

(2022) 01 KL CK 0062

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 5367, 6278 Of 2021

Asha Anilkumar

APPELLANT

Vs

Cherthala Municipality Represented By Its Secretary

RESPONDENT

Date of Decision : 12-01-2022

Acts Referred:

Kerala Municipalities Act, 1960 — Section 447

Citation : (2022) 01 KL CK 0062

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : Joby Jacob Pulickeedy, Anil George, Dajish John, Harikrishnan P, Joby Cyriac, V.G.Arun, V.Jaya Ragi, Neeraj Narayan, R.Harikrishnan, Jayasankar J.S., J.Om Prakash, Jacob Sebastian

Final Decision : Allowed

Judgement

N. Nagaresh, J.

1. W.P.(C) No.5367/2021 has been filed by the petitioner-tenant seeking to set aside Ext.P9 and to command the 2nd respondent to reconsider Ext.P9

and thereafter issue licence, without insisting for any consent from the 4th respondent-landlord. W.P.(C) No.6278/2021 has been filed by the same

petitioner-tenant seeking to command the 2nd respondent-Circle Inspector of Police to afford adequate and meaningful police protection to the life of

the petitioner as well as for occupying building No.639C without any hindrance from the 3rd respondent or his agents. As the issues involved in these

writ petitions are interconnected, they are heard together and being disposed of by a common judgment.

2. The petitioner submits that she is a lessee in respect of property having 3.66 Ares of land along with building No.639C of Cherthala Municipality.

The 4th respondent is working abroad and has executed Ext.P1 Power of Attorney in favour of his father. The 4th respondent leased out the 3.66

Ares of land to the petitioner and permitted the petitioner to construct a building thereon for running a restaurant. The petitioner obtained Building

Permit and constructed a building for the restaurant. The initial rent agreement was for a period of 11 months. When the 11 months period ended, the

4th respondent issued a consent letter for starting a restaurant in the building.

3. The petitioner submits that the 4th respondent now wants to alienate the property and has required the petitioner to vacate the premises. The

petitioner approached the 2nd respondent-Secretary to Municipality seeking licence to run a restaurant. The 2nd respondent did not accept the licence

application and has instead issued a notice dated 05.02.2021, threatening that the restaurant being run by the petitioner without licence, will be closed

down. The petitioner submitted reply to the said notice. However, the petitioner's application for licence was not favourably considered. The petitioner

therefore filed W.P.(C) No.3899/2021. This Court in the said writ petition, directed the 2nd respondent to consider and pass orders on the application

for licence submitted by the petitioner, in the light of Ext.P2 consent deed.

4. Thereafter, the 2nd respondent conducted a hearing. The application for licence was, however, rejected on 25.02.2021 as per Ext.P9. It is

aggrieved by Ext.P9 order that the petitioner has filed W.P.(C) No.5367/2021.

5. In W.P.(C) No.6278/2021, the petitioner alleged that on 08.03.2021, when the petitioner reached the restaurant premises, the gate was seen locked

and a car was waiting outside. Two persons came out of the car and threatened the petitioner that they will kill the petitioner if the gate is opened. In

such circumstances, the petitioner seeks for a direction to the 2nd respondent-Circle Inspector to afford adequate and meaningful police protection to

the life of the petitioner and for occupying building No.639C without any hindrance from the 3rd respondent or his agents.

6. The learned counsel for the petitioner submitted that the petitioner has been conducting the hotel business investing huge amounts. The petitioner

submitted an application for licence under Section 447 of the Kerala Municipality Act. The petitioner produced Ext.P2 consent letter. The 2nd

respondent took a stand that Ext.P2 cannot be treated as a consent letter. The learned counsel for the petitioner submitted that the Hon'ble Apex

Court in the judgment in *Sudhakaran v. Corporation of Trivandrum and another* [2016 (3) KHC 803] has held that even in the case of

application for obtaining licence for the first time, the tenant cannot be deprived of running a lawful business merely because of the landlord withholds

the consent. Valid tenancy itself has an implied authority of the landlord for legitimate use of the premises by the tenant.

