

(2014) 06 KL CK 0246

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 31325 of 2011

Alexander

APPELLANT

Vs

Mavelikkara Municipality

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Kerala Municipalities Act, 1994 — Section 447, 492, 492(3)

Citation : (2014) 3 ILR 440 : (2014) 3 KHC 131 : (2014) 3 KLT 225

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : P.B. Sahasranaman, T.S. Harikumar and K. Jagadeesh, Advocate for the Appellant; C. Rasheed, Millu Dandapani and Rasheed C. Nooranad, Advocate for the Respondent

Judgement

A.V. Ramakrishna Pillai, J.—Ex. P10 order passed by the Tribunal for Local Self Government Institutions is under challenge in this Writ Petition. The petitioner is the owner of a building bearing Door No. VI/142 of the Mavelikara Municipality which was given to the 3rd respondent for conducting fruit/vegetable business by a deed of leave and licence. The 3rd respondent obtained licence from the 1st respondent municipality to conduct the same. Subsequently, he stopped the said business and started restaurant in the premises without obtaining licence from the municipality.

2. As the 1st respondent demanded production of consent from the landlord, for considering his request of licence, the same was challenged by the 3rd respondent before the 2nd respondent. But the decision of the Secretary was upheld by the Municipal Council and directed the 3rd respondent to close the restaurant.

3. The petitioner further alleges that as the 3rd respondent has not complied with the directions of the municipality, the municipality was constrained to close down the restaurant with the help of the Police. However, the 3rd respondent broke down the locks put by the municipality and approached the Tribunal for

Local Self Government Institutions challenging the order of the 2nd respondent.

4. The learned Tribunal directed the municipality to grant licence to the 3rd respondent, which was challenged by the petitioner in O.P. (C) No. 2573 of 2011 before this Court and this Court by Ext. P9 judgment disposed of the O.P. along with O.P. (C) No. 3047 of 2011 filed by the municipality. The direction of the Tribunal was set aside and the Tribunal was directed to reconsider the matter afresh. Accordingly, the learned Tribunal by the impugned order found that the 3rd respondent has obtained a deemed licence and, therefore, permission from the owner of the building is not required. It is with this background, the petitioner has approached this Court.

5. In the detailed counter affidavit by the 3rd respondent it was contended that Ext. P10 order passed by the Tribunal is not liable to be interfered with. The allegation that the 3rd respondent broke down the locks put by the municipality was denied by him. The 3rd respondent would contend that initially he was occupying the shop room belonged to the petitioner's brother adjacent to the Vallakkattil theatre. Two months later, the petitioner requested him to shift the business to his building and Ext. P1 agreement was executed. The maintenance of the building was also done at his expense and he had spent more than Rs. 2 lakhs on that count. It is also contended that the 3rd respondent had given Rs. 6 lakhs as advance to the petitioner.

6. It is stated in the counter that the change of business was for the reason that the vegetable business was not profitable. According to this respondent the intention of the petitioner is to evict him from somehow or other. He also would allege that he had obtained requisite licence from the local authority as well as Food Safety and Standards Authority of India.

7. I have heard the learned counsel for the petitioner, the learned Senior Counsel appearing for the 3rd respondent as well as the learned standing counsel for the respondent municipality.

8. The previous order of the Tribunal for Local Self Government directing the respondent municipality to grant licence to the 3rd respondent was interfered with as per Ext. P9 and the Tribunal was directed to consider whether there was any covenant in the agreement restraining the 3rd respondent from doing any business other than vegetable. The Tribunal was also directed to consider whether it was necessary for the local authority to demand fresh letter of consent for obtaining a licence for a different business. The Tribunal was also directed to consider whether notice was served on the 3rd respondent within 30 days from the date on which the application for renewal for licence was received by the Secretary of the 1st respondent and to consider whether the 3rd respondent would be treated as deemed licensee.

9. The 3rd respondent was put in possession of the premises on the basis of Ext. P1 agreement styled as "leave and licence agreement" and the 3rd respondent started business in vegetables on the strength of the same. While so, the 3rd

respondent applied to the 1st respondent on 13.1.2011 for grant of licence to run a restaurant. However, the 1st respondent by Ext. P3 communicated the 3rd respondent that his request for licence to start the restaurant can be entertained only if there is consent of the petitioner who is the owner of the building.

10. The findings of the learned Tribunal in Ext. P10 order which is impugned is that as the said reply was not given within a period of 30 days from the date of receipt of a copy of the application by the Secretary of the 1st respondent, the 3rd respondent could be deemed to have granted licence under the provisions of sub-section (6) of S. 447 of the Kerala Municipalities Act. Sub-section (3A) of S. 447 the Act reads as follows:

(3A). The Secretary shall, within fifteen days from the date of receipt of the application, by order and subject to such terms and condition as he deems fit, either grant licence for using a place to conduct a common trade or in the interest of the public refuse to grant such licence.

