why licence has not been placed on record by the petitioners. He submits that sufficient explanation has come forth from the authorities about state excise department being under umbrella of home department. According to him, citizen charter cannot be whisked away, relying on down loaded pages to impute absolute separation. He, referring to the citizen charter, submits that there is sufficient explanation. He submits that having regard to provisions of the Prohibition Act, licencing authority is indeed the State government comprising, *inter alia*, home department.

77. Mr. Dharmadhikari submits that rules, particularly rule 3

(5) of Distillation Rules, 1966 will have full play in the matter. Petitioners' licence stood lapsed upon failure to renew the same after 31st March, 2011. He submits that even it is not the case of the petitioners that they had ever tried to have renewal of licence till order dated 20th December, 2019 had been issued at any time after March, 2011.

78. Respondent No. 5 submits, dilatory tactics were being adopted on behalf of petitioners, while their licence had expired since 2011 and had lapsed. There had been no effort at all to have its revival. Notice had been issued to the petitioners by way of abundant precaution when in law, the licence already stood cancelled. Nothing is placed on record to show any effort to have revival of licence after its expiry under Distillation Rules 1966. No prejudice on that count can be said to have been caused to the petitioners.

79. He submits that the petitions have been moved with a view to protract granting of Form I licence to respondent No.5. Respondent No. 5 under interim order, is suffering heavily, as referred to in the affidavit in reply lot of money had been expended in purchase and over renovation, repairs and modernization of manufacturing plant and apart from that, amount is being expended over personnel and maintenance of

the property.

80. He submits that the petitioners though refer to order dated 13th April, 2018 in Securitization Application No. 30 of 2018 and order dated 6th November, 2019, yet, it will have to be taken into account that the DRT has observed that proceedings before it would not relate to grant of licence to respondent No. 5 and would not impede progress in the same, pointing out paragraph No. 9 of order dated 14th August, 2020.

81. He, therefore, urges not to indulge into request of the petitioners and requests to dismiss the petitions.

82. While arguments are so advanced on behalf of the petitioners and the respondents, documents placed in court depict that area of 4 *Acre, 73 Guntha* comprising portions of lands from Gut No. 26 and 27 got segregated under acts of the financier and the petitioners. Said 4 *Hectare, 73 Are* had been in security with Union Bank of India. While petitioners had defaulted repayment of loan, proceedings pursuant to Securitization Act *viz.*, Original Application No. 37 of 2013 had ensued before Debts Recovery Tribunal (DRT) and under the same, property in security with Union Bank of India had been put to auction. Sale proceedings were purportedly objected to in

securitization application No. 30 of 2018. On 13th April, 2018, learned advocate for the bank had made a statement to the effect that sale certificate would not be issued to respondent No. 5 until next date. On 21st September, 2018, it emanates from the statement, on behalf of the petitioners before DRT, in respect of operation of interim relief, that it no longer survived. Thereafter, it appears sale certificate was issued on 27th September, 2018 and sale deed was executed on 29th September, 2018.

83. It appears that respondent No. 5, upon aforesaid purchase, had applied to the State authorities for grant of licence. In the circumstances, notice had been issued to the petitioners on 5th February, 2019 pursuant to section 54 (1) (b) of the Prohibition Act in respect of Form I licence but the same had been returned unclaimed. It appears the notice had been sent on the very same address of the present petitioners as is shown in title cause of the writ petitions.

84. It is referred to on behalf of the respondent No. 5 that exercise in order to gauge its competence, capability and capacity had been undertaken and thereupon approval to LOI had been issued on 29th June, 2019 and later even LOI had been issued on 15th July, 2019

85. Petitioners had been dormant till approval to LOI had been issued and purportedly objected to approval to LOI on 29th July, 2019.

86. Petitioners have referred to that on 31st July, 2019 a communication had been issued to them. They have not placed on record said communication. However, the same has been appended to their reply to the petition filed by the respondents which shows that the petitioners were called upon for hearing on 7th August, 2019 in respect Form I licence and not with reference to CL-1 licence or for that matter LOI. On 8th / 9th August, 2019, petitioners had been to authorities as also written submissions were made on their behalf. Only one page of their written objections has been annexed to writ petition No. 12756 of 2019 at page 61 by petitioners, which also refers to licence No. F-I (15). Thereafter, property had been visited, inspected and documents were verified and report had been made on 13th August, 2019 by Deputy Superintendent and subsequently by Superintendent on 21st August, 2019 referring to cancellation of licence to petitioners and granting licence to respondent No. 5, same property being involved. Though petitioners have referred to documents dated 27th and 29th August, 2019, same have not been placed on record.

