
(2001) 07 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 20850 of 2001

Mahtanis Enterprises

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Citation : (2004) ILR (Kar) 2567 : (2001) 4 KCCR 186 SN

Hon'ble Judges : V. Gopala Gowda, J

Bench : Single Bench

Advocate : T. Seshagiri Rao, for the Appellant; Muniyappa, for the Respondent

Judgement

Gopala Gowda, J.—The petitioner was running a Pub and Restaurant in M.G. Road, Bangalore under a valid license. When the petitioner applied for renewal of license for the year 1999-2000, renewal was refused on the ground that if the topography of the premises is taken into consideration, petitioner's business establishment would be in Cellar Floor for which trade license is prohibited under Bye-law No. 21(c) of the Building Bye-laws. Another ground on which license has been refused is, there is no provision for parking in the entire building. Aggrieved by the same, the petitioner preferred appeal before the Standing Committee. By an interim order dated 16-11-2000 the Standing Committee permitted the petitioner to carry on the business, till the disposal of the appeal. The Commissioner of Bangalore Mahanagara Palike by his letter dated 18-12-2000 recommended to the State Government to cancel the interim order of the Standing Committee on the ground that permission cannot be granted to run the business in the ground floor. Consequently, the Government passed the impugned order at Annexure-E dated 24-5-2001 cancelling the order dated 16-11-2000 of the standing Committee.

2. Originally the petitioner has filed this Writ Petition seeking to quash the impugned order at Annexure-E dated 24-5-2001. By filing an application, directions have been sought to 4th respondent to consider the application of the petitioner for renewal of license pursuant to the applications dated 26-2-2001

and 21-5-2001 by accepting the renewal fee and also directing the respondents not to take any action to close down the business of the petitioner until renewal of the license. The said application is allowed.

3. According to the learned Counsel for the petitioner, the impugned order at Annexure-E is contrary to the decision of this Court in the case of RAMAKKA v. BANGALORE CITY CORPORATION. ILR 2001 KAR 2797

4. Brief statement of objections is filed on behalf of respondents 2 to 4 justifying the impugned action and reiterating that the building in question is in basement floor which is ear-marked for parking of vehicles and seeking dismissal of the Writ Petition.

5. The impugned order at Annexure-E need not be quashed as quashing of the same is only academic as the period of license was over and fresh application is filed for renewal of license. The Writ Petition has to be considered in the light of the additional prayers sought for in the application, which has been allowed. For that purpose, it has to be considered whether the premises in which the petitioner is carrying on business is a cellar floor or not and whether parking facility is provided in the building. For this purpose, the definition of Basement or Cellar has to be looked into. Section 2.8 of Building Bye-laws of the Corporation defines the same as under:-

"2.8 BASEMENT, STOREY OR CELLAR" means any storey which is partly or wholly below the level of the centre of the adjoining road in the front. The basement storey should not project more than 1 m. above this road level".

As per the above definition, to determine whether the building is cellar or basement or not, the adjoining road in front of the building has to be taken into consideration.

6. Admittedly the building in question is facing M.G. Road. From this road side the building is in ground floor and not in cellar floor. It may be that the building is in cellar floor on the back side. But that is not relevant for considering in which floor the building stands. As per the definition extracted above, road abutting the front portion of the building is the relevant consideration. If that is taken into consideration, the building in which the petitioner was carrying on business stands in the ground floor. Therefore, refusal to renew the license on the ground that the building is in cellar floor is without any basis and the same is rejected.

7. Learned Counsel for the petitioner relying upon the sanctioned plan has submitted that parking facility is provided. Whether parking facility is provided to the customers of the petitioners or not in the premises in question, is a fact to be examined by the concerned authorities.

8. It was reported that the petitioner was carrying on business despite refusal of renewal of license and application for renewal for the current year is pending. Pursuant to the observations made by this Court, Mr. T. Seshagiri Rao, learned Counsel for the petitioner submits that petitioner has stopped running the

business. This is not disputed by the learned Counsel for Bangalore Mahanagara Palike. It is also stated that the Health Officer already visited the spot and inspected the premises. The submission of learned Counsel for the petitioner is placed on record.

9. The prayer sought to direct the respondents not to take action to close down the business of the petitioner does not survive for consideration since petitioner himself has stopped the business.

10. In so far as the sole prayer that remains for consideration to consider the applications of the petitioner for renewal of license is concerned, the applications are not considered in view of the impugned order at Annexure-E. In the light of the observations made above, the respondents are directed to consider the application of the petitioner for renewal of license without being influenced by the rejection of renewal under Annexures-C1 to C3 and the Government Order at Annexure-E. If for any technical reasons the applications for renewal cannot be considered, respondents may consider grant of fresh license to the petitioner.

11. Writ Petition is partly allowed directing the respondents to consider the applications of the petitioner as indicated above and pass appropriate orders within two weeks from the date of receipt of a copy of this order.