(2012) 06 KL CK 0064

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6494 of 2012 and Connected Cases

Hotel Malika Residency APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Citation : (2012) 3 ILR (Ker) 320 : (2012) 3 KLJ 314 : (2012) 3 KLT 310

Hon'ble Judges : P.N. Ravindran, J

Bench : Single Bench

Advocate : C.C. Thomas, Sri. Nireesh Mathew and Sri. M.G. Karthikeyan, for the Appellant; Sujith Mathew Jose (Government Pleader) for respondents 1 to 4, Sri. P.S. Biju for 5th respondent, Sri. N. Reghuraj and Smt. Ammini Kutty for respondents 6 to 8, for the Respondent

Judgement

Mr. Justice P.N. Ravindran

1. A common question arises in these Writ Petitions. The parties are also the same. They were therefore heard together and are being disposed of by this common judgment. W.P.(C) No. 6494 of 2012 is treated as the main case and unless otherwise mentioned, the parties and documents referred to, are with reference to the said Writ Petition. The brief facts of the case are as follows: "M/s Hotel Malika Residency", the petitioner in W.P.(C) No. 6494 of 2012 is a partnership firm. It is running a hotel at Ettumanoor under the name and style "Hotel Malika Residency". Ext.P-1 licence in form FL-3 was issued to the Managing Partner of the petitioner firm under rule 13(3) of the Foreign Liquor Rules, 1972 (hereinafter referred to as "the rules" for short) on 8-8-2006. The licence which was initially valid till 31-3-2007, was being periodically renewed and the last of the renewals was valid till 31-3-2012. After the FL-3 licence was renewed for the year 2010-2011, the partners of the petitioner firm transferred the land and the building where "Hotel Malika Residency" is situate, to respondents 5 to 8, who are partners of yet another firm M/s Bee Bees Palace, as

per Ext. P-2 sale deed dated 13-4-2010, that was registered on the same day. The petitioner states that on the very same day, the purchaser firm M/s Bee Bees Palace, leased back the property conveyed to it as per Ext. P-2 sale deed, to the petitioner firm as per Ext. P-3 lease deed dated 13-4-2010 for a period of five years, with effect from 13-4-2010 with the obligation to pay the sum of Rs. 2,50,000 per mensem as rent. It is stipulated therein that the petitioner firm will be at liberty to use the entire hotel building and the premises and can obtain hotel, lodging licence, etc., for running the bar attached hotel named "Hotel Malika Residency". Though the fifth respondent later raised a dispute and also filed a complaint in the Court of the Judicial Magistrate of the First Class, Ettumanoor alleging that Ext. P-3 is a forgery and the court below forwarded the complaint to the Ettumanoor Police for investigation u/s 156(3) of the Code of Criminal Procedure and the Ettumanoor Police registered Crime No. 1263 of 2011 on 28-11-2011, it is not in dispute that Ext.P-1 licence was renewed for the year 2011-2012 also, without any objection being raised to the renewal either by the department or by respondents 5 to 8. When Ext.P-1 licence was issued for the first time to the petitioner firm, the hotel had a three star classification which was required for the grant of a fresh FL-3 licence at the relevant time. Rule 13(3) of the rules was amended with effect from 9-12-2011 and thereafter, an FL-3 licence can be issued only to hotels which have obtained four star, five star, five star deluxe, heritage, heritage grant or heritage classic, classification from the Ministry of Tourism of the Government of India.

2. Long after Ext.P-2 sale deed was executed, the fifth respondent filed Ext.P-5 complaint dated 2-12-2011 produced in W.P.(C) No. 32515 of 2011 before the Commissioner of Excise, Kerala, the Deputy Commissioner of Excise, Kottayam and the Circle Inspector of Excise, Ettumanoor alleging that Ext.P-3 lease deed is a forgery and that he has objection to the FL-3 licence in the name of the petitioner firm being renewed. The fifth respondent thereafter filed W.P.(C) No. 32515 of 2011 in this Court for an order directing the Commissioner of Excise, Thiruvananthapuram and the Deputy Excise Commissioner, Kottayam to enquire into Ext.P-5 complaint filed by him and to take action to cancel or suspend the licence issued to the Managing Partner of the petitioner firm. He also sought an order directing them not to permit the Managing Partner of the petitioner firm to run the bar attached hotel on the strength of Ext.P-1 licence. The Managing Partner of the petitioner firm thereafter moved the third respondent for renewal of Ext.P-1 licence for the year 2012-2013. The third respondent then took the stand that as the petitioner firm had transferred the hotel building and the appurtenant land to the partnership firm of which respondents 5 to 8 are partners, without the previous sanction of the Excise Commissioner, he is not entitled to seek a renewal of the licence in view of the stipulations contained in Rule 19 of the rules. W.P.(C) No. 6494 of 2012 was thereupon filed on 14-3-2012 seeking a declaration that the petitioner firm is entitled to have Ext.P-1 licence renewed in terms of the policy of the Government and a direction to the official respondents to renew Ext.P-1 licence for the year 2012-13 and in the subsequent

years.

