(2014) 07 KL CK 0176

In the High Court Of Kerala

Case No : R.S.A. No. 1392 of 2011

Eldho APPELLANT

Vs

Manual RESPONDENT

Date of Decision : 31-07-2014

Acts Referred:
Easements Act, 1882 — Section 52, 52, 53, 54, 55

Citation : (2014) 3 KHC 611 : (2014) 3 KLJ 858 : (2014) 3 KLT 787 : (2015) 1 RCR(Rent) 211

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : T. Krishnan Unni, (Sr. Advocate), Meera Gopinath, K.C. Kiran and P.A. Sheeja, Advocate for the Appellant; P.N. Ramakrishnan Nair, P. Viswanathan and Peeyus A. Kottam, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.

(1) Can the inclusion of a particular period or term for the operation of an agreement for licence be treated as contracting out?

(2) In a case wherein a particular term or period is fixed in an agreement for licence, can it be said that the said licence will become irrevocable till the expiry of the said period?

(3) Can a demand by the licensor to the licensee to vacate the premises, which is the subject matter of the licence, be regarded as a revocation of the licence?

(4) In the case of a premature revocation, what, if any, are all the reliefs or remedies available to a licensee?

1. These are the questions of law to be answered in this appeal.

The plaintiff in O.S. No. 235/09 of the Subordinate Judge''s Court, Muvattupuzha, who is the respondent in A.S. No. 78/2011 of the Additional District Court, Muvattupuzha, has come up in appeal, challenging the judgment and decree dated 27.9.2011 passed by the lower appellate court.

The plaintiff, as licensee, had entered into Ext. A1 agreement for licence with the respondent herein as licensor on 18.08.2005 for a period of 10 years in respect of the licence to use the crusher unit of the licensor, named ''J.M.T. Granites'' for the production and manufacture of aggregates. A licence fee of Rs. 16,000/- per month for the first 5 years and Rs. 18,000/- per month for the next 5 years was fixed through clause (4) of Ext. Al agreement. As per clause (3) of Ext. Al agreement, the licensee had requested the licensor the permission to use the said crusher unit of the licensor for a period of 10 years, and the licensor had permitted the said request. As per clause (6) of Ext. A 1, apart from smashing rubbles for the manufacture of aggregates, the licensee had no right to do any other business or works by making use of the machinery or the premises. A security deposit of X 7 lakhs was made by the licensee and the same was entrusted to the licensor for the due performance of the licence agreement. As per clause (11) of Ext. A 1, the licensor had permitted the licensee to put up necessary sheds in the property for the installation of crusher machinery. The licensee had agreed that on the expiry of the term of licence, the licensee would remove such machinery which would be installed by the licensee or such sheds which would be put Up by the licensee, at the cost of the licensee. Clause (13) enables the licensor to terminate the licence at any time, on three months'' notice to the licensee.

2. While matters were proceeding so, it seems that the relationship between the licensor and the licensee became strained. Even prior to the expiry of the term, the licensor had demanded the licensee to surrender vacant possession of the premises as well as the machinery. The licensee was not ready and willing to surrender possession of the crusher machinery or to surrender the subject matter of the licence prior to the expiry of the term. As the licensee had apprehended forcible eviction from the part of the licensor, the present suit as O.S. No. 235/09 was filed by the licensee as plaintiff before the Subordinate Judge''s Court, Muvattupuzha against the licensor seeking a decree of prohibitory injunction for protecting the possession of the licensee.

3. The licensor, who is the original respondent herein contended that the licence was terminated through a mutual agreement between the licensor and the licensee, and that the terms were reduced into writing as Ext. B2. According to the respondent, an amount of Rs. 2 lakhs was arrived at as damages payable to the licensee for such premature termination along with the amount of security of Rs. 7 lakhs, and the same were paid by the licensor to the licensee through two cheques issued for Rs. 9 lakhs. At the same time, it is nobody''s case that any such amounts were withdrawn from the Bank by the licensee at any point of time. The Trial Court has decreed the suit and granted a decree of prohibitory injunction as prayed for. Aggrieved by the same, the licensor preferred A.S. No. 78/2011 before the Additional District Court, Muvattupuzha. The learned Additional District Judge, after hearing both sides, allowed the appeal, set aside

the judgment and decree passed by the Trial Court, and dismissed the suit through the impugned judgment

