SYED ROSHAN ZAMIR ALI

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2025:CGHC:61968

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Judgment reserved on 09.10.2025

Judgment delivered on 23/12/2025

FA No. 112 of 2009

1. State of Chhattisgarh through the Assistant Commissioner, Excise, District Korba.

... Appellant/defendant

versus

1. Smt.Anita Devi Agrawal Pro. Hotel Centre Point, TP Nagar, Korba, District Korba.

... Respondent/plaintiff

For appellant	:	Mr. Kalpesh Ruparel, Panel Lawyer
For Respondent	:	Mr. K.D. Singh, Advocate

Hon'ble Shri Justice Parth Prateem Sahu

CAV Order

1. Appellant-State has preferred this first appeal under Section 96 of the Code of Civil Procedure, 1908 against the judgment and decree dated 29.8.2008 passed in Civil Suit No.11A/2007 by which learned 2nd Additional District Judge (FTC) Korba decree suit of plaintiff/respondent herein and declared the proceeding initiated against plaintiff/respondent herein for

recovery of Rs.1,00,000/- towards arrears of license fee to be illegal.

2. Facts of the case, in brief, are that plaintiff/respondent herein filed a civil suit for declaring recovery of difference of license fee of Rs.1,00,000/- by defendant/appellant herein to be illegal and further restraining defendant from such recovery, pleadings *inter alia* that plaintiff is owner of Hotel Central Point located at Transport Nagar, Korba. Plaintiff, after obtaining valid FL-3 license from concerned authority, selling/serving open foreign liquor in hotel. Plaintiff has obtained license for sale of open liquor for the period 2001-02 and paid Rs.6 Lakhs towards bar license fee as is fixed for a city having population up to 3,00,000. Defendant issued letter dated 24.12.2003 calling upon plaintiff to deposit Rs.1,00,000/- against difference of license fee on the ground that there was an audit objection as on the date of issuance of license for the period 2001-02, population of Korba city was above 3 Lakhs and therefore, license fee to be paid by plaintiff was Rs.7 Lakhs. Notice was replied by plaintiff on 22.3.2004 stating therein that Municipal Corporation, which is one of the institution of the State, has given information about the population of Korba city during that period, as 2,36,219. Difference of license fee is claimed after long time of about two years. Recovery of Rs.1,00,000/- stating to be towards

difference of license fee is not permissible when demand is made after completion of period of license of one year. Plaintiff has fixed the charges for selling open liquor in hotel in ratio of license fee paid in this regard.

3. Defendant filed written statement denying the pleadings made in plaint. It was admitted in written statement that FL3 license was issued to plaintiff in the year 2001-2002 upon deposit of license fee of Rs.6,00,000/- considering the population of Korba city in between 1,00,000 to 3,00,000. According to information gathered from District Statistical Officer, Korba, population of Korba at relevant point of time was 3,15,695/- and only thereafter demand of balance license fee of Rs.1,00,000/- was raised. Population of Korba during period when license was issued to petitioner was less than 3,00,000 is considered on the basis of information supplied by plaintiff obtained from the office of Municipal Corporation, which was not correct. According to the procedure prescribed for grant of FL-3 license in the city having population of more than 3,00,000, license fee was Rs.7,00,000/-. Plaintiff, however, deposited Rs.6,00,000/- only and therefore, demand of difference of license fee of Rs.1,00,000/- was made through letters issued in this regard to plaintiff.

4. Learned trial Court considering the pleadings made by respective parties, has formulated four issues for

consideration and after providing opportunity to respective parties to lead evidence, considering the documentary and oral evidence brought on record, has allowed the suit filed by plaintiff/respondent herein observing that demand made by defendant of Rs.1,00,000/- towards different of license fee to be illegal and permanently restrained defendant from initiating proceeding of recovery of Rs.1,00,000/- from plaintiff.

