

(1998) 09 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No's. 8640 and 9281 of 1998, W.M.P. No's. 13133, 14200 and 14201 of 1998 and Cont. Application No. 405 of 1998

Mrs. Gandhimathi and Others

APPELLANT

Vs

The Collector and Others

RESPONDENT

Date of Decision : 09-09-1998

Acts Referred:

Evidence Act, 1872 — Section 73

Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 13

Citation : (1998) 09 MAD CK 0001

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : S.V. Jayaraman, in W.P. No. 8640/98, for the Appellant; Patty P. Jagannathan, A.G.P. for Respondents 1 to 3 in W.P. No. 8640/98 and for Respondents 1 to 3 in W.P. No. 9281/98 and A.L Somayajee for N. Damodaran, for Respondents 4 and 5 in W.P. No. 8640/98, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—The Writ Petition No. 8640/98 is filed by the Petitioners for issue of mandamus or any other order or direction

directing the Respondents 1 to 3 to cancel the Licence No. 245/715/MG dated 29.5.1998 issued by the first Respondent herein to the fourth

Respondent herein to vend Indian Made Foreign Liquor at the Petitioners' premises bearing Door No. 49, South Boag Road, T. Nagar, Chennai-

17.

2. The Petitioners 1 to 4 are the children of one late Dhanapal Naicker and as per the partition deed dated 4.10.1994, the said property was

allotted to the Petitioners 1 to 4 in this case, which is an extent of 796 sq.ft.

3. The said property was originally leased out to the fifth Respondent herein by

name Kasimuthu Manickam, for a period of three years with effect from 1.6.95 and the period expired on 31.05.1998. At that time, the fifth Respondent was in possession and he was also dealing with the business of Indian Made Foreign Liquor. The lease period expired on 31.5.98 and thereafter the Petitioners 1 to 4 did not give any no objection certificate for him to conduct the business.

4. The fourth Respondent herein, was a successful bidder of Indian Made Foreign Liquor in Division No. 137, Mambalam in the public auction held on 2.5.1998.

5. The Petitioners did not give any permission nor they have executed a lease deed in favour of the fourth Respondent with regard to the schedule premises, i.e., Door No. 49, South Boag Road, T. Nagar, Chennai and the consent already given to the fifth Respondent has also expired on 31.5.98.

6. But, the fourth Respondent has obtained permission to conduct the business bearing Door No. 49, South West Boag Road, T. Nagar, Chennai in collusion with the authorities and the Petitioners apprehend that the fifth Respondent might have also colluded with the fourth Respondent in permitting him to enter possession. According to the Petitioners, the fourth Respondent is only a trespasser. Immediately after getting information about the occupation i.e. on 2.6.98 itself, the Petitioners submitted a petition for cancellation of the licence granted to the fourth Respondent. They had also sent a telegram to the third Respondent on 4.6.98 and a police complaint was also given on the same date. Repeated representations were also made to the authorities. In spite of several representations and telegrams, the Respondents 1 to 3 have not initiated any action to cancel the licence in favour of the fourth Respondent.

7. The further grievance of the Petitioners is that the fourth Respondent, after illegal trespass into the property, is threatening the Petitioners and has created law and order problem. It is further stated that they have sold the property to the fifth Petitioner (wrongly typed as fifth Respondent) under a registered sale deed dated 12.6.98 and the Petitioners 1 to 4 are bound to protect the interest of the fifth Petitioner also. The Petitioners 1 to 4 under the above circumstances, have come to this Court with the relief stated above.

8. A detailed counter affidavit has been filed by the fourth Respondent wherein he alleges that he has entered into possession of the premises on the basis of an unregistered lease agreement dated 20.5.98 which is for a period of three years. He has also agreed to pay a rent of Rs. 5,000/-. It is further stated that he has paid Rs. 1,50,000/- as advance. He stated that he has taken possession of the premises from the fifth Respondent on 20.5.98 itself.

9. It is stated that the fourth Respondent has already filed a suit in O.S. No. 3662 of 1998 on the file of III Assistant City Civil Court, Madras for permanent injunction restraining the owners or their men or anybody claiming through them from interfering with his possession and enjoyment of the suit premises and in the said suit, he has also filed an application in I.A. No. 8620 of 1998 and obtained an order of injunction. The subject matter of the lease agreement is with respect to Door No. 49, South West Boag Road, T. Nagar, Chennai and he is running the wine shop in a portion of it while retaining the other portions for storing wastes.

