

(2011) 01 MAD CK 0317

In the Madras High Court

Case No : Second Appeal (MD) No. 1250 of 2008 and M.P. (MD) No. 2 of 2008

Anandakrishnan

APPELLANT

Vs

The Commissioner. and The Chairman

RESPONDENT

Date of Decision : 07-01-2011

Acts Referred:

Easements Act, 1882 — Section 60, 62

Citation : (2011) 01 MAD CK 0317

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : C. Dhanaseelan, for the Appellant; C. Rajakumar, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan, J.—The unsuccessful Plaintiff is the Appellant.

2. The Plaintiff filed the suit for declaration and injunction. The case of the Plaintiff was that he is engaged in the business of Plantain Fruit Processing in the Marthandam Vegetable Market owned by the Respondent and he was granted licence to do the said business and acting on the licence, he has constructed a pucca building and he is doing business for the past more than 60 years and the Defendant issued notice on 21.1.2001 stating that they are going to auction the right to process the plantain fruit by fumigation and therefore, the suit was filed stating that the licence granted in favour of the Plaintiff is irrevocable as per Section 60(b) of the Easements Act and therefore, prayed for declaration that he is entitled to continue with his Fruit Processing work in the site allotted to him and for injunction.

3. The Respondents/Defendants contended that the Appellant is only a licensee and every year, he was participating in the licence and the licence period expires on the expiry of the period stated therein and he has not put up any construction as alleged by the Appellant and as per the terms of the licence, he is not permitted to put up any construction and therefore, even assuming that he has

put up some construction, he cannot claim any right to stay in the suit property by virtue of Section 60(b) of the Easements Act and therefore, the Plaintiff is not entitled to the relief prayed for.

4. The Trial Court held that no permission was obtained by the Appellant for putting up construction and the Appellant was also evicted from the premises and he is not in possession of the property and dismissed the suit. The lower appellate court also independently analysed the evidence and confirmed the findings of the Trial Court and dismissed the appeal. Hence, the second appeal.

5. The substantial questions of law that arise for consideration in this second appeal are:

a) Whether the courts below are legally correct in not considering the Appellant/Plaintiff's right and claim by raising specific issues based on Section 60 of the Indian Easements Act, 1882.

2. Whether the Appellant/Plaintiff's right claimed in the suit is protected u/s 60 of the Indian Easements Act, 1882, when the nature of business of artificial ripening of plantain bunches by fumigation smoke is admitted by the Respondents and no other person except the Appellant followed by his father is doing the same for the last more than 60 years.

6. Mr. Dhanaseelan, learned Counsel for the Appellant submitted that admittedly, the Appellant was a licensee of specified area given to him by the Respondents and as per the Commissioner's report, it has been made clear that the Appellant has put up construction of a permanent character in the suit premises which was granted to him on licence and therefore, u/s 60(b) of the Indian Easements Act, the licence is irrevocable as the Appellant, acting on the licence, put up the construction of permanent character. He therefore, submitted that even assuming that the Appellant was evicted during the course of trial, the Appellant is entitled to restitution and therefore, the courts below erred in dismissing the suit filed by the Appellant. In support of his contention, he relied upon the judgments in *Gopalan Nair v. Thevi Amma* (AIR 1969 Kerala 23) and *Dwarka v. Gourishankar* (AIR 1943 Nagpur 77).

7. On the other hand, it is contended by the learned Counsel for the Respondents Mr. Rajkumar that the Respondents are Municipality and every year, they are granting licence to various persons for doing various activities in the premises owned by the Respondents and the licence is for a particular period and after the expiry of the licence, nobody can claim any right to be in possession of the property and unless they become successful bidder in the subsequent years, they are not entitled to remain in possession of the property. It is further submitted that the Appellant is also not entitled to the benefits of Section 60(b) of the Easements Act and he has not put up any construction of permanent character and as per the terms of the auction, no licensee is permitted to put up any construction and even if they put up any construction, they would become the property of the Municipality and the licensee cannot claim ownership over the

same. He further submitted that the plea of irrevocability of licence has to be specifically pleaded in the plaint and in the absence of any pleading and evidence to that effect, it is not open to the Appellant to raise the same subsequently. In support of his contention, he relied upon the judgments in Rajaraman Vs. Kaliammal, and Tamil Nadu Municipal Shop Merchants Association v. State Of Tamil Nadu AIR 2000 Mad 393.