5. Learned counsel for defendant/appellant would submit that based on information supplied by plaintiff/respondent herein that population of Korba city is less than 3,00,0000 in the application for grant of FL3 license/its renewal, license fee of Rs.6,00,000/- was accepted from plaintiff. However, according to the letter of the District Statistical Officer, as per Census of 2001 population of Korba was more than 3,00,000, therefore, the demand of difference of license fee was made. Population as projected by plaintiff/respondent herein to be less than 3,00,000 is erroneous and therefore, the demand raised cannot be said to be arbitrary or illegal in any manner. Learned trial Court though recorded that on the date of issuance of FL3 license, according to Census 2001, population was more than 3,00,000 i.e. 3,15,695, but allowed the suit applying provisions of Section 115 of the Evidence Act, which in the facts of the case is erroneous. Hence, he

prays that judgment and decree passed by learned trial Court be set aside and appeal be allowed.

6. Learned counsel for plaintiff/respondent herein opposing submissions of learned counsel for the defendant/appellant, would submit that at the time of depositing license fee, defendant/appellant would have called for information/report about actual population of Korba city. Once license fee is accepted by respondent considering population to be less than 3,00,000, and further that period of license of one year is already expired on the date of making the demand, the notice/letter issued by appellant State demanding alleged difference of license fee thereafter, is bad in law. Though in the letter written by defendant/appellant basis of knowledge about population is the letter of the District Statistical Officer, however, neither the letter of the District Statistical Officer is produced nor any official is examined as a witness to prove the pleadings made in written statement. There is no suppression of any material fact by plaintiff and therefore, recovery under the head of different of license fee that too after expiry of period of one year of FL3 license is bad in law and therefore, learned trial Court has rightly decreed the suit.

7. Heard learned counsel for respective parties and perused the documents placed on record.

8. It is not in dispute that plaintiff/respondent is owner of Hotel Central Point situated in Tranport Nagar, Korba. Grant of FL 3 license by appellant for the period 2001-02 is also not in dispute. It is also not in dispute that license fee is prescribed and fixed by defendant/appellant based on the population of the city concerned. Plaintiff/respondent herein submitted an application for grant of FL3 license for the period from 2001-02, deposited fee of Rs.6 Lakhs considering information supply by the Estate Officer, Municipal Corporation Korba that population of Korba city is less than 3,00,000 i.e. 2,36,219. At the time of accepting license fee and prior to issuance of license, no objection is raised by defendant/appellant department. In fact, FL-3 License was issued in favour of plaintiff/respondent.

9. From the pleadings made in written statement as also contents of impugned judgment and decree it is reflecting that on the basis of information supplied by the District Statistical Officer that population of Korba city in 2001-02 was 3,15,695, a letter was issued for the first time on 24.12.2003 asking plaintiff/respondent herein to deposit Rs.1,00,000/- towards difference of license fee within a period of 07 days.

10. Burden to prove the pleadings made in plaint is upon the plaintiff. In support of pleadings made in plaint, plaintiff/respondent herein has produced six documents.

Ex.P-1 is the letter dated 20.2.2006 issued by the Assistant Excise Commissioner, Korba under the subject “for deposit of difference of license fee”. Ex.P-2 is the letter dated 2.4.2024 issued to plaintiff/respondent by Assistant Excise Commissioner, Korba and under reference column there is mention of letter dated 24.12.2003 and reply letter sent by plaintiff/respondent herein dated 22.3.2004. From the reference column of letter dated 2.4.2004 (Ex.P-2) it is appearing that first letter which is sent by defendant/appellant Department to the plaintiff/respondent, is of 24.12.2003 Letter dated 24.12.2003 is produced as Ex.P-3. In the body of this letter it is mentioned that according to information of the District Statistical Officer, population of Korba city in the year 2001-2002 was 3,15,695. Plaintiff deposited only Rs.6,00,000/- as license fee and thereby had deposited Rs.1,00,000/- less towards license fee.

11. Ex.P-4 is the reply letter given by plaintiff to letter Ex.P-3. Ex.P-5 is the letter dated 12.3.2004 in the form of information given by the Estate Officer based on Census of the year 1991 and further mentioning that record of population of Census 2001 is not received in the office.

12. To prove the documents, plaintiff has examined Manoj Kedia as PW-1 and BP Tiwari, Estate Officer, Municipal Corporation Korba as PW-2. Manoj Kedia (PW-1) is the power of attorney

holder of plaintiff. He in his examination in chief stated that he is power of attorney of plaintiff Anita Devi Agrawal, proprietor of Hotel Central Point. He is working as Manager since last 10 years in hotel of plaintiff. FL-3 license for the hotel was issued by defendant department after deposit of requisite license fee by plaintiff i.e. Rs.6 Lakhs. He further stated that according to information gathered from Municipal Corporation Korba about population of Korba city as 2,32,219, an amount of Rs.6 Lakhs towards license fee was deposited. This witness was extensively cross-examined by defendant. In cross-examination he has stated that he cannot make statement positively that population of Korba city in the year 2001-02 was less than 3 lakhs. He also denied the suggestion given about population of Korba during 2001-02 as 315695.

