

(1995) 09 KL CK 0031
In the High Court Of Kerala
Case No : O.P. No. 8614 of 1994-A

M. Gopalkrishnan and Another	Vs	APPELLANT
The Commissioner Chalakuddy Municipality, Chalakaddy and Another		RESPONDENT

Date of Decision : 21-09-1995

Acts Referred:

Kerala Municipalities Act, 1961 — Section 280

Citation : AIR 1996 Ker 174

Hon'ble Judges : V.V. Kamat, J

Bench : Single Bench

Advocate : K.A. Shamsudeen, for the Appellant; Viju Thomas and S. Paramewaran, for the Respondent

Final Decision : Allowed

Judgement

V.V. Kamat, J.—The two petitioners have approached this Court in the matter of their licence relating to their canteen stalls and as a consequence allow them to continue their business after quashing the order (Ext. P9). They are the residents of Chalakkudy. It is averred that petitioner No. 1 is physically handicapped. They are running two canteen stalls attached to a theatre, "Akkara Theatre" owned by a firm in the name and style of "Augesthya Corporation" represented in this petition by additional respondent No. 3 as the managing partner of the Corporation.

2. The canteen stalls are situated within the compound of the theatre. Petitioner No. 1 deals in cool drinks, cigarettes, pan etc. whereas petitioner No. 2 has a tea stall. It is averred that this Akkara Theatre was constructed 30 years ago. The present respondent No. 3 assumed ownership 20 years thereafter, approximately 10 years prior to the petition. It is also averred that earlier these stalls were conducted by one Sri Paul. When from 1983 onwards the above firm purchased the theatre, the petitioners continued running the stalls on monthly rent of Rs. 90/-. Their prospective customers are only cinegoers. It is averred that other

than the cinema theatre, these stalls are not allotted separate numbers by the Chalakkudy Municipality. It is further averred that there is no separate electricity or water connection other than those provided to the theatre.

3. In addition, it is averred that right from the year 1983-84 onwards the petitioners have licences both u/s 284 of the Kerala Municipalities Act as well as under the provisions of the Prevention of Food Adulteration Act, having been renewed periodically from year to year. It is averred that the purpose and name of the business shown in the licence is "Akkara Theatre Canteen" showing the building number as that of the theatre building. Right from the inception the Chalakkudy Municipality has issued receipts evidencing acceptance of licence fees from the petitioners, photostat copies of which are placed on record at Ext. P1, Pl(a) to Pl(i) as far as petitioner No. 1 is concerned and ExtS, P2, P2(a) up to P2(h) as far as petitioner No. 2 is concerned. Perusal of these documents would substantiate the contention that Chalakkudy Municipality has issued official receipts to both the petitioners with regard to payment of licence fees as well as towards the Prevention of food Adulteration Act with regard to the property located at Akkara Theatre. Perusal of these documents would further show that these payments are received from time to time from 1983-84 continuously down to the year 1992-93 from both these petitioners.

4. It is urged that the certificate of licence is with the respondent No. 2 as it is tendered for the purposes of renewal.

5. In addition thereto it is averred that the business of the petitioners is registered with the Labour Department of the State Government and the necessary certificates under the provisions of the Shops and Commercial Establishments Act, 1960 issued by the Assistant Labour Officer to each of the petitioners are tendered at Exts. P3 and P3(a). These certificates, it will have to be stated in fairness to the record, are issued on March 23, 1991 as far as petitioner No. 1 is concerned and on September 7, 1989 as far as petitioner No. 2 is concerned, specifically mentioning the name of the establishment as "Canteen-- Akkara Theatre", further recording the payments made by the petitioners and accepted by the registering authority up to the end of December 31, 1993 towards the registration certificate. It is also necessary to record that as far as petitioner No. 1 is concerned, the payments right from 1983 onwards up to the period ending on December 31, 1991 are accepted on February 23, 1991. Be that as it may, these two documents place on record that the concerned Labour Department through the Assistant Labour Officer, Chalakkudy have issued the registration certificates to these establishments which are shown to have been located at Akkara Theatre, and are described as canteens.