87. While petitioners contend that reports dated 13th August, 2019 and 21st August, 2019, respectively made by Deputy Superintendent and Superintendent referring to impediment of CL-1 licence, yet, said reports placed on record appear to refer to that the LOI is in respect of licence to respondent No. 5 and that the petitioners have been divested of land, machinery and plant, over which Form I licence No. 15 had been given to the petitioners. Thus, one thing emerges that as against the impression carried by the petitioners that the reports relate to CL-1 licence, the position appears to be otherwise. It appears to have been suggested that action for surrender petitioners' licence may be resorted to. At the same time no objection to grant Form-1 licence to respondent No. 5 to manufacture in the property had also been given.

88. Respondent No. 2 after examining reports had forwarded the same to respondent No. 1 - State of Maharashtra. Accordingly, notice came to be issued from office of respondent No. 1 on 6th September, 2019 calling the petitioners for hearing on 11th September, 2019, which was subsequently posted on 13th September, 2019 and the petitioners had attended the same and also made written submissions. Submissions on 13th September, 2019 also refer to Form I licence. Reference is also made in the

same to written submissions on 8th August, 2019 before Deputy Superintendent which were also in respect of Form I licence. According to the respondents, in communication dated 17th September, 2019, petitioners had been clear on that they were not to add anything to the submissions, which were already made.

89. Documents all along reflect that those are in respect of Form I licence and not with respect to CL-1 and hearing had been taking place in respect of Form I licence. All the communications from government continually refer to that those were in respect of Form I licence, yet all along effort of the petitioners has been to create an impression that the petitioners were not being given opportunity in respect of Form I licence.

90. While it has been contended that no proper procedure is being followed in granting licence to respondent No. 5 or cancelling petitioners' licence, it appears that Rule 3 of Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules, 1966 (Distillation Rules 1966) would be pertinent to be referred to. Rule 3 stipulates that a person desiring to construct and work distillery for manufacture of spirit shall make an application for licence to the State government and on receipt of application and after making such inquiries, as may be

necessary, commissioner is to forward application to State government with his remarks and if the State government is satisfied, it may grant licence.

91. Proposal dated 20th September, 2019 submitted by respondent No. 2 - the commissioner takes stock of the situation observing that the subject property, over which issue of Form I licence has been raised, has been sold to respondent No. 5 under an auction at the instance of financier - Union Bank of India and that the same is subject to decision of DRT. LOI has been issued to respondent No. 5, having regard to that plant, machinery and land has been transferred to respondent No. 5. Purpose underlying Form I (15) licence of the petitioner is not getting fulfilled and, thus, notice under section 54 (1) (b) of the Prohibition Act had been issued to the petitioners. It has further been referred to that in the present matter, it would not be a case that there is any impediment to issue Form I licence. In the facts and circumstances, while the power to grant or refuse licence vests with the State and that as the land, plant and machinery have been transferred to respondent No. 5, it had been recommended that it would be proper to grant licence to respondent No. 5 and proposed to pass orders accordingly subject to decision of DRT.

92. Petitioners purport to rely on a decision of the Supreme Court in the case of *“Dharampal Satyapal Limited V/s Deputy Commissioner of Central Excise, Gauhati”* (*supra*) emphasizing natural justice imperatives. Said decision appears to have been on the background that while concessions were purportedly given to the industry coming up in north eastern area with effect from 1997, same were taken away by subsequent notification. In the circumstances, recovery of tax was being pursued. In paragraph No. 15 of the judgment it has been referred to that issue is as to whether it was mandatory to issue show cause notice before making order of recovery while it appears no notice was given. The commissioner (appeals) had held in favour of assessee, but Central Excise and Service Tax Tribunal had set aside his order. The Supreme Court in paragraph No. 38 has observed that while law on principle *audi alteram partem*, has progressed, principles of natural justice are not to be applied in straight jacket formula and those would be resilient. It depends on the kind of functions performed and the extent to which person is likely to be affected. It is further being referred to in paragraph No. 39 that principles of natural justice are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals etc. Yet, there are situations and circumstances

would be so that a fair hearing “would make no difference”, meaning that a hearing would not change the ultimate conclusion reached by the decision maker, then hearing may be of no avail. Finally, looking at the issue involved, appeal by the assessee had been dismissed by the Supreme Court.

93. It may not be out of place to refer to from paragraph No. 39 following observations of Lord Wilberforce in “*Malloch V. Aberdeen Corpn.*” (*WLR . 1595 : ALL ER p. 1294*) as have been reproduced thereunder

“.... A breach of procedure cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court does not act in vain.”