10. It is the further case of the fourth Respondent that on 9.6.98, he received a memo from the second Respondent calling upon him to explain for the complaint dated 5.6.98 given by the first Petitioner in this case. After getting copy of the complaint, he has also given explanation. It is stated that the previous owners gave all these troubles as he refused to purchase the demised premises for a fancy price. Thereafter, he verified the office of the Sub-Registrar, T. Nagar wherein he found that an extent of 385 sq.ft. of the premises bearing Door No. 49, has been sold to the fifth Petitioner herein and another portion to one Manickam. The said Manickam, in turn, has applied for a licence to conduct the Liquor business at Door No. 49/3 and the same is causing great inconvenience to him. In the lease agreement executed by the Petitioners 1 to 4, there is a mistake regarding boundaries.

10a. The fourth Respondent has also filed a Writ Petition No. 9281/98 questioning the right of the said Manickam to do business in the building where he has got the lease right. He has also obtained an interim order and the same is in force. According to him, he is in possession only on the basis of the lease agreement executed by the Petitioners 1 to 4 and the same is valid. Hence, he prays the dismissal of the writ petition filed by the

Petitioners.

11. The Petitioner in the Writ Petition No. 9281/98 is the fourth Respondent in the earlier writ petition. The third Respondent in this writ petition, is

a purchaser of a portion bearing Door No. 49, which is subject matter of the petition. In that portion, the third Respondent has obtained licence for

conducting liquor business. According to the Petitioner, the third Respondent is not entitled to do business in any portion of the premises bearing

Door No. 49 (to be more precise Door No. 49/3) since it forms a part of his own lease premises. In this case also, the Petitioner says that he has

taken lease of the entire premises bearing Door No. 49 on the basis of the lease agreement dated 20.5.98 and the same was executed by the co-

owners. So long as the lease agreement is in existence, the third Respondent is not entitled to do any business in any portion.

12. A detailed counter affidavit has been filed by the third Respondent in this case wherein he has stated that the lease agreement alleged to have

been taken from the co-owners on 20.5.98 is a fraudulent document and he has been doing business on the date of writ petition filed, in that

portion of the building which he has purchased on 12.6.98. He prays for the dismissal of the writ petition filed by the Petitioner/fourth Respondent

in WP. No. 8640/98.

13. On its part, the Government did not file any counter, but it has placed the entire file before this Court.

14. The only question that arises for consideration in this case is whether the lease agreement alleged to have been taken by the fourth Respondent

in WP. No. 8640/98 and who is the Petitioner in other petition, is valid or not?

15. When the execution of a document is denied, it is the duty of a person who relies on the same to substantiate that it is valid. Except for the

averment that he has taken a lease deed from Petitioners 1 to 4, no other evidence is let in by the fourth Respondent.

16. Certain circumstances which are placed create suspicion in the mind of this Court as to the validity and genuineness of the document. The

learned Senior Counsel for the Petitioner brought to me the original unregistered lease deed which is purported to have been signed by Petitioners

1 to 4. The admitted signature of Petitioners 1 to 4 is available in a partition deed executed by the members of the family. On a comparison of this

admitted signature with the signature in the impugned lease deed, I find that they are not similar. In fact, in the writ petition filed by the fourth

Respondent, it is admitted by him that the signatures appearing in the document are not similar with the signatures appearing in the lease agreement.

17. In this connection, it is also noted that there was an earlier lease arrangement with the fifth Respondent in W.P. No. 8640/98, which expires

only on 31.5.98. As per the lease agreement, the fifth Respondent has agreed to hand over the possession to the lessors on the expiry of the

period. In this case, the fourth Respondent states that he obtained the possession from the fifth Respondent on 20.5.98. Admittedly, during this

period, the fifth Respondent was doing Liquor business and the licence was also valid till 31.5.98. I feel, it is most improbable that in a case where

the licence is valid till 31.5.98 to do Liquor business, the licensee closed down the shop before the expiry period.

18. The lease agreement further provided that the fourth Respondent has paid a sum of Rs. 1,50,000/- as advance. Para 5 of the lease agreement

reads as follows:

The Lessor do hereby admit and acknowledge and give the receipt for a sum of Rs. 1,50,000/- (Rupees one lakh and fifty thousand only) given as

advance by the lessee.

No receipt has been filed to show that the fourth Respondent paid a sum of Rs. 1,50,000/-. Whether the fourth Respondent had the financial

capacity to raise this amount on that day, is also not proved. It is true that during that time, he has participated in the auction and has also paid huge

amount to the Government. That will not show that he had also sufficient fund to pay the advance.

19. The earlier lease agreement in favour of the fifth Respondent is also for a rent of Rs. 5,000/-. In the impugned lease agreement also, the rent is

fixed at Rs. 5,000/- only. Nowadays, when the inflation is rising and the rent is being increased every month, it is very doubtful whether the

Petitioners 1 to 4 would have agreed to receive the rent for Rs. 5,000/- only from the new tenant.

20. That apart, as per the earlier agreement the fifth Respondent/lessee paid a sum of Rs. 1,50,000/- as advance Unless and until that Rs.