6. It is necessary to mention that it is averred that petitioner No. 1 is also in occupation and possession of one other room in another commercial building owned by the very same owner of the theatre wherein he is conducting a flower mart under the name "Trichur Flower Mart". The said property is described as No. XXV/290 (old No. XXV/260). It is averred in respect of the said premises that

there is a dispute between petitioner No. 1 and the owners leading to a rent control petition for eviction in the civil Court of Irinjalakkuda. It is specifically averred that because of the above dispute the relations are strained and all sorts of steps are taken to evict the petitioners from the present canteen stalls also. It is averred that within the compound of the theatre complex a new canteen stall was attempted to be raised in regard to which various authorities were moved by the petitioners staying the said construction for some time. Parallel business was commenced within the theatre compound itself by the owners -- Augesthya Corporation, simultaneously adopting methods of disturbance. In the petition illustratively some of the methods are specified.

7. It is then averred that in February, 1993 notices were received from the Chalakkudy Municipality through its Commissioner (respondent No. 1) alleging that in regard to their applications for renewal of licences for the year 1992-93, the said applications are rejected on the ground that the petitioners had furnished wrong building numbers in their applications to snatch an order on the basis of the above false information. As a consequence the notices intimated stoppage of their business activity and called for explanation for furnishing these erroneous particulars together with a threat of a possible prosecution. These notices are placed on record at Exts. P4 and P4 (a). It is contended that the respondent Nos. 1 and 2 had not assigned separate numbers to the canteen stall other than the assignment of the number to the cinema theatre. The petitioners also recorded their no objection in assigning separate numbers to the premises occupied by them.

8. It is averred that ignoring the explanation" their application for renewal of the licences for the year 1993-94 was not accepted by respondent No. 1, nor were the petitioners permitted to remit the required licence fee. It is specifically urged and alleged that respondent Nos. 1 and 2, the statutory authorities, are acting at the instigation of the owners of the theatre leaving the petitioners to submit the application by registered post accompanied by the required payment by money orders necessary for the renewal of the licence which was renewed as stated above right from the years 1983-84.

9. It is further averred that unlike a statutory authority, the municipality even refused to accept the postal cover containing the applications and it was returned with the postal endorsement "refused".

10. This led the petitioners to approach this Court by filing O.P. No. 4566/1993 with a prayer for a direction in the matter of renewal of licences for the years 1992-93 and 1993-94. This Court issued interim direction for the issuance of the provisional licences and accordingly the respondent Nos. 1 and 2 renewed the licences provisionally from April 5, 1993 to June 5, 1993. It is necessary to place on record that this interim direction was also confirmed as a result of the dismissal of W.A. No. 560/1993 by an Order dt. May 24, 1993.

11. To place on record the conduct of respondent No. 1 in this background, it is

placed by way of an averment that on the last day of the validity of the provisional licence, on June 5, 1993, in spite of the pendency of the petition in this Court, a notice was issued to the petitioners to stop the business from June 6, 1993. To substantiate the contention regarding the conduct of respondents 1 and 2, a copy of the said notice is also placed on record at Ext. P5. This led this Court to issue further directions for grant of provisional licence.

12. The record shows that by an order dt. July 6, 1993 decided O.P. No. 4566/1993 with a direction to the respondent No. i is as follows:

"The applications of the petitioners for licence are now pending before the first respondent. The first respondent is directed to consider these two applications and pass appropriate order therein. The first respondent shall hear both the petitioners and also respondents 4 and 5 or their representatives. All these parties may be given reasonable opportunity to produce documents of their own to prove their respective contentions. A decision in this regard shall be made at the earliest. Till such decision is taken, the petitioners shall not be evicted from the building in which they conducted business. If the order is passed against the petitioners, they may be given opportunity to challenge the same before appropriate statutory authority. Till such reasonable time the order shall not be implemented. The petitioners have claimed several other reliefs in the original petition. As this original petition is disposed of to consider the pending application for licence, I do not go into other questions. It is made clear that the original petition is disposed of without prejudice to such rights of the petitioners."

