
(2015) 06 KAR CK 0373

In the Karnataka High Court

Case No : Writ Petition Nos. 2581 of 2015 (GM-RES) and 3740 of 2015 (GM-TEN)

G. Raja

APPELLANT

Vs

The Government of Karnataka and Others

RESPONDENT

Date of Decision : 01-06-2015

Acts Referred:

Easements Act, 1882 — Section 52, 63

Citation : (2015) 5 KarLJ 260 : (2016) 1 KCCR 560

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : R. Mahesh, for the Appellant; Vijayakumar A. Patil, Additional Government Advocate and P.D. Surana, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Abdul Nazeer, J—The petitioner is a licensee of a stall bearing No. 120 at Kempegowda Bus Station, Bangalore and the licensor is Karnataka State Road Transport Corporation (for short "KSRTC"). The licence was granted for a period of one year pursuant to the tender notification dated 28-11-2012. It was renewed till 31-1-2015. By notice dated 5-9-2014, the petitioner was called upon by the KSRTC to renew the licence, if he so desires for a further period of one year. The petitioner sent his willingness to renew the licence as per his communication dated 12-9-2014. Since the KSRTC failed to renew the licence, he has filed W.P. No. 2581 of 2015 for a mandamus directing the KSRTC to renew the licence till 31-1-2016. In the meantime, the KSRTC issued a notification dated 29-1-2015 inviting applications from the interested persons for auctioning of the right to carry on business in the aforesaid stall as a licensee. Therefore, petitioner has filed W.P. No. 3740 of 2015 challenging the said notification. Sri R. Mahesh, learned Counsel appearing for the petitioner submits that the respondents are not justified in refusing to renew the licence, despite the petitioner's willingness to continue the licence for a further period of one year. It is further contended that the petitioner is in possession of the stall as a licensee.

He cannot be thrown out of the premises in question without due process of law. KSRTC has issued tender notification for auctioning of the right to carry on business as a licensee without evicting the petitioner from the premises in question in accordance with law. In this connection, he has relied on the decisions of the Apex Court in *The Corporation of Calicut Vs. K. Sreenivasan*, AIR 2002 SC 2051 : (2002) 4 JT 589 : (2002) 4 SCALE 377 : (2002) 5 SCC 361 : (2002) 3 SCR 783 : (2002) AIRSCW 2105 : (2002) 4 Supreme 35 and *C.M. Beena and Another Vs. P.N. Ramachandra Rao*, AIR 2004 SC 2103 : (2004) 3 CTC 314 : (2004) 4 JT 288 : (2004) 3 SCALE 497 : (2004) 3 SCC 595 : (2004) 3 SCR 306 : (2004) AIRSCW 1858 : (2004) 3 Supreme 372 .

2. On the other hand, Sri P.D. Surana, learned Counsel appearing for respondents 2 to 4 submits that petitioner is a licensee of the premises in question. He is not in physical possession of the premises. Therefore, he has no right to continue as a licensee in the said premises. At best, he can seek some time to vacate the premises. He further submits that the KSRTC being an instrumentality of the State cannot grant the licence without due process of law. It has to adopt transparent procedure for grant of licence. That is why action has been taken to auction the right to do the business as a licensee in the said premises, so that it can fetch better revenue to the Corporation. He prays for dismissal of the writ petitions.

3. I have carefully considered the arguments of the learned Counsel made at the Bar and perused the materials placed on record.

4. Section 52 of the Indian Easements Act, 1882 defines the term "licence". It states that where one person grants to another, or to a definite number of other persons, a right to do or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a "licence".

5. Thus, a licence is a purely personal privilege or right enabling the licensee to do something on the land of the licensor which would otherwise be unlawful. It is merely a leave to do a thing, which enables the licensee to do lawfully what he could not otherwise do except unlawfully. A licence passes no interest in immovable property to the licensee.

6. A Full Bench of the Delhi High Court in *Chandu Lal Vs. Municipal Corporation of Delhi*, AIR 1978 Delhi 174 : (1978) 1 ILR Delhi 292 was considering a case of a licensee in possession of Kiosk situated near Bus Stop, Parade Ground, Opposite Red Fort, Delhi. The land belongs to the Municipal Corporation of Delhi. The suit by the licensee was for restraining the Municipal Corporation of Delhi from interfering or disturbing or dispossessing from the Kiosk. The Full Bench after considering the various judgments on the point has held that the petitioners being licensees with liberty to occupy and use the Kiosk for a period of 11 months in the first instance could not be said to be in legal possession of the

premises, the legal possession all along remaining with the Corporation. On revocation of the licence, they ceased to enjoy the liberty to continue to occupy the Kiosk so as to drive the Corporation to evict them in due course of law, nor can the petitioners' possession be said to be "settled possession" as was sought to be made out. The petitioners being licensees legal possession all along remained with the Corporation. That being so, the Corporation had a right to re-enter the premises and reinstate itself provided it does not use more force than necessary. Such an entry would be received only as a resistance to an intrusion, upon possession which had never been lost.