8. The learned Counsel for the Appellant Mr. Dhanaseelan submitted that the report of the Advocate Commissioner Ex.A5 would make it clear that the Appellant has put up construction of a permanent character in the property which was given to him on licence and therefore, the licence becomes irrevocable as per Section 60(b) of the Easements Act. According to him, in Ex.A5, the Respondents have admitted that the Appellant is attempting to change the thatched roof into asbestos roof and the Appellant is not entitled to do the same and he must remove the asbestos roof and retain the thatched roof. The notice was dated 20.6.1997 and therefore, he has contended that from Ex.A5, it can be presumed that atleast from the year 1997, the Appellant is in possession of the property by putting up construction and therefore, he is entitled to the benefits of Section 60(b) of the Easements Act.

9. On the other hand, Mr. Rajakumar, learned Counsel for the Respondent brought to my notice the terms and conditions of the licence for the year 2000-2001, Ex.A2 7 wherein it has been stated that no construction shall be made without permission of the Council in the premises given on lease and only after getting the permission from the Council and as per the plan approved, the licensee can put up a construction and as per the auction notice, licence was given only to ripen the plantain to become plantain fruit in the premises and it cannot be contended by the Appellant that he has put up construction.

10. It is seen from the report of the Advocate Commissioner that he found plantain fruit processing work being carried on in the building and the building was constructed with burnt brick and there are four rooms and the walls are constructed with burnt bricks, sand, mixed mud and mortar and according to him, the value of the building would be around Rs. 43,674/=. Therefore, from the Commissioner's report, it has been made clear that there is a pucca building wherein fruit processing was carried on by the Appellant at the time of inspection. Though the Appellant claimed that he had put up construction in the licensed premises and relied upon Ex.A5 to prove the same, from Ex.A5, it cannot be presumed that he had put up the construction. It is stated in Ex.A5 that the Plaintiff has put up a temporary shed with thatched roof in the premises licensed to him and he is doing the business of fruit processing and he is attempting to change the roof and that cannot be permitted. Therefore, what was constructed by him initially was a temporary shed and at the time of inspection, which was done in the year 2001, a pucca construction was found in the premises. In such circumstances, can it be stated that the Appellant is entitled to the benefits of Section 60(b) of the Easements Act.

11. It is held in the judgment reported in *Gopalan Nair Vs. Thevi Amma Thankamma and Another*, that when a building is found to be of a permanent character involving expenses, the grantor would not be entitled to revoke the licence after such work has been executed. To the same effect is the judgment reported in AIR 1943 NAGPUR 77. Therefore, we will have to see whether the Appellant is entitled to the benefits of Section 60(b) of the Easements Act.

12. Admittedly, the Appellant was the licensee and he was doing the business of fruit processing in the market owned by the Respondents. It is seen from Ex.A5 that he has put up a temporary shed with thatched roof and was doing the business of fruit processing in that premises and he attempted to change it into a pucca roof. Therefore, having regard to the above pleading and finding given, the Appellant relies upon Section 60(b) of the Easements Act to retain his possession and contends that the licence granted to him is irrevocable.

13. It is not in dispute that every year, licence is granted by the Respondents for various business activities inside the market premises and the Appellant was the successful bidder in every year and was doing the business of fruit processing in the said premises. Therefore, when a licence is for a particular period and when a person puts up some construction, even assuming that the same is of a permanent character, he cannot claim that by reason of such construction, the licence became irrevocable. In other words, Section 60 of the Easements Act has to be read with Section 62 of the Easements Act. As per Section 62(c), the licence is deemed to be revoked where it has been granted for a limited period and the period expires. Therefore, as per Section 62, the licence shall be deemed to have been revoked after the period for which it was given. Admittedly, the licence was given for a period of one year 10 by conducting auction and therefore, it shall be deemed to have been revoked after the expiry of one year as per the Easements Act. But, u/s 60(b), when a licensee acting upon the licence, has constructed a permanent character incurring expenses, the licence becomes irrevocable. Therefore, in such circumstances, it has to be seen whether a licensee can claim any permanent status in the licensed property.

14. Katiyar, the celebrated author, in his book on Easements in the X edition at page 907 dealt with this position as follows:

Clause (c) - Grant for a limited period or subject to a condition. Where a licence is granted only for a limited period or on condition that it shall become void on the performance or non-performance of a specified act, it shall be deemed to be revoked when the period expires or the condition is fulfilled. If the licence is for a limited period only or subject to a condition the fact that the licensee acting upon such licence has executed work of a permanent character and has incurred expenses thereon, does not affect its revocability on the expiry of such period or on the fulfilment of such condition.

The law does not permit a licensee whose licence had been validly revoked to exercise his licence any longer. If he does so he does something wrong. He will

be only a trespasser after he had lost his right under the licence and the owner of the land is entitled to deal with him as a trespasser.