It would thus be seen that the petitioners continued to function with regard to their business activities specified above.

13. It is also placed on record that the petitioners had to approach the Munsiffs Court, Irinjalakuda by filing O.S. Nos. 559/ 1993 and 560/1993 seeking injunction against the owners from eviction or demolition of the building otherwise than through the due process of law. Such an injunction was granted by the Civil Court.

14. The material on record shows that thereafter respondent No. 1 conducted enquiry and passed order dt. September 4, 1993 (Ext. P7) in accordance with the directions of this Court in the earlier petition as stated above.

15. Perusal of this order dt. September 4, 1993 would show certain basic features that are on record have been completely ignored by respondent No. 1. In fact the aspects that are recorded to have been revealed from the office records and that have formed the basis of the order are as follows:

"(a) Tea shop and pan shop are being conducted unauthorisedly within Akkara Theatre compound without obtaining licence from the Municipality.

(b) For the shed which was constructed unauthorisedly by the building owner Smt. K.A. Lilly, years back, no permission was obtained from the Municipality nor it was numbered.

(c) Sri M. Gopalakrishnan and Sri K.D. Devassy were conducting the business cheating the Municipal authorities by remitting the D and O Licence fee in forged numbers for years, as if they were having licence,

(d) The shed is not permissible under KBD 1984. No permission for conducting business in such building is allowable.

(e) In the report of the Municipal Health Inspector it is stated that the sale of Food and Drinks in the shed situated, very near to the urinal since there is unbearable foul smell and unhygienic circumstances."

16. It would be seen that the staring feature of long and uninterrupted occupation and possession of the petitioners in a lawful manner on acceptance of the payment has been totally ignored in Ext. P7 from consideration. I have already observed after perusal of Exts. P1 and P2 that in the compound of Akkara Theatre the petitioners have been carrying on business activity in the premises described as "Canteen -- Akkara Theatre". The documents speak for themselves. The case of the petitioners is already placed in the proper perspective hereinbefore. In the light of these aspects as far as the petitioners are concerned, their occupation and possession is difficult to be understood as unauthorised and on the contrary their long continuous and uninterrupted possession stares in the face of the situation required to be appreciated. It is also necessary to consider the averment of the petitioners that they are on the premises for the last 30 years and the present respondent No. 3 would be 20 years after their initial occupation and continuance thereafter. Suffice it to say that the factors that are placed on record in the order at Ext. P7 is completely based on total ignoring of the material on record showing long and uninterrupted occupation of the petitioners. It appears that the petitioners have preferred statutory appeal by preferring the memorandum placed on record at Ext. P8. It is averred that after a lapse of about 9 months from the submission of the memorandum (Ext. P8), the petitioners received communication giving them an intimation that the appeal was dismissed by the Municipal Committee on June 7, 1994. Needless to state that this was, it is urged also, in violation of the elementary principles of natural justice as no hearing was given to the petitioners, nor the decision was communicated to them. In this context also it is averred that the petitioners are entitled to have a speaking order from the appellate authority in the matter of a statutory appeal with regard to their legal rights of continuance. It is urged even with regard to the contents of the said communication that it is a product of non-application of mind. With regard to the text of the order it is necessary to mention at this stage that the learned counsel has submitted the translated version of these two orders and in regard to the appellate order, pointed out that this is proceeding on order of the Municipal Commissioner, Chalakudy. In other words, it is submitted that it cannot be considered from the examination of the tenor of the contents of the said order that it is an order of the statutory appellate authority. Be that as it may, it records that the Committee, the Municipal Committee being the statutory

appellate authority, was convinced that the cool drinks and pan shop are unauthorisedly constructed and not numbered by the municipality, emphasising also that the building number 285 shown in the applications under consideration are not referable to the licensed premises. The decision of the Committee recorded as resolution No. 10 is intimated by Ext. P9 to the effect that no licence can be granted for the business in the building unauthorisedly constructed and not numbered by the municipality.