7. The learned counsel for the petitioner asserted that the 2nd respondent has acted beyond the powers under Section 447 of the Kerala Municipality

Act and has rejected the licence application of the petitioner, illegally. The learned counsel for the petitioner pointed out that the counter affidavit of

the respondent alone is sufficient to establish that the petitioner is in lawful possession of the building. As regards W.P.(C) No.6278/2021, the learned

counsel for the petitioner asserted that the 2nd respondent is duty-bound to give police protection to the petitioner who is a law abiding citizen and

occupying the building legally. The petitioner is not a trespasser, pointed out the petitioner.

8. The 4th respondent-landlord opposed the writ petition. The 4th respondent stated that the 4th respondent has not permitted the petitioner to

construct a building within his property. He has only permitted the petitioner to use his property by constructing a makeshift shed. The 4th respondent

has not authorised the petitioner to obtain any building permit. The 4th respondent asserted that Ext.P2 is a forged document doctored by the petitioner

so as to defraud the 4th respondent and the authorities. The writ petition has been filed on the strength of a forged document.

9. When the issue involves disputed questions of fact, the mandate of law is to relegate the parties to get adjudicated their dispute before appropriate

forum competent to decide the factual disputes.

10. The learned counsel for the respondent argued that the agreement dated 18.01.2020 cannot be treated as a lease deed. At the most, it can be

treated as a licence looking at the factual situation of the case. Admittedly, the property was handed over to conduct a hotel for the period prescribed

in the agreement. The said agreement is only a licence and the petitioner will not get the status of a tenancy. Therefore, the petitioner cannot claim the

benefit of the judgment of the Apex Court reported in *Sudhakaran* (supra). The writ petition is therefore liable to be dismissed, contended the learned

counsel for the 4th respondent.

11. Respondents 1 to 3 (in W.P.(C) No.5367/2021) filed a counter affidavit. The respondents stated that the judgment of the Apex Court will be

applicable only in case where there is a valid tenancy. Therefore, even if there is no consent from the owner, if the applicant establishes a valid

tenancy, he could not be deprived of a licence to run the establishment. However, in the petitioner's case, he does not possess a valid consent. He has

not established a valid tenancy. Hence, even as per the judgment of the Hon'ble Apex Court, the petitioner is not entitled to licence.

12. Heard the learned counsel for the petitioner, the learned Standing Counsel representing the Municipality, the learned counsel for the respondent-

landlord and the learned 13. Ext.R4(a) is the deed dated 18.01.2020 executed between the 4th respondent and the petitioner. The said deed is for a

period of 11 months and would come to an end on 17. 12. 2020. After the expiry of the said period, according to the petitioner, the 4th respondent has

issued Ext.P2 consent letter dated 20.11.2020. The 4th respondent would dispute the authenticity of the said document. Respondents 1 to 3 have taken

a stand that the said document cannot be treated as a consent letter as contemplated under Section 447 of the Kerala Municipality Act.

14. The questions arising in these writ petitions are whether the petitioner is a tenant; whether Ext.P2 is a genuine consent letter as contemplated

under Section 447 and whether the municipal authorities are justified in rejecting the application for licence submitted by the petitioner.

15. Ext.R4(a), is the deed executed between the petitioner and the 4th respondent by which the petitioner has come into possession of the land.

Ext.R4(a) deed is not disputed by the 4th respondent. The 4th respondent has taken a stand that it is not a lease deed but is only a licence. Ext.R4(a)

is a document described by the parties as rent agreement. The title indicates tenancy. Ext.R4(a) also states that the land has been taken possession by

the petitioner for a period of 11 months. There is nothing in Ext.R4(a) which would indicate that exclusive possession of the land is not given to the

petitioner. Prima facie, Ext.R4(a) is a deed of tenancy.

