

(2016) 03 KL CK 0152
In the High Court Of Kerala
Case No : W.P. (C) No. 7768 of 2016

George Mathew

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-03-2016

Acts Referred:

Kerala Abkari Shops Disposal Rules, 2002 — Rule 7(4)
Transfer of Property Act, 1882 — Section 108(c)

Citation : (2016) 3 KHC 650 : (2016) 3 KLT 245

Hon'ble Judges : K. Harilal, J.

Bench : Single Bench

Advocate : Alexander Joseph, Advocate, for the Appellant; S. Krishnakumar, Shylaja Varghese, K. Shaji Antony, Sabu S. Kallaramoola, Advocates and T.R. Rajesh, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

K. Harilal, J.—The petitioner is the licensee of Toddy Shop No. 17 of Group No. IV of Kothamangalam Range. Toddy Shop No.17 is functioning in Building Nos. 11/168, 168A and 169 of Pindimana Grama Panchayat. The building was jointly owned by the petitioner, his brother late Binu and the respondents 4 and 5. After the death of late Binu, his wife "Samma Binu" and the respondents 4 and 5 have jointly gave Ext.P1 consent, to the petitioner to conduct the toddy shop in the building for the year 2014-2017. According to the petitioner, as per Ext.P1 consent, the petitioner is entitled to conduct toddy shop in the building till 31.3.2017. While so, the 3rd respondent purchased the right of the petitioner and the legal heirs of the late Binu in the building and now the respondents 3 to 5 are the co-owners of the building. The 3rd respondent raised objection before the 2nd respondent against the conduct of toddy shop in the said building. Consequently, the 2nd respondent issued Ext.P2 letter rejecting the renewal of the licence of the toddy shop. The petitioner submits that since all the co-owners of the property had already grant consent to conduct the toddy shop till 31.3.2017, the rejection of renewal of licence on the basis of the objection raised

by one of the co-owners of the property is illegal, arbitrary and unsustainable. It is with this grievance, this Writ Petition is filed with a prayer to quash Ext. P2 and direct the 2nd respondent to renew the licence of the petitioner to conduct the toddy shop.

2. Heard the learned counsel for the petitioner, the learned counsel appearing for the respondents 3 to 5 and the learned Government Pleader.

3. The learned counsel for the third respondent submits that the third respondent, as lessor, has every right to determine the lease, at any time, as the lease is a consent to enjoy the property only. The learned Government Pleader drew my attention to Rule 7 of the Kerala Abkari Shops Disposal Rules, 2002 (hereinafter referred as "the Rules") and submits that Ext.P2 order was passed in compliance with the direction in proviso to sub-rule (4) of the said the Rule.

4. I am unable to countenance the above arguments, in view of the rights and liabilities of the lessor, contemplated under the Transfer of Property Act, 1882. According to S. 108(c) of the Transfer of Property Act, the lessor shall be deemed to contract with the lessee that, the latter pays rent and performs the contracts binding on lessee, he may hold the property during the time limited by the lease, without interruption.

5. It is true that lease of immovable property is a transfer of right to enjoy the immovable property; but where the lease is for a specified period and a third party had acted upon that lease hold right of the lessee, even if, the lessor subsequently objects the enjoyment of that lease hold right, during the period specified in the lease deed the third party is liable to reject or ignore such objections, as the lessee has the right to hold the property during the time specified by the lease deed, without interruption under S.108(c) of the Transfer of Property Act. In such cases, merely on the reason that the Excise Department issues licence under the Abkari Act for each year, the lessor will not get an opportunity to determine the lease or oppose the renewal of licence every year, unless the lease is legally determined by the due process of law. In other words where a licence is grant to conduct a toddy shop, to the lessee, relying on the lease deed executed by the owner of the property for a specified period, the consent of the owner of the property is not required for renewal of licence for every year, during the period of lease, as the lessee has the right to hold the property, during the time limited by the lease, without interruption, if there is no default in payment of rent under Section 108(c) of the Transfer of Property Act. In such cases, even if the lessor objects subsequent renewal, during the time specified by the lease deed, the Excise Commissioner is liable to discard the objection and to renew the licence, for each year during the time specified by the lease deed.

6. Going by Ext.P2, it is seen that the second respondent rejected the application seeking renewal of the licence, on the sole reason that one of the co-owners objected the renewal of licence by withholding his consent. As rightly submitted

by the learned counsel for the petitioner, going by Ext.P1, it is seen that all the then co-owners of the property, grant consent to conduct the toddy shop in the property till 31.03.2017 and licence had been issued on the basis of the said consent. The point to be considered is, where the building is leased out, to the licensee by all the co-owners, for three years, can the yearly renewal of the licence, within the said three years be rejected on the basis of an objection subsequently raised by one of the co-owners?

7. Going by the proviso to sub-rule (4) of Rule 7 of the Rules, it is seen that the statutory insistence is that the licensee shall produce before the Deputy Commissioner of Excise concerned the written consent/lease deed from the owners of land/building, where a toddy shop is proposed to be licenced. If consent or lease was grant for more than one year, no fresh consent/lease is required for the renewal of licence, for the period covered by the lease deed or consent. There is no statutory insistence that fresh consent is required for every renewal in the instant case, Ext.P1 is the consent, grant by all the co-owners to the petitioner to conduct toddy shop in the said building till 31.03.2017. Since the consent had already grant for 3 years, this Court is of the view that, a further consent is not required for the renewal of licence for every year, within the period of lease.

8. In the above analysis, Ext.P2 will stand set aside. Here, the period of lease expires on 31.03.2017 only and the second respondent has no case that the petitioner defaulted payment of rent. So, the second respondent is directed to renew the licence of the petitioner for a period till 31.03.2017. It is made clear that for further renewal, after 2017. fresh consent of all the co-owners is required.

9. This Writ Petition is disposed of accordingly.