4. Heard Sri T. Krishnanunni, learned Senior Counsel for the appellant and Sri. Peeyus A. Kottam, learned counsel for the respondent. It seems that during the pendency of the present appeal, the licensor died and his legal representatives have been impleaded herein as additional respondents 2 to 5. The learned Senior Counsel has argued that unlike in the case of other statutes, parties may be able to contract out in the case of agreements for licence, and the inclusion of the period of 10 years in the agreement itself is the evidence of such contracting out in this particular case, and therefore, the rights and liabilities of the parties to the present contract through Ext. A1 has to be decided in terms of the Indian Contract Act and not through the provisions contained in the Indian Easements Act, 1982. The argument in short is that the incorporation of the said period of 10 years in Ext. AI agreement has made Ext. AI irrevocable unilaterally, at the instance of the licensor alone. It has been argued that the licensor had gone to the extent of falsely fabricating Ext. B2, in order to make it appear that there was a mutual agreement for revocation. Ext. B2 was subjected to examination by a handwriting expert at the Forensic Science Laboratory, Trivandrum, for which Ext. X1 opinion was received. The learned Senior Counsel has pointed out that Ext. X1 clearly reveals that the signatures shown at the bottom of Ext. B2 as those of the licensee, are forged. Based on the said fact it is argued that when the licensor has a specific case that the licence was terminated through a mutual agreement, which was ultimately found to be a forged one, the licensor cannot be heard to say that the licence was revoked through any other means.

5. Per contra, the learned counsel for the respondent has argued that even if Ext. B2 is not accepted, the clear admissions by the licensee in the plaint as well as in his evidence in box reveal that there was clear revocation of the licence in this case. It has been argued that the incorporation of a specific term or period in the agreement for licence, does not amount to contracting out or to make such an agreement of licence irrevocable.

6. This Court is not relying on the contents of Ext. B2. Even though it is only an opinion evidence, Ext. X1 reveals that in all probability the signatures shown in Ext. B2 as signatures of the licensee would not have been affixed by the licensee. This Court is of the view that there is no reason to discard the said opinion evidence especially when the licensee has been clamouring from the beginning onwards that Ext. B2 was forged.

7. The first question to be decided is whether the inclusion of a specific period or term for the operation of the licence in an agreement for licence as the one contained in Ext. A1, amounts to contracting out or whether the licence created through Ext. AI becomes irrevocable prior to the expiry of the term contemplated under clause (3) of Ext. AI. The learned Senior Counsel has invited the attention of this Court to the decision in Philomina v. Executive Officer (1987 (2) KLT 89) wherein it was held:

S. 60 bars the grantor from revoking a licence in the circumstances specified in clause (b) thereof. However, if the parties themselves have entered into an agreement, for the licence to expire or terminate by efflux of time, or on the happening of any particular event or contingency, S. 60(b) does not apply. This is because quite apart from the law of easements and licences, the parties are at liberty to enter into any contract of their choice, and when they have arrived at a solemn agreement that the licence shall be only for a particular duration or shall stand terminated on a particular eventuality or contingency, the licensee is bound by the engagement, and shall not be entitled to continue the licence in derogation of the contract. Such termination of licence as under the terms of the contract between the parties, is not a "revocation" of the licence by the grantor under S. 60. But one relatable to the agreement. The rule of irrevocability has its foundation on the principle of an implied grant, and therefore has no operation when there is an express contract between the parties. There is no provision in the Easements Act or elsewhere which precludes parties from entering into any such agreement. Such a contract is not vitiated or rendered invalid in any manner even if it makes inroads into the conditions of irrevocability provided in S. 60.

8. According to the learned Senior Counsel, based on the dictum noted suprd, inclusion of a particular term of 10 years incorporated through clause (3) in Ext. A1 is nothing but a contracting out, which makes inroads into the conditions of irrevocability provided in S. 60. All licences are to be dealt with under the provisions of Ss. 52 to 64 of the Indian Easements Act, 1882. S. 52 defines licence. On going through the definition, it seems that it does not show that a licence has to be created for a particular period or term. S. 60 deals with a situation as to when a licence is revocable. S. 60 says that "a licence may be revocable by the grantor, unless-(a) it is coupled with a transfer of property and such transfer is in force and (b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution. ""Even though S. 60 deals with a situation as to when a licence is revocable, it seems that the said provision reveals as to when a licence becomes irrevocable. A licence becomes irrevocable only in two eventualities, i.e., (a) when it is coupled with a transfer of property and the said transfer is in force; or (b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution. Exception the above two circumstances, always a licence is revocable. The learned Senior Counsel has no case that the case in hand will fall in any of these two situations mentioned in S. 60 of the Indian Easements Act. It seems that the licensor had granted permission to the licensee to put up sheds in the property. At the same time, there is an undertaking by the licensee that he would remove such sheds at his own cost on the expiry of the licence. Therefore, it is evident that such construction of sheds is not of a permanent character within the meaning of S. 60(b). It is the admitted case that Ext. Al creates mere licence and not a lease. It is the admitted case of the appellant that there is no transfer of property or any

transfer is in force in this case and therefore, it is not covered by S. 60(a) also. When it does not come within the purview of S. 60(a) or (b), such a licences is revocable.

9. Regarding contracting out, it has to be noted whether the mere inclusion of a particular term or period in an agreement for licence is contracting out or not. Even though the definition of licence as contained in S. 52 does not contemplate inclusion of a particular period for creating a licence, other provisions contained in Ss. 62 and 64 of the Indian Easements Act, clearly give an indication that a contract of licence can be entered into for a particular term or period. The opening words of S. 62(c) show that "Where it has been granted for a limited period......"Therefore, it is evident that an agreement for licence can be created for a limited period. Matters being so, there is no embargo to create a licence for a particular period. S. 64 deals with the rights of the licensee on eviction. It says:

Where a licence has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the licence, the right for which he contracted, he is entitled to recover compensation from the grantors.