11. Sub-section (6) of S. 447 the Act reads as follows:

(6) If the order on an application for any licence or permission are not communicated to the applicant within thirty days after the receipt of the application by the Secretary or within such longer period, as may be prescribed in any class of cases the application shall be deemed to have been allowed for the period required in the application, subject to the Act, rules and bye-laws and all conditions which would have been ordinarily imposed.

12. The definite stand taken by the 3rd respondent is that the order on the application for renewal was not communicated to him within thirty days. Admittedly, the application was received by the Secretary of the 1st respondent on 13.1.2011. It is further admitted by both sides that the order of the Secretary of the 1st respondent dated 8.2.2011 was communicated to the petitioner only on 14.2.2011.

13. I have verified the calendar of the year 2011 to ascertain whether the reply reached the 3rd respondent within a period of 30 days as envisaged by S. 447 stated above. The total number of days from 14th January to 14th February, 2011 is 31. However, the 30th day falls on 13.1.2011 which is a Sunday. Here I would like to refer to Ss. 8 and 9 of the Kerala Interpretation and General Clauses Act, 1125 which reads as follows:

8. Commencement and termination of time.- In any Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and for the purpose of including the last in a series of days or any other period of time to use the word "to".

9. Computation of time. Where by any Act, any act or proceeding is directed or allowed to be done or taken in any Court or office on a certain day or within a prescribed period, then, if the Court or office is closed on that day or the last day of prescribed period, the act or proceeding shall be considered as done or taken

in due time if it is done or taken on the next day afterwards on which the Court of office is open:

Provided that nothing in this section shall apply to any act or proceeding to which the Limitation Act for the time being in force.

14. The Apex Court in the decision reported in M/s. Saketh India Limited and others Vs. M/s. India Securities Limited, observed that ordinarily in computing the time the rule observed is to exclude the first day and to include the last.

15. When the number of days are calculated in terms of the aforesaid sections, it can be safely said that the reply of the 1st respondent reached the 3rd respondent within a period of 30 days as envisaged by the statute. Hence, the finding of the learned Tribunal that there was deemed licence does not stand the test of reason and, therefore, cannot be allowed to stand.

16. Regarding the question of consent, it appears that the learned Tribunal has misunderstood the provision of Ss. 447 and 492 of the Kerala Municipalities Act. S. 492(3) of the Municipalities Act reads as follows:

(3) Where any person intending to obtain a licence or permission for the first time and where the applicant is a person other than the owner of the premises in question, he shall along with the application produce the written consent of the owner of the premises and the period of the licence shall not exceed the period, if any, specified in the consent.

17. The present request of the 3rd respondent is to start a new business which is not at all connected or allied with the earlier business for which a licence was granted to him. S. 492(3) of the Municipalities Act gives a right to the landlord to see what business is going on in the premises and whether that business is detrimental to his interest with respect to the building concerned.

18. The learned counsel for the petitioner would argue that as it was expressly stated that the purpose for which the premises was given to the 3rd respondent was for conducting the business in vegetables, it excludes the 3rd respondent from conducting any other business in the light of the expression "Unius Est Exclusio Alterius" which means that the express mention of one thing implies the exclusion of another. This rule enunciates one of the first principles applicable to the construction of written instruments. For example, it seems plainly to exclude any increase of an estate by implication, where there is an estate expressly limited by will and an implied covenant to be controlled within the limits of an express covenant. That means where the parties are engaged to written agreements with express stipulations it is manifestly not desirable to extend them by implications because the presumption is that having expressed some, they have expressed all the conditions by which they intended to be bound under that instrument.

19. In this case, the Tribunal was exercising discretionary powers vested with the 1st respondent municipality as per the Kerala Municipalities Act and it would be

very detrimental to the object of the Act. At this juncture, the learned Senior Counsel appearing for the 3rd respondent inviting my attention to the decision of a Division Bench of this Court in Marimuthu and Others Vs. D.G.P. and Others, would argue that since the possession of the tenant is lawful, the landlord is not entitled to withhold his consent for the conduct of the business for which the premises was given on rent. Here in this case, the premises was given on rent for conducting vegetable shop. Therefore, the learned Tribunal was not at all justified in finding that no fresh consent is required for conducting the restaurant by the 3rd respondent. Viewed in that profile, the finding of the learned Tribunal that the consent of the landlord is not required as the licence does not require any positive covenant is incorrect. The 3rd respondent municipality in its discretion has found that consent from the petitioner is necessary for the grant of licence to the 3rd respondent for valid reasons. It is absolutely within the competence of the first respondent to consider whether the formalities required for the grant has been complied with by the 3rd respondent.

In the result, the Writ Petition is allowed. Ext. P10 order is quashed upholding Resolution No. 5 of the 2nd respondent dated 26.3.2011, which was communicated to the 3rd respondent as per Ext. P7 notice dated 11.4.2011.