17. It is on the basis of these factual averments it is urged that the factors staring in the face of the record show long uninterrupted and continuous occupation and possession of the petitioners for over a period of 30 years, in the light of the situation that the present respondent No. 3 came to hold the title for the last 10 years only. The learned counsel urged that the documents placed on record show payment of licence fee to the Chalakkudy Municipality both for the theatre and towards the payment under the Prevention of Food Adulteration Act and that too continuously for a period commencing from 1983 onwards. The learned counsel submitted that the proceedings dealing with the petitioners cannot be understood and properly appreciated as without the instigation of the owners of the theatre. The learned counsel also submitted that in spite of the position that the petitioners have already a premises in the complex independent of the premises in question, in regard to which there is a rent control legislation, several factors placed on record go a long way in appreciating the approach of the statutory authority. The learned counsel further submitted that petitioner No. 1 deals in cool drinks and pan whereas the petitioner No. 2 has a tea shop which are natural annexations of a cinema theatre together with the existence of a urinal by the side. The learned counsel submitted that the averments of the petitioner are substantiated by the documentary material on record at least in the nature of Exts. P1 and P2 together with his sworn averments in the petition, and there is no reason to discard the version of the petitioners on human probabilities. The learned counsel also submitted that the fabric would show that in 1991 the real dispute is born and again on probabilities as a result of initiation of rent control litigation. The learned counsel submitted that if the situation of these business activities is taken into consideration, the continuance of the said activities in the nearness of the urinal also will have to be taken into consideration as a situation in existence for over a long time. The learned counsel urged that the question will have to be approached on the basis of these various aspects throwing sufficient lens light and would have to be appreciated on the basis of the steps taken by the owner of the premises from the year 1991.

18. The averments of the petition and the contentions are answered both by the owner (additional respondent No. 3) as well as by the statutory authorities (respondents 1 and 3).

19. Perusal of the counter of the owner would place the following contentions to be considered in the decision of the present petition. It is urged that the averments and insinuations in paragraphs 11 and 12 of the O.P. and the ground

are totally untenable, unfounded, incorrect and untrue and are liable to be disbelieved and rejected. It is urged that the petitioners have no right to apply for any licence to run any business. In the process it is urged that the petitioners have no right to occupy or possess the premises because there is no relationship of lessor or lessee with regard to any shop or room or other structure in the premises of the cinema theatre. There is no question of permission also. It is contended that the petitioners are attempting to mislead this Court on the sympathetic ground or consideration and make use of it to perpetuate a claim over the premises of this respondent. It is urged that so far as the petitioner No. 1 is concerned, he is a tenant of one of the shop rooms in the shopping centre belonging to the Augesthya Corporation. It is also urged and it sounds quite interesting that on a couple of occasions when both the petitioners tried to put up some unauthorised improvised structures in the premises, this respondent raised objections and protested when they left the attempt thereafter. It is urged that in an attempt to create some right in their favour, they filed application before the Municipal Commissioner, Chalakkudy for the issuance of Dangerous and Offensive Trades Licence (D. O. Licence) and when this was known sometime in July 1991, a written representation was submitted to the Commissioner not to issue any licence. It is contended that the petitioners have given false numbers of rooms and remitting amounts towards licence fee. It is urged that in this manner, without the knowledge and consent of respondent No. 3 attempts are made to obtain licence. It is urged that in fact the canteen and cool drink house is conducted by respondent No. 4 themselves and, therefore, there is no question for any one else being permitted or consented for the licence for running the business. It is contended in the counter that the attempt of the petitioner is to perpetuate their act of trespass under one pretext or other.