94. In the rejoinder, petitioners have appended copy of order of DRT dated 14th August, 2020, wherein, in paragraph No. 9, it has been opined that *status quo* order had not been in respect of granting of licence and licence is questioned in high court.

95. All the respondents viz., respondents No.1 to 6 vehemently submit that all along the petitioners have been fallaciously projecting case and had been concealing correct factual position, particularly that the subject matter concerns Form I licence and had kept away his Form I licence from the court, which had expired long back in 2011. Petitioners had

neither attempted to stall lapsing of licence nor have got the same renewed at any point of time hitherto.

96. Petitioners have not been able to show that they had ever attempted to keep alive Form I licence after March, 2011 or had applied for renewal of the same, it is not even their case.

97. In the present matter, while capital is sought to be made out of the reports of authorities, deputy superintendent and superintendent, that those are with reference to CL-1 licence, being attached to property concerned, yet, CL-1 licence has not been brought before this court to show that it has nexus with the property concerned.

98. Section 26 of the Prohibition Act gives significant indication of that power to issue licence for construction and working of distillery in which spirit may be manufactured, is with the State government.

99. The Distillation Rules also depict that issue of licence for manufacture of the kind applied for by respondent No. 5 is resting with the State government. Petitioners have not been able to show that said power of the State government had been delegated to Commissioner / other subordinate officer.

100. Rule 4 of the Distillation Rules, vests the State government with power to renew the licence and also provides for consequences of failure to pay renewal fees that the same shall be treated as cancelled. Rule 3 (5) read with proviso to Rule 4 of the Distillation Rules lends lot of force to the contentions on behalf of respondents that upon expiry of the period of licence and on failure to have renewal, same deserves to be treated as cancelled.

101. Further, section 56 of the Prohibition Act appears to invest the authority granting licence to cancel the same even for causes other than specified in section 54 of the Act with notice or without notice with reasons.

102. Impugned order dated 20th December, 2019 appears to have been passed by the State government after issuing notice and calling petitioners for hearing. Impugned order also gives reference of the proposal dated 20th September, 2019. Further, with coming to an end of rights in the land and manufacturing plant and machinery, which is subject to decision by DRT, the purpose, for which licence had been granted, which appears to have lapsed, so far as petitioners are concerned does not appear to continue to subsist.

103. It is being contended that department of home affairs has nothing to do with state excise department is concerned, while a copy of Form I (15) licence granted to petitioners has been produced on behalf of respondents, it may have to be taken into account that Form I (15) licence granted to the petitioners is under the signature of Additional Secretary of home department issued in 2009 and the same had been renewed only once and had come to an end after 31st March, 2011.

104. The citizen's charter, issued by Home Department of State government appears to contain various departments *viz*; police and state excise among others. Under the same, works of home department in general have been enlisted referring particularly to, among others, police, state excise. It further, under its schedule, refers to that the authority to grant licence Form I rests with the State government.

105. Petitioners contend, citizens charter relied on is issued decades ago, is of 1985 and may not hold presently. It has been stated on affidavit on behalf of the respondents that state excise department continues to be under umbrella of home affairs and is concerned with home department and its works and functions are under its aegis. The citizens charter shows that granting of licence to manufacture spirit and alcohol, referring to rule 3 of

Distillation Rules, 1966, is with the State government. In 2009 licence had been issued in favour of the petitioners by home department and is not contended by petitioners to be without authority. This deflates contention of the petitioners that licencing is not a matter concerned with home department. Petitioners further could not point out that there is inter departmental water tight compartmentalization. The contention of the petitioners that Home department has no concern with granting and / or cancellation of Form I licence does not appear to hold any water. In the circumstances, this being an act of the State, is an irrefutable matter.

106. In the scenario, the petitioners have skipped over many relevant aspects and while DRT as well has referred to that granting of licence seldom has any concern with the proceedings before it, facts and circumstances are not conducive to lean in favour of the petitioners in discretionary powers of this court. Petitioners do not appear to have been able to build foundation strong enough to give indulgence into their request. Having regard to facts, circumstances, foregoing discussion and taking overall view in the matter, a pedantic approach would be required to be eschewed. In view of above, impugned order would not be liable to be faulted with. We are, therefore, not

inclined to entertain the writ petitions any further.

107. Writ petitions, therefore, crumble down and are dismissed.
Rule stands discharged.

108. At this stage, learned advocate for the petitioners requests for continuation of interim order for a further period of four weeks. In the given circumstances, we find it difficult to accede to the request made to continue the relief.

[R. G. AVACHAT]
JUDGE

[SUNIL P. DESHMUKH]
JUDGE