3. When W.P.(C) No. 6494 of 2012 came up for hearing on 29-3-2012, after notice to the respondents, a learned Single Judge of this Court after hearing both sides passed the following interim order:

The writ petition need be heard in detail. In view of the mid summer holidays, post the matter for hearing immediately after reopening. There will be an interim direction to the third respondent to provisionally grant renewal in favour of the petitioner for a period of three months subject to payment of the requisite licence fee and complying with other formalities required. It is made clear that the provisional renewal ordered above will be subject to result of this writ petition and that the petitioner cannot claim any right on the basis of this interim order if it is ultimately found that the petitioner is not entitled for getting the licence renewed.

4. Aggrieved thereby, the fifth respondent filed W.A. No. 721 of 2012. Though initially, a Division Bench of this Court passed an interim order staying the operation of the interim order passed by the learned Single Judge on 29-3-2012, the writ appeal was dismissed by judgment delivered on 12-4-2012. SLP (Civil) No. 13436 of 2012 filed by the fifth respondent in the Apex Court was dismissed by Ext.P-6 order dated 27-4-2012 with the observation that renewal of the licence in terms of the order passed by the learned Single Judge, shall be strictly in terms of the procedure laid down in Rule 13 of the Foreign Liquor Rules. In the meanwhile, as directed by the Excise Commissioner, the Joint Excise Commissioner, Southern Zone, Thiruvananthapuram, enquired into Ext.P-5 complaint produced in W.P. (C) No. 32515 of 2011 and submitted a report dated 12-3-2012, a copy of which is produced as Ext.R-5(c) in W.P.(C) No. 6494 of 2012. In that report he recommended that the FL-3 licence issued to the petitioner firm may be suspended and may be renewed only after the dispute between the parties is settled. The fifth respondent thereupon filed W.P.(C) No. 8414 of 2012 for an order directing the Excise Commissioner to take immediate action upon that report and for an order directing the Excise Commissioner to suspend the licence issued to the petitioner firm for the reason that the petitioner firm does not possess a valid licence issued by the Ettumanoor Grama Panchayat to run a hotel/restaurant in the premises mentioned in the licence.

5. The main contention raised in W.P.(C) No. 6494 of 2012 is that there is no restriction in the Abkari Act or in the Foreign Liquor Rules or in the conditions of licence which prohibits transfer of the licenced premises without the previous sanction of the Excise Commissioner and therefore, the stand taken by the respondents that the licencee has violated Rule 19 of the rules cannot be sustained. It is contended that the restriction contained in Rule 19 of the rules and in the conditions of licence is only as regards as sale, transfer or sub renting of the licence and not of the licenced premises and as Managing Partner of the petitioner firm has admittedly not transferred the licence and the licence still stands in his name and it was renewed even after the licenced premises was sold

under Ext.P-2, the petitioner firm is entitled to have the FL-3 licence renewed. The third respondent, the Deputy Commissioner of Excise, Kottayam has sworn to a counter-affidavit dated 21-6-2012 on his own behalf and on behalf of the second respondent, Excise Commissioner. In paragraph 3 thereof it is stated that though the partners of the petitioner firm constructed a three star classified hotel named "Hotel Malika Residency" and obtained an FL-3 licence as per order No. XC7-12038/06 dated 4-8-2006 issued by the Excise Commissioner, that FL-3 licence to Hotel Malika Residency was granted in the name of the Managing Parmer, that it is still in the name of the Managing Partner, that the validity of the three star classification certificate issued to Hotel Malika Residency expired on 30-4-2011, that a three star classification certificate is essential to renew the FL-3 licence and therefore, the FL-3 licence cannot be renewed. It is contended that as the petitioner''s hotel possessed a three star classification certificate when the FL-3 licence was first granted in the year 2006, no reliance can be placed on the 7th proviso to Rule 13(3) of the rules. In paragraph 4 of the counter-affidavit it is stated that the partners of the firm "Hotel Malika Residency" sold the land and building as per Ext.P-2 sale deed to M/s Bee Bees Palace, another partnership firm, without obtaining the previous sanction of the Excise Commissioner thereby violating Rule 19 (i) of the rules and therefore, action under Rule 34 of the rules was recommended against the licencee. It is stated that one of the partners of the purchaser firm (the petitioner in the connected writ petitions) has disputed the lease arrangement and denied having affixed his signature thereto, that the genuineness of the lease agreement can be established only in a competent court and the Police are also investigating into the matter. In paragraph 5 it is stated that upon receipt of Ext.P-5 complaint produced in W.P.(C) No. 32515 of 2011, an enquiry was conducted by the Joint Excise Commissioner and in the enquiry it was revealed that without obtaining the previous sanction of the Excise Commissioner, the hotel building and the appurtenant land were assigned to M/s Bee Bees Palace, thereby violating Rule 19(i) of the rules. In paragraph 6 it is stated that in view of the above reasons and also for the reason that Hotel Malika Residency does not have a valid restaurant licence, the licence cannot be renewed for the year 2012-13. A reading of paragraphs 6 and 7 of the counter-affidavit makes it evident that the official respondents have no case that the FL-3 licence was transferred without the previous sanction of the Excise Commissioner. The case set out is that the sale of the hotel building and the appurtenant land without the previous sanction of the Excise Commissioner is illegal and therefore, the licence cannot be renewed. The other reasons given are that the validity of the three star classification certificate expired on 30-4-2011 and the hotel does not have a licence to run a restaurant.