20. The counter of the statutory authority-respondents Nos. 1 and 2 also needs to be referred to in the context for the relevant purpose. Obviously the averments of the petition that the petitioners are running the stalls on rental basis for a monthly rent of Rs. 90/- is not known to the statutory authorities and it is stated so in the counter. It is further placed on record that as far as the stalls are concerned, no separate building numbers are allotted. It is urged that the stalls are unauthorised. It is stated that the two stalls are partitioned at the centre of one independent unauthorised building. Needless to state that the mandatory requirement of permission from the statutory body is pressed into service. It is on the basis of the said contention that the structure is in existence without permission. It is averred that the petitioners are carrying on business unauthorisedly. I am afraid that it is not possible to accept the averment because the existence of the structure without the necessary permission may perhaps have the characteristic of the structure being unauthorised. However, if the petitioners are conducting business with a long duration continuously and uninterruptedly, it is difficult to accept the contention that the petitioners were carrying on business unauthorisedly as a logical consequence of the premises being unauthorised.

21. With regard to the documents (Exts. P1 and P2) ranging from 1983-84 onwards, it is urged that the petitioners have quoted wrong building numbers and have managed to obtain Exts. P1 and P2 from the office of the Municipality. Suffice it to observe that the authority of the level and prestige of the Municipal Commissioner of a Municipality has made this statement without taking the elementary care of seeing the documents themselves. In the narrative I have referred to these exhibits after perusing them and I have already recorded the description of the premises shown as "Canteen -- Akkara Theatre". In the teeth of these glaring situations on the record of Exts. P1 and P2, it is not possible to understand the averment that the petitioners have quoted wrong building numbers as far as the documents Exts. P1 and P2 are concerned. With regard to the other comment that these receipts have been managed by the petitioners from the office of the Municipality, exercising judicial restraint to the utmost, the averment of the Municipal Commissioner of this character has left many things wide open for justifiable comment and their consequence. The only subdued comment that is possible is that any payment is accepted whether the payment is due or not and in such a situation of functioning of a statutory body, documents could be made available as evidence of occupation. It is not possible to accept this answer that the documents are managed. It could only mean that the statutory head of the statutory body for convenience can have courage to say anything that is suitable for the purposes of the litigation in the Court. I refrain further.

22. It is averred that the petitioners had furnished wrong building numbers in their applications. The applications are of the year 1993. These are not the applications for the first in point of time. The earlier records are placed on record of the petition and have been referred to by me earlier. The averments require consideration in the light of the above material on record. It is urged that it is the requirement of law that the small stalls situate within the theatre premises should also have a separate and independent number. These are matters for the record and convenience of the statutory body. The question for consideration in the proceedings of this petition is as to whether the material placed on record by the petitioners in the nature of Exts. P1 and P2 could be possibly considered to have been managed as sought to be contended by the Municipal Commissioner. It is not possible to accept the said averment that these documents are managed.

23. There are several factors which are required to be considered on the basis of probabilities of the situation. It is impossible to ignore that all this was set in motion when in 1992-93 application was rejected. Another factor which is required to be taken into consideration is that at or about this time the rent control litigation with regard to other premises in the shopping complex was initiated against petitioner No. I which was, again on probabilities, the force of destruction of normal relationship between the occupant and the owner. The factual matrix and the contentions cannot be left away from the consideration and common experience that the relationship of the owner and the occupant rarely exhibit elements of cordiality. It is understandable as far as respondent

No. 3 on the one hand and the petitioners Nos. 1 and 2 on the other from the very nature of their relationship inter se, but it is not possible to appreciate that a statutory body should come before this Court to accept that everything can be managed. Because it is stated by the Municipal Commissioner it would be more than difficult to receive the stamp of acceptance by an automatic process. The presumption is otherwise. All officers and all official acts have a presumption of genuineness and emergence after following the necessary particulars. The documents at Exts. P1 and P2 have been issued in the official course of business and at least on probabilities there is no reason to discard that these documents have been issued from time to time during year to year when the payments were made in regard thereto except the document at Ext. P3.