10. Section 64 deals with a situation wherein a contract of licence has been terminated prematurely. When a contract of licence has been entered into for a particular period as the one in this case, when a premature revocation is there or forcible eviction is there, it has to be construed that the licensee in such a case could not fully enjoy the fruits of the licence. A licence comes to an end normally when the object has been accomplished or fulfilled or the period for which it was created expires. In this particular case, the contract of licence was for enabling the licensee to manufacture aggregates by making use of the machinery installed by the licensor or by installing other machinery by the licensee himself. When such a permission was granted through a licence for 10 years for making aggregates, it can be said that a premature revocation prior to the expiry of 10 years will gives rise to a right of action to me licensee under S. 64 and such right of action is limited to the right of claiming damages, and nothing more. Even if a licensee has been thrown out forcibly by the licensor after making a demand for the surrender of vacant possession, it cannot be said that the licensee can still protect his possession through a suit. At the same time, in such a case, the licensee maybe able to succeed in a litigation for damages under S. 64 of the Indian Easements Act.

11. The learned counsel for the respondent has invited the attention of this Court to the decision in The Trivandrum Golf Club and Others Vs. State of Kerala, wherein it was held:

The rights and obligations of a licensor and licensee are governed by the provisions in Chapter VI of the Indian Easements Act. The law governing their rights as under the above Act is exhaustive and there cannot be any exception to the rules enshrined thereunder. A licensee is entitled to a reasonable time to leave the property on revocation of the licence and also to remove his goods in such property. Even in a case where the licence has been revoked without providing Such reasonable time, he cannot claim an injunction to continue for user of the land after revocation of the licence. His remedy is only to sue for damages provided he is entitled to the right conferred under S. 64 of the Indian Easements Act.

12. In a case wherein a particular term is included in a contract of licence and a further condition is made to the effect that the licensee should not be dispossessed prior to the expiry of such a term, then it clearly makes out a case of contracting out. In such a case, such a contract will fall within the clutches of S. 60 and will create a licence irrevocable during that particular period for which that contract was entered into. But in the present case Ext. A1 does not give any such indication. Over and above it, clause (13) of Ext. Al clearly gives an indication that the licensor can move back from the agreement at any time, on three months'' notice to the licensee. At the most it can be said that no written notice was issued in this case to the licensee by the licensor within the meaning of clause (13). At the same time, clause (13) does not stipulate any such written notice. As observed by the court below, the plaintiff/licensee as P.W. 1 has admitted in unequivocal terms that on 23.11.2009 the licensor had approached him and demanded vacant possession of the machinery as well as the premises. Such a demand can be said to be a notice within the meaning of clause (13) of Ext. A1. Over and above it, the licensor had approached this Court through W.P. (C) No. 21130/10 wherein he had specifically averred that the licence was terminated. At the most, as per Ex t. A1 the licensee would be able to protect his possession on the basis of clause (13) of Ext. A1 for a period of three months from 23.11.2009 onwards. After that, the licensee cannot stand in the way of surrendering vacant possession. Of course, clause (13) of Ext-Al may be treated as contracting out. Even if that is accepted, such right to protect possession cannot be extended for any period beyond such three months from the date of notice. When the licensee as P.W. 1 has admitted that the licensor had approached him on 23.11.2009 and demanded him to surrender vacant possession, it cannot be expected that the licensee could protect his possession for any period beyond the said three months from 23.11.2009 onwards.

13. As per S. 61 of the Indian Easements Act, revocation of a licence may be express or implied. Even when the conduct of the licensor clearly depicts that he had revoked the licence, it can be treated as an implied revocation. The licensor was contending from the beginning that the licence was revoked. In such a case, in the absence of any document to prove such revocation, it has to be treated as an implied revocation within the meaning of S. 61, When P.W. 1 has admitted that the licensor had demanded vacant possession on 23.11.2009, any further evidence is not required to prove that the licence was revoked within the meaning of S. 61 of the Indian Easements Act. Over and above it, the repeated assertions made by the licensor in the written statement as well as in the Writ Petition also clearly reveal that the same constitute revocation within the

meaning of S. 61 of the Act. In a case of licence simpliciter, the licensee cannot protect his possession against the licensor. Of course, he could protect his possession against other persons, other than the licensor. A premature revocation, may at the most gives a right to the licensee under S. 64 of the Indian Easements Act for claiming damages. Matters being so, this Court does not find anything to interfere with the impugned judgment. This appeal is devoid of merits, and is only to be dismissed, and I do so.

In the result, this R.S.A. is dismissed. In the nature of this appeal, there is no order as to costs. It is made clear that the appellant can withdraw the amount deposited by the licensor before the Trial Court as per the orders of this Court in the Writ Petition.