

(2009) 04 KL CK 0006

In the High Court Of Kerala

Case No : Writ Petition (C) No. 10573 of 2008

Abdul Hameed, M. and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-04-2009

Acts Referred:

Kerala Abkari Act, 1077 — Section 64A

Citation : (2009) 1 KLJ 933

Hon'ble Judges : V. Giri, J

Bench : Single Bench

Advocate : N. Subramanian and M.S. Narayanan, for the Appellant; Sudhadevi, Government Pleader for Respondents 1 to 3, A.K. Chinnan and Susal A. Chinnan for 4th Respondent and N. Raghuraj, for 5th Respondent, for the Respondent

Final Decision : Dismissed

Judgement

V. Giri, J.—Does Section 64A of the Abkari Act, impliedly, require a licensee under the Abkari Act and the Foreign Liquor Rules to obtain the consent of the owner of the premises for renewal of the license to run a bar attached restaurant, where the licensee is not the owner of the premises? This is the question that has been posed for consideration in this case.

2. Petitioners, who are the owners of a building situated in Palarivattom, which had been leased out to the fourth Respondent for conduct of a bar attached hotel, seeks a direction to the licencing authorities under the Abkari Act and the State to ensure that the renewal of FL3 licence is not done without obtaining a written consent of the landlords and also to cancel the renewal if the license has already been renewed. The contention has been raised with reference to Section 64A of the Abkari Act which, in certain circumstances, provides for the owner of a land, building or other premises to be prosecuted for an offence thereunder, if he permits any person to use such premises for the manufacture, sale or storage or sale of liquor, in contravention of the Act.

3. The case of the Petitioners is that by a lease deed executed on 19-5-1998 and thereafter on 31-3-2005 the lessee had been permitted to run a bar, restaurant and a lodge for a period of 12 months. The lease was being renewed from time to time, the last renewal was with effect from 19-5-2006 to 18-5-2007 in relation to the first lease deed and with effect from 31-3-2006 to 30-3-2007 in relation to the second lease deed. There has been no renewal of the lease thereafter, but the tenant has continued by holding over.

4. It is alleged that the landlords require the premises for their purpose and reference is made in this regard to the second Petitioner who allegedly requires the same to set up a clinic of her own. Reference is also made to requirement of office "Space for the Petitioners. Petitioners have instituted Rent Control Petitions before the Rent Control Board, Ernakulam. The same are being prosecuted.

5. It is alleged that some of the workers employed by the licensee, the fourth Respondent, have been convicted for certain abkari offence, which has in turn given rise to an apprehension in the mind of the Petitioners that the premises which have been leased out are not being used in strict conformity with legal provisions. Petitioners therefore, have sent Ext. P-3 representation to the licensing authorities requiring them to refrain from renewing the FL3 licence except with their consent. It is specifically pointed out in Ext. P-3 that the landlords have come across instances where persons employed by the licensee have been convicted for offences under the Abkari Act. Therefore, the landlords apprehend that they themselves might be prosecuted for the offence u/s 64A of the Abkari Act. In these circumstances, as responsible owners of the premises, they are entitled to take such steps as are necessary to see that the user of the leased premises does not result in contravention of law. They are also entitled to see that the premises are not used by anybody in such a manner that it results in the contravention of the provisions of any law, including the Abkari Act. One legitimate step taken by the landlords, according to the Petitioners, is to withdraw the consent of the landlords for user of the premises and ensure that a licence, which enables the user of the premises to conduct a bar attached restaurant, is not renewed, and thereby obviate the possibility of a contravention of the provisions of the Abkari Act.

6. Writ petition has been filed broadly raising the above contentions and the following reliefs have been sought for.

(i) Issue a writ of mandamus directing Respondents 1 to 3 to ensure that renewal of the FL3 License granted to the 4th Respondent herein, and bearing No. 98/2006-07 [subsequently renewed on the basis of the interim order dated 21-3-2007 in W.P. (C)9535/2007] is not done without obtaining the written consent of the landlords, and to cancel the renewal if the license has already been renewed.