7. A Division Bench of the Madras High Court in the case of General Merchant Association, represented by Secretary and Treasurer and Others v Corporation of Chennai, represented by its Commissioner, Chennai - LAWS (Mad.) -1998-12-29 (W.A. No. 1150 of 1997) decided on 12-12-1998 was considering a similar question. It has been held that:

"It is also equally well-settled the position of a licensee after termination becomes unlawful and the licensee is not entitled to any injunction restraining the licensor from evicting him as unlike a tenant a licensee does not have judicial possession and the possession always remains with the licensor and what was granted is a privilege in terms of the licence, which in the absence of such a grant become unlawful.

The occupation of the writ petitioners with respect to the stalls/shops in public market is referable to the licence originally granted as their status is that of a licensee. Once such a licence is terminated, the possession of the stalls become unlawful as they have no right and the possession of such possession after termination is not protected by any statutory provision. In terms of Section 63 of the Easements Act, 1882, where licence is revoked the licensee is entitled to reasonable time to leave the property for removing all his goods which he has been allowed to place. A person continuing in the premises after the termination of licence, his status is as already pointed out is unlawful and he has no semblance of any right to continue in the premises".

8. Section 63 of the Easements Act lays down the licensee's right on revocation. It states that where a licence is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby, and to remove any goods which he has been allowed to place on such property. Thus, a licence is revocable at any moment at the instance of the licensor. The provisions made by this section is very salutary to safeguard the interest of the licensee from being jeopardized by a mere frivolous or vexatious exercise of his right of revocation by the licensor. But for these provisions the licensee's interest would have been at the mercy of the licensor. According to this section, the licensee is entitled to a reasonable time.--

"(a) to leave the property affected thereby; and

(b) to remove any goods which he has been allowed to place on such property."

9. Coming to the facts of the present case, licence was granted for a period of one year from 28-11-2012. KSRTC renewed the licence without due procedure of law till 31-1-2015. Such an action is detrimental to public interest. The petitioner has no right to continue in the premises. The legal possession all along remained with KSRTC. On the expiry of the period of licence, petitioner has ceased to enjoy the liberty to continue to occupy the shop so as to drive the KSRTC to evict him in due course of law. It is not the case of the petitioner that he is in settled possession of the property. Therefore, on the facts and circumstances of this case, it is not necessary to institute a suit or initiate proceedings under the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974.

10. It is to be noticed here that the property in question is a public property belonging to an instrumentality of State. It is the custodian of public properties. It is not as free as an individual in selecting the recipients for its largess. For allotment of the properties, a transparent and objective criteria/procedure has to be evolved based on reason, fair play and non-arbitrariness. In such action public interest has to be the prime guiding consideration. In the matter of grant of largesses such as licences, the Government must act in fair and just manner and any arbitrary distribution of wealth would violate the law of land. Therefore, KSRTC cannot keep extending the period of licence by private agreement. The grant of licence has to be auctioned so that the KSRTC can fetch better revenue.

11. In the instant case, the licence in respect of the premises in question was auctioned for a term of one year and it was extended by another year which is not permissible in law. Be that as it may. Question of continuing of licence in favour of the petitioner does not arise because it would amount to unfair grant of largess. The respondents have to again auction the property as proposed by them. At best, petitioner is entitled for grant of reasonable time to continue to do the business and to remove his belongings.

12. The decisions relied on by the learned Counsel for the petitioner has no application to the facts of the case. In K. Sreenivasan's case, it has been held that a licensee can also be evicted under the provisions of Kerala Public Buildings (Eviction of Unauthorised Occupants) Act, 1968. This decision does not lay down the law that licensee has to be evicted only under the provisions of the said Act. In C.M. Beena's case, the Court found the licensee was in possession for about 20 years before the date of deed of licence and inspite of the "deed of licence" of 1981 having been executed, continued to possess, use and enjoy the occupation of premises as before. Though the so-called licence expired in 1982, the respondent did not insist on the appellant putting back the respondent in possession of the premises but allowed him to remain in occupation and to continue to do so for a period of about seven years till the date of the institution of the suit. On the facts of the case, the Supreme Court held that the relationship between the parties is that of landlord and tenant. That is not the position in the instant case.

13. Therefore, the writ petitions are dismissed. Petitioner is granted time till

30-9-2015 to leave the premises in question. In view of the dismissal of the writ petitions as above, I.A. No. I of 2015 in W.P. No. 2581 of 2015 does not survive for consideration. It is accordingly dismissed. No costs.