15. Therefore, a reading of the above passage would make it clear that even though the licensee has executed a work of permanent character and has incurred expenses, it will not affect the revocability of the licence on the expiry of the period. Further, as held by this Court in the decision reported in *Rajaraman Vs. Kaliammal*, , the plea of licence has to be pleaded and proved and in the absence of pleading, it cannot be presumed.

16. In this case, nowhere the Plaintiff has stated that he is a licensee of the premises and has put up construction of permanent character by incurring expenses. It is stated in para 1 of the plaint that he is engaged in the plantain fruit processing work with the consent of the Respondents by obeying their rules and regulations and is paying the fee. He has further stated in para 5 that without paying compensation to him for the work done by him or without issuing notice to remove the construction, the Respondents are not entitled to issue the auction notice. Therefore, a reading of the plaint would make it clear that the Appellant was questioning the right of the Respondent in issuing the auction notice for the right to carry on the fruit processing in the premises owned by the Respondents and he has not claimed any irrevocable licence in his favour. Therefore, in the absence of any pleading to that effect, there is no need to go into the questions of irrevocability of the licence granted in favour of the Appellant and there is no need to question the applicability of Section 60(b).

17. Nevertheless, I have held that the Appellant is not entitled to the benefits of Section 60(b) of the Easements Act having regard to the provisions of Section 62 and also as per the passage from Katiyar's on Easements. This question can also be analysed from another angle. Normally, a licence is a permission given to a person to do certain acts which is, but for the permission, unlawful. Therefore, it presumes that a person will be given possession of certain property to do certain and acting on the licence if he puts up any construction of a permanent character by incurring expenses, the licence becomes irrevocable.

18. In this case, it is admitted that the premises given to the Appellant is within the market place and permission to do any business in the market place has to be given by the Respondents. The Respondents are admittedly granting licence every year by conducting auction and there is a possibility of various other persons participating in the auction and becoming licensees. Fortunately or unfortunately, the Plaintiff is granted licence to do the business of processing of plantain in the premises and for that purpose, he has put up some construction. Therefore, in such circumstances, it cannot be stated that a person, who participated in the auction every year, can claim permanent right over the area by invoking Section 60(b) of the Indian Easements Act. In this connection, the 14 following passage from the judgment in *Tamil Nadu Municipal Shop Merchants Association, Etc. v. State Of Tamil Nadu and Ors.* AIR 2000 MAD 393 would be relevant:

It is the larger Interest of the society that has to be taken into account. If certain persons, merely because they bid at the auction and became successful bidders and thereby became entitled to enjoy the right for certain period, are allowed to contend that they must be granted renewal, then there will be no control for the public bodies. Persons let into possession would like to continue as long as it is possible, and then their heirs will be let into possession and it will likewise become a heritable right. It cannot be permitted at all. The properties of local bodies cannot be allowed to be fettered by perpetuity.

....

The entry of the Petitioners into the property of Municipal Council was because of a public auction and they cannot claim that such an entry should be barred for others, enabling them to remain in the property forever. They are estopped from putting forward such a contention.

Therefore, the nature of right the Petitioners are granted cannot be equated to that of the right of a tenant under the Tamil Nadu Buildings (Lease and Rent Control) Act. In fact, here it is not a lease but only a licence. This is completely a different situation to which the analogy of the Tamil Nadu Buildings (Lease and Rent Control) Act can hardly be applied.

....

The larger interest of the public is to lease out the properties by public auction. If the right is leased out by public auction, everyone will have a chance to participate. The Petitioners can also participate in the same. On the other hand, if it is renewed in favour of those who were already there, the right of others to participate in the auction would be taken away. Thus, an equal opportunity to everyone will be denied. The plea that if the lease is not renewed, the persons who are already there will be uprooted and their livelihood will be affected, would not be tenable. There is no right inhering in the Petitioners to demand permanent lease in their favour. With open eyes, they have bid at the auction, knowing it is only for three years. They came into the picture only by way of public auction. Therefore, it is not open to them to contend that they will be uprooted. The deprivation of livelihood is not there. For, there was no assurance to the Petitioners at any point of time by the local bodies that the lease will be permanent in nature. By clinging to the property forever, the Petitioners will be only depriving the opportunity of those who in law are entitled to bid at the auction and become successful bidders. Therefore, there is no uprooting of the persons, but there is only uprooting of avarice of the individuals.

19. Therefore, considering all these aspects, I am of the view that the Appellant is not entitled to claim that the licence granted to him is irrevocable as per Section 60(b) of the Easements Act and substantial questions of law 1 and 2 are answered against the Appellant.

In the result, the second appeal is dismissed. No costs. The connected

miscellaneous petition is also dismissed.