(ii) Declare that written consent of the landlord is necessary for renewal of any license of permissions under the Abkari Act or the Rules thereunder, if the

licensee is conducting its business in a rented premises.

7. Counter-affidavit has been filed by the State as also by the licensees.

8. I heard Mr. M.S. Narayanan, learned Counsel for the Petitioners, Smt. Sudha Devi, learned Senior Government Pleader, Mr. A.K. Chinnan, learned Counsel for the licensees and Mr. N. Raghuraj, learned Counsel appearing for the contesting Respondents.

9. It is fairly conceded by the learned Counsel for the Petitioners that the provisions of the Abkari Act and the Rules framed thereunder as they currently stand, do not require the consent of the landlords, for the renewal of an existing FL3 licence. Such a consent is required only when the premises are being licensed for the first time. That is to say, when the applicant for an FL3 licence is not the owner of the premises, in relation to which a licence is sought for, licensing authorities are entitled to insist on the consent of the owner of the premises for the user of the same. Subsistence of such a consent, for the continued use of the premises as a bar attached restaurant or for the renewal of the licence, whenever a renewal of the licence is sought for and required, is not an express requirement either under the Abkari Act or the Rules framed thereunder.

10. This position available under the statute has been found by this Court in Writ Petition No. 14757/2004 which has been affirmed by the Division Bench in Writ Appeal No. 1049/2005 wherein the Division Bench has held that "we agree with the view taken by the learned Single Judge that the consent of the building owner is necessary for giving licence only at the time of initial grant even though Government is free to cancel the licence on any other ground".

11. Learned Counsel for the Petitioners Mr. Narayanan submits that this Court's attention was not drawn to the provisions of Section 64A of the Abkari Act and if such provision is construed correctly, it would clearly indicate that the sanction of the landlords is necessary for the renewal of FL3 licence just as such a consent is necessary at the time of initial grant. Reference has also been made in this regard to certain observations made by Justice K.S. Radhakrishnan (as His Lordship then was) in *Salam Haji v. State of Kerala* 1999 (1) KLT 102.

12. Section 64A of the Abkari Act reads as follows:

Penalty for allowing land, building, room etc., for manufacture, sale or storing for sale of liquor or intoxicating drug .- Notwithstanding anything contained in this Act, or in any other law for the time being in force, any owner or occupier or person having control of, any land, building, room, space or enclosure, permits any person to use such land, building room, space or enclosure for manufacture sale or storing for sale of liquor or intoxicating drug in contravention of this Act or of any rule or order made thereunder or of any licence or permit obtained under this Act shall be punishable with fine which shall not less than twenty five thousand rupees unless he proves to be satisfaction of the court that all due and

reasonable precautions were taken by him to prevent such use.

13. The same was introduced by Act 12 of 1995. It essentially provides for the prosecution of the owner of any premises, or occupier or person having control of any land, building or other premises, when it is found that such premises have been used for manufacture, sale or storage for the sale of liquor in contravention of the provisions of the Act or the Rules or the licensing conditions as the case may be. It seeks to impress upon the owner or person having control of the premises, the necessity to be circumspect whenever he seeks to let the premises belonging to him or under his occupation for an activity which is regulated by the provisions of the Abkari Act and the Rules. It seeks to impress upon such persons the necessity to take such steps as are required to see that the premises in their occupation or which belongs to them are not used by any person, for an activity dealing with the manufacture, storage or sale of liquor, otherwise than as permitted by the Act or the Rules.

14. Permission to use any premises for the manufacture, storage or sale of liquor, given by the owner of a building to another person is not regulated by the provisions of the Abkari Act or Rules. When a person other than the owner of the premises, uses the same for any activity, law recognizes such user by virtue of a lease, or a licence. In certain cases, possession by a person other than the owner, could be on the strength of a mortgage as well which was the case considered in Writ Appeal No. 1049/2005. But in all such cases, whether it is by way of a lease, licence or a mortgage, there is a legitimacy to the possession asserted by the user of the premises. The relationship between the owner and the user is regulated either by the Transfer of Property Act or by the Easements Act, as the case may be. The manner in which such permission is granted and the relationship between the owner and the user are not governed by the provisions of the Abkari Act. They are governed by the law relating to immovable property, either the Transfer of Property Act or the Easements Act, as the case may be.

