2025:BHC-AS:9590-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7921 OF 2024

ıtbhumi Hotels & Resorts Pvt. Ltd. … Petitioner
Vs.
The State of Maharashtra … Respondent

Mr. Anil Sakhare a/w. Mr. Manish Kelkar for the petitioner.
Ms. S.D. Vyas, Addl. G.P. a/w. Ms. Tejas Kapre, AGP for respondent/State.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
DATED: 26 FEBRUARY 2025

ORAL ORDER: (Per G.S. Kulkarni, J.)

1. The petitioner, formerly known as Mumbai Gambling Management Pvt. Ltd., has filed this petition under Article 226 of the Constitution of India praying for a relief that Maharashtra Casinos (Control and Tax) Act, 1976 (for short the "**Maharashtra Casinos Act 1976**"), which was never notified and brought into force, and which in fact stood repealed by the Maharashtra Casinos (Control and Tax) (Repeal) Act, 2023, be directed to be brought into force, by declaring that the said Repeal Act, 2023 is ultra vires the Constitution of India.

2. The relief as prayed for is too far-fetched for more than one reason. It is completely within the domain of Legislature to enact a particular law as also to repeal such law. About 49 years back, the State Legislature enacted the Maharashtra Casinos Act in the year 1976. Admittedly, the State as a matter of

public policy never thought it appropriate to bring the said legislation into force.

3. The petitioner is engaged in hospitality business and is running hotels and resorts and was desirous to open and operate casinos in the State of Maharashtra. In this regard, the petitioner is stated to have made a proposal to the State authorities including the Maharashtra Tourism Development Corporation.

4. Mr. Sakhare, learned senior counsel for the petitioner has drawn our attention to an order dated 9 October, 2015 passed by this Court on Public Interest Litigation No. 19 of 2015 whereby the State Government was granted six months time to take an appropriate decision on the question whether the State Government intends to bring the provisions of Maharashtra Casinos Act, 1976 into force. The said order reads thus:

> "1. By an order dated 4 September, 2015, we had directed the State Government to decide within a reasonable time the question whether it intends to bring the provisions of the Maharashtra Casinos (Control & Tax) act, 1976 (Maharashtra Act No. XXXI of 1976) into force.
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> 2. We are informed that the decision has not been taken by the State Government so far. We give six months time to take an appropriate decision accordingly. The PIL is disposed of in the aforesaid terms. Liberty is granted to the petitioner to apply."

5. Mr. Sakhare's grievance is that no decision was taken by the State Government although the aforesaid order was passed by this Court. It is submitted that the State Government in fact took a decision, not to bring the

Maharashtra Casinos Act, 1976 into force as seen from a departmental note dated 19 July, 2023, which was moved upto the highest office of the Chief Minister. A copy of such note is annexed at page 102 of the petition.

6. Mr. Sakhare submits that thereafter the State Government decided that the Maharashtra Casinos Act, 1976 be repealed. Accordingly, the State Legislature passed the Repeal Act, 2023. The petitioner being aggrieved by such action on the part of the respondents has filed the present petition praying for the following substantive reliefs:

> "a) That this Hon'ble Court may be pleased to issue Writ in the nature of Mandamus or such other appropriate writ, order or direction thereby holding and declaring that the Maharashtra Casinos (Control & Tax) (Repeal) Act, 2023 is ultra vires the Constitution of India;
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> b) That this Hon'ble Court may be pleased to issue a Writ in the nature of Mandamus or such other appropriate writ, order or direction, thereby directing the Respondent to issue the notification as contemplated under Section 2 of the Maharashtra Casinos (Control and Tax) Act, 1976 and notify the date from which such Act would come into force;
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> c) That this Hon'ble Court may be pleased to issue a Writ in the nature of Mandamus or such other appropriate writ, order or direction to the Respondent directing the Respondent to decide the applications made by the Petitioner for running casinos in hotels, floating hotels, cruises and independent resorts in accordance with the provisions of the Maharashtra Casinos (Control and Tax), 1976;"

7. Having heard the learned counsel for the parties and having perused the record, at the outset, we may observe that none of the rights of the petitioner under the Maharashtra Casinos Act, 1976 are affected so that the petitioner, can be said to be aggrieved by the Repeal Act, for the reason that Maharashtra Casinos Act, 1976 was never brought into force. The Act was "still born".

Hence, when the Act itself was a dead letter, no legal rights whatsoever could accrue to the petitioner so as to maintain this petition.

8. In any case, we cannot countenance an argument that a legislation which was not brought into force can create any legal rights in favour of any person. For such reason, there cannot be any objection to the repeal of the said Act, as both the actions of the State Legislature, namely, to frame a law and to repeal the law is wholly the prerogative and the domain of the State Legislature within its powers under the Constitution of India.

9. The prayers in the petition are indirectly a relief that the Legislature be directed to re-legislate the Maharashtra Casinos Act, 1976. It can never be that by setting aside of the Repeal Act, 2023, the petitioner would achieve revival/re-birth of the original legislation, for the reason that the consequence of the repeal of the Act has already taken effect, namely, that Maharashtra Casinos Act, 1976 is no more on the statute book, as it lays deeply buried. There cannot be a writ to be issued to the Legislature to unbury or re-legislate, which is in fact the relief of the petitioner. Hence, such revival of the Maharashtra Casinos Act, 1976 and that too by a Writ of the Court, is an impossibility and a far-fetched expectation, of the petitioner, which the law can never recognize.

10. For another reason, prayer (a) as made by the petitioner cannot be granted, as an act of the legislature can be declared ultra vires on three established parameters. Firstly, that the legislation is beyond the legislative

competence; secondly, it is violative of the fundamental rights guaranteed under the Constitution or any other constitutional provisions; and thirdly, it is manifestly arbitrary. We fail to understand as to how any of its parameters stand attracted in the present case to declare the Repeal Act unconstitutional and more particularly when the principal act itself was not notified.

11. Resultantly, we have no manner of doubt that the petition is patently misconceived. It is accordingly rejected. No costs.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI, J.)

Signed by: Vidya S. Amin
Designation: PS To Honourable Judge
Date: 28/02/2025 17:10:29