13. BP Tiwari (PW-2), an employee/Estate Officer of Municipal Corporation Korba, has stated that after perusal of record of Census of 1991 information was given to the plaintiff that in the year 2001 population of Korba city was 2,36,219. He further deposed that at the time when information was supplied to plaintiff on 12.3.2004, any record relating to Census of 2001 was not available with the Municipal Corporation. He also stated that information about the population based on Census of 2001 was received in the year

2005. He admitted that as of know he is aware that according to Census of 2001 population of Korba Municipal Corporation was 315695. He also stated that when he gave certificate to the plaintiff, at that time no information/input was gathered from the District Statistical Officer / Collector, Korba. He also admitted that when certificate was issued to plaintiff, no information was available in the office of Municipal Corporation with regard to population of Korba city based on Census of 2001.

14. Defendant even after giving several opportunities, failed to examine any person as a witness and right to lead evidence was closed vide order dated 8.8.2008 recording that many opportunities have been given to defendant State.

15. Plaintiff filed the suit against demand raised by defendant of difference of license fee of Rs.1,00,000/- vide letter dated 24.12.2003, whereas period of license expired on 31.3.2002. Defendant who issued letter has not examined any witness nor produced any document to show when population based on Census of 2001 was declared publicly. Copy of FL3 license issued in favour of plaintiff has also not been produced by any of the parties nor it is case of defendant that based on terms and conditions of license, defendant can recover amount in the garb of difference of license fee after completion /expiry of period of FL3 license of one year which

came to an end on 31.3.2002, whereas demand is made for the first time on 24.12.2003.

16. Learned trial Court while deciding the suit has observed that knowledge of population of Korba city was in fact to have been available with the department. It is defendant department who issued license after accepting license fee based on the population and therefore a duty was cast upon defendant department to make demand of license fee based on the information and data with regard to population available in the department. License is issued for running business of liquor. A businessman normally fixes rates of goods to be sold by him. In case at hand, respondent is in the business of hotel and bar, therefore, in normal course first they calculate cost of good, add certain expenditure and income and thereafter fix sale price of it. When license fee is charged by appellant department of Rs.6,00,000/- for the year 2001-02 and during entire period of license, no further demand is raised even in the garb of difference of license fee, then appellant department is estopped from claiming/ demanding any amount as difference of FL3 license fee that too after expiry of period of license. In this case, demand is raised after about more than 1 ½ year of expiry of license. Defendant/appellant has not produced any evidence as to when population based on Census of 2001 is made public

and data has been forwarded to the concerned department which in the facts and circumstances of the case is important. If based on Census of 2001 data of population based on Census of 2001 is published much after the issuance of license then it cannot be applied to the license which was already issued pursuant to the date of population available in record based on earlier census. Defendant has not proved by placing cogent evidence before learned trial Court that any other data was available either in Municipal Corporation or in the department to show that according to acceptable data published by any government department was available showing population of Korba city to be more than 3,00,000.

17. Learned trial Court while deciding Issue No.1 has recorded finding that population of Korba Municipal Corporation in the year 2001-02 was not less than 3 Lakh but more. So far as it relates to facts of present case, it is not germane but what is important and relevant is whether on the date of issuance of license any such government record/data was available with the government department or municipal corporation. Said fact remained unproved. Burden to prove this fact was upon defendant/appellant when it is defendant who had raised a demand asking plaintiff to deposit Rs.1,00,000/- towards different of license fee on the ground that population of Municipal Corporation Korba was more than 3 Lakhs in which

they utterly failed as no oral evidence is recorded nor any document is produced in this regard.

18. For the foregoing discussion, I do not find any good ground to interfere with the findings recorded by learned trial Court to decree the suit of the plaintiff/respondent herein. Consequently, appeal being sans merit is liable to be and is hereby dismissed.

19. A decree be drawn-up accordingly.

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-