15. The right to evict any lessee from leasehold premises, constituted in areas covered by the Rent Control Act would obviously be governed by the provisions of the Kerala Building (Lease and Rent Control) Act (Act 2) of 1965.

16. The user of any premises for an FL3 licence is regulated by the provisions of the Abkari Act, Rules and the conditions in an FL3 licence. If therefore, the statute does not contemplate the requirement of a subsisting consent of the landlord, to be demonstrated by an express renewal of the original consent by the landlord, at every point of time when the licence is sought to be renewed, then, it would not be possible for any such requirement to be read into the statute. This is the gist of what has been laid down by this Court in Writ Appeal No. 1049/2005, as well. Is there anything in Section 64A of the Act which suggests a different view or which suggests that a subsisting consent of the landlord is necessary for renewal? Section 64A of the Act was challenged in Salim Haji's case. In paragraph 7 of the said judgment, the learned Judge while

upholding the validity of the said provision, also found that one comes across several instances/enactments including the Forest Act and Narcotic Drugs and Psychotropic Substances Act, containing similar provisions.

17. Thus, Section 64A of the Abkari Act is not intended to regulate the licensed activity or the licensing powers of the State. It is not even intended to regulate the right of the owner of a premises to let his premises to be used by either a lessee or a licensee for the purpose of a bar attached restaurant. It is intended only to see that the owner of a premises is circumspect in letting the premises belonging to him to be used for an activity which is otherwise comprehended by the provisions of the Abkari Act and the Rules. Learned Counsel for the Petitioners Mr. Narayanan, submits that the moment the authorities under the Abkari Act detect that the licensed premises has been used in such a manner as to contravene the provisions of the Act and the Rules, it straight away enables the officers to prosecute the owner of the premises also. I am unable to agree with the said submission. The closing portion of the Section makes it clear that it is still open to the landlord to prove that he in turn has taken all precautions to prevent an unauthorized, illegal or irregular use of premises. If the original permission has been granted by the owner of certain premises, by making it clear that the premises will be used, in accordance with law, then the owner of the premises/landlord would have discharged the burden to a considerable extent. When he comes across instances where the premises have used unauthorizedly, as is alleged to have been happened in the instant case, it is his responsibility and right to insist on his lessee or licensee, the necessity to see that the premises are not used for such illegal or unauthorized activities. If he does so, he can again claim to have discharged the burden as contemplated by Section 64A of the Act. If he brings to the notice of the licensing authorities the activities being continued by the lessee in an illegal fashion or unauthorizedly, he can again claim to have discharged the burden to a considerable extent. It is therefore, not a case where Section 64A is immediately attracted or that the landlord of a premises is liable to be convicted for an offence u/s 64A of the Act, the moment it is found that a building has been used in contravention of the provisions of the Act and the Rules. The question is whether the landlord or the owner of the premises had taken due precaution to see that no illegal or unauthorized activity is carried on in his premises and that he had taken care to prevent it as well.

18. As stated above, Section 64A is part of a plenary power available to the Government, intended to regulate an activity which is otherwise dangerous. But it is not intended to regulate the jural relationship between the owner and the lessee or the licensor and the licensee. These are matters which have to be dealt with under the Transfer of Property Act, Rent Control Act or for that matter, under the Easements Act. The provisions of Section 64A of the Abkari Act have no impact whatsoever on the licensing powers of the State or its officials, or regulatory measures, that any licensee under the Abkari Act will have to be subjected to for the purpose of carrying on an activity which is otherwise

regulated by the provisions of the Abkari Act.

19. In the result, I am of the view that Section 64A of the Abkari Act neither expressly nor by implication, suggests that the consent of the owner of the premises is required for renewal of an FL3 licence. In such circumstances, it cannot be said that the licensing authority has acted in an illegal manner in not insisting on the consent of the Petitioners for the renewal of the FL3 licence granted in favour of the fourth Respondent.

Petitioners are not entitled to the reliefs prayed for in the writ petition. Writ petition is bereft of merit and accordingly, the same is dismissed.