16. Section 447 of the Kerala Municipality Act reads as follows:

â??447. Purpose for which places may not be used without licenceâ?" (1) A Municipality may notify by publication in the Gazette or in any other manner as

may be

prescribed that no place within the Municipal area shall be used for any one or more of the purposes specified in the rules made in this behalf) or for any other trade

without licence and except in accordance with the conditions specified therein and where the licence is for running hostels, restaurants, eating houses, coffee

houses, Abkari shop, laundries, travel agency or barber saloons, the licence shall always contain and be deemed to contain a condition that admission or service

therein shall be available to any member of the public:

Provided that no notification under this sub-section shall take effect before the expiry of sixty days from the date of its publication.

(2) The owner or occupier of every such place shall within thirty days of the publication of the notification apply to the Secretary for a licence for the use of such

place for such purpose.

(3) The Council shall, within thirty days from the date of receipt of the application, by order and subject to such terms and conditions as it deems fit, either grant a

licence for the use of a place for conducting a dangerous or offensive trade or in the interest of the public refuse to grant such licence.

(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.

(4) The periods of licence granted under sub-section (3) and (3A) or a licence deemed to have been granted under sub-section (6) shall, unless a date is specified

therein, expire on completion of three years from the date of its issue.

(5) Every application for any licence or permission or for its renewal under this Act or the rules or bye-laws made thereunder, shall be made not less than thirty days

and not more than ninety days before the earliest day on which such licence or permission is required or the licence expires.

(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 ordinary imposed.â??

Therefore, a consent letter from the landlord is required to obtain a licence from the Municipality.

17. Ext.P2 is a document dated 20.11.2020 titled as Deed of Consent. Respondents 1 to 3 would contend that Ext.P2 cannot be treated as a consent

letter and it can only be treated as a deed for extension of the lease. The 4th respondent would, however, submit that Ext.P2 is a concocted document

and cannot be accepted for the purpose of grant of a licence under Section 447. A reading of Ext.P2 would indicate that what is consented in the said

document is continuance of the lease and a consent to repay ₹ 12 lakhs. Ext.P2, however, would indicate that the land was given to conduct a hotel.

18. This Court finds that even if the argument of the 4th respondent that Ext.P2 is a concocted and fabricated document is accepted, still the petitioner

will be entitled to get a licence from the Municipality on the basis of the original deed dated 18.01.2020 in view of the judgment of the Apex Court in

Sudhakaran (supra). The Hon'ble Apex Court in the said judgment has held that even in the case of application for obtaining licence for the first time,

the tenant cannot be deprived of running lawful business merely because the landlord withholds the consent. The Hon'ble Apex Court held that valid

tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant.

19. In the present case, the fact that the petitioner came into possession of the land and constructed a building on the basis of a deed executed on

18.01.2020 is not in dispute. The 4th respondent has a case that the said document is not a lease/tenancy. It is for the 4th respondent to approach the

competent court and establish his right over the property as a licensor. A plain reading of Ext.P2 would show that the 4th respondent has given the

property to the petitioner for the running of a hotel.

20. When the 4th respondent has given property to the petitioner for the specific purpose of running a hotel, in view of the judgment of the Hon'ble

Apex Court in Sudhakaran (supra), respondents 1 to 3 cannot deny licence to the petitioner, for the reason that the 4th respondent has not given a consent letter.

For the aforesaid reason, the petitioner is entitled to succeed. Consequently, W.P. (C) No.5367/2021 is allowed to the extent of setting aside Ext.P9

and directing the 2nd respondent to consider the application for licence submitted by the petitioner in the light of the judgment of the Hon'ble Apex

Court in Sudhakaran (supra), without insisting for any consent from the 4th respondent. W.P.(C) No.6278/2021 is disposed of directing the 2nd

respondent to afford adequate police protection to the life of the petitioner. Needless to say, if there is any attempt to forcefully evict the petitioner, the

2nd respondent shall take appropriate action in accordance with law.