24. It would also be necessary to place on record that in the teeth of the detailed averments in the petition regarding the occupation of the petitioners, emphasising the emergence of the respondent No. 3 to have the title of ownership after a period of 20 years of their occupation, averments placing on record the question of payment of rent of Rs. 90/- per month from the beginning in regard to the premises in question together with the placement of the material on record in the nature of Exts. P1 and P2, a bare denial not only by the respondents Nos. 1 and 2 that they do not know, as well as denial of the same character in the counter of respondent No. 3 would hardly display any element of satisfaction that is required from the respondents in the context. For the purposes of this petition, as stated above, continuous and uninterrupted occupation stares in the face of the record and is supported by the documentary evidence on record in the nature of receipts, Exts. P1 and P2. I have already observed that the stand taken up by the statutory body that these documents are managed would not stand the test of any kind in the context.

25. It will have to be observed that occupation and continuous possession of the premises go a long way in the matter of the need for protection of the possession. I have already observed that the nature of the premises and the nature of the business could not be characterised by the same adjective as has been done by the Municipal Commissioner. In these days of paucity of accommodation, need to consider the rights of the parties, has introduced certain rights flowing from exclusive character of possession of a continuous character. It is needless for me to say that for persons like the petitioners it would be an unequal fight and it would, therefore, be the guarded duty of the statutory authorities to be vigilant to all the usual casualness of describing their own receipts as having been managed. The proceedings of this petition necessitates a need for observation that if not the statutory authorities considered the entire situation, a common man will have no door-step in the first instance. The record of orders that are placed on record show that initially the licence was rejected on flimsy ground that the number is not correct which I have already observed to be erroneous on facts. It is seen that it is after the earlier order of this Court fault is found with the difficulties of hygiene ignoring that the situation has continuity as it is for every number of years. It also needs

to be observed that if a cinema theatre accommodates a tea stall and pan shop in the vicinity of a urinal, the person to be dealt with is not the panwala and the tea stallwala. Necessary steps are desired that these situations are avoided by the principal person who has to deal with the members of the public and maintain minimum standards of public health. The proceedings also reveal the situation that instead of treating the real person in regard to these aspects, rejection of licence has been chosen to be the remedy which will result in placing these two petitioners straightway on the street. In my judgment, time has come to take up these aspects into consideration if not by anyone else, by the authorities who are in charge of carrying out the functions of a public body for District Administration or the Municipal Administration.

26. Another feature is placed on record by the proceedings of this petition. The petitioners are required not only to approach this Court more than once, but also to approach the Municipal authorities almost more than once because of the situation that is described by me hereinbefore on perusal of the appellate order (Ext. P9).

27. The proceedings require me to emphasise the need for protection on the basis of the material on record. It need not be understood that protection should continue with regard to the conduct of the tea stall and the pan shop in the vicinity of the urinal. The Municipal authority is certainly free to look into the question if it is on the ground of hygiene. But the Municipal authority would certainly consider the importance of the situation that instead of cancelling the licence, the person really responsible for it has to be dealt with to remedy the situation for there is no dispute that the premises is of a cinema theatre and a pan shop and a tea stall are the necessary pre-requisites of a cinema theatre along with a urinal. The manner in which the situation is to be solved is the factual aspect to be taken into consideration by the Municipal authorities. In the process the proceedings reveal that it is the petitioners who need to be looked after in view of their long uninterrupted occupation and possession of the premises. In fact rights that are available on the basis of continuous occupation are rights beyond the pale of the scope of the present petition. The observations will have to be appreciated in the context of the material that is placed on record governed by the law of buildings for the purpose of this petition.

28. For the above reasons the petition succeeds. Both the petitioners are entitled to a direction in regard to the renewal of the licence as a result of the quashing of Ext. P9 with regard to the premises in question, viz., the cool drinks and pan shop of petitioner No. 1 and tea stall of petitioner No. 2 making it clear that the Municipal authorities would be free to look after the considerations of hygiene as is found in the order in a proper way in accordance with the observations made hereinbefore. Needless to state that the parties are free to take up steps with regard to the rights relating to the property in question and the observations made above would have to be understood and appreciated in the context of the question of renewal of licence which is the subject-matter of the petition. In the

circumstances there shall be no order as to costs.