1,50,000/- is received by him, he cannot hand over the possession. The

Petitioners specifically denied that the fifth Respondent has any right to surrender possession, so long as the lease deed in his favour subsists. None of these suspicious circumstances is explained by the fourth Respondent by adducing any evidence or supporting document. I am well aware that I am proceeding with the writ petition. Even, in such a case, when the fourth Respondent relied on a document, he has to prove the genuineness of the same. The claim is based on a lease agreement. When the lease period is exceeding one year and when the rent is fixed at Rs. 5,000/- and the advance is fixed at Rs. 1,50,000/-, the document should have been compulsorily registered. But, in this case, the document is an unregistered document. Even the stamp duty is not paid properly. In such cases, no reliance can be placed on such a deed. When the entire claim is based on such a disputed document, unless and until there is cogent evidence, this Court will not be justified to enter any findings in favour of the fourth Respondent.

21. The immediate conduct of the Petitioners is also relevant. On 1.6.98, a licence was taken by the fourth Respondent and he wanted to do business on the next day. When he attempted to enter into the building, a police complaint was also filed by Petitioners 1 to 4. They have also moved the authorities for cancellation of the licence in favour of the fourth Respondent. If Petitioners 1 to 4 have really received a sum of Rs. 1,50,000/- as advance and have also executed a lease agreement, there is no necessity for them to file a complaint within ten days after executing the impugned document. There is no explanation from the fourth Respondent in this regard, except to state that the Petitioners wanted their building to be purchased by him at a very high price, which he refused. The statement that within few days, Petitioners, 1 to 4 have sold the building to one Arumugham, the fifth Petitioner in WP No. 8640/98 and to one Manickam, the third Respondent in WP. No. 9281/98, shows that the case of the fourth Respondent is false.

22. The subject matter of litigation is the building bearing Door No. 49. The third Respondent in WP. No. 9281/98 is admittedly doing business in a portion bearing Door No. 49. The authorities have also inspected the property and they were satisfied that the third Respondent has physical possession over the same. If really the fourth Respondent was in exclusive

possession of the entire building bearing Door No. 49 on the basis of the impugned lease deed, he would not have permitted the third Respondent in this writ petition, to do business therein. He is also a competitor in the business.

23. It is true that this Court cannot sit as an expert for comparing the signatures and on the basis of comparison alone, a decision cannot be

arrived, but, at the same time, it cannot be said that this Court has no jurisdiction to compare the signatures, because that is also a relevant factor

while considering the genuineness of the document. In a decision reported in *Fakhruddin v. State of M.P.* AIR 1967 SC 1326, the Hon'ble

Supreme Court held as follows:

Learned Counsel representing the first Respondent raised a contention that this Court should not take the part of an expert in handwriting to

compare the signatures of witnesses to find out whether they were signatures of the same person. According to counsel, the disputed signatures

should be sent to experts for their opinion. In the alternative it is contended that Petitioner should examine persons familiar with the signature of the

witnesses to establish the identity of signatures. Handwriting may be proved on admission of the writer or by the evidence of some witness in

whose presence it was written. This is direct evidence. In the absence of such direct evidence, opinion on handwriting expert or of some who is

familiar with the writing of the person is relevant. Thus besides direct evidence which of course is the best method of proof, the law makes two

other modes also as relevant, i.e., a writing may be proved to be the handwriting of a particular individual by the evidence of a person familiar with

the handwriting of that individual or by the testimony of an expert competent to compare the handwritings on a scientific basis. A third method is

also provided by the Evidence Act in Section 73. It is comparison by the court with the writing of the person. The Court can apply its own

observation to the admitted or proved writings and to compare them with the disputed one. This comparison depends on an analysis of the

characteristics in the admitted or proved writings and of the same characteristics in large measure in the disputed writing. Even if there is the

opinion of the expert on the handwriting, it is subjected to the scrutiny by court. The expert's opinion is not the final word. The court must see for

itself whether it can safely be held that the two writings are of the same person. To this extent, court may play the role of an expert. The court can accept the disputed signature to be that of the witness when it is satisfied on its observation that it is safe to accept the same. In this view, I do not think it necessary to have the admitted signature of the witness to be compared with the signature in the disputed counterfoils of the ballot paper by any expert. This Court can scrutinise the characteristics of the signatures. If it finds that the disputed signature has the same characteristics in large measure with the admitted signature, it can safely come to the conclusion that both are of the same person.

The said decision has been followed in *A. Neelalohithadasan Nadar Vs. George Mascrene and Others*, and after extracting the above passage

from *Fakhruddin's* case, Their Lordships held that the opinion formed by the High Court on a comparison is correct. Their Lordships further held

even though this Court is slow in resorting to this method, the approach of the High Court cannot be faulted and the court can exercise such power

in view of the decisions reported in *The State (Delhi Administration) Vs. Pali Ram*, and in *Murari Lal v. State of M.P.* 1980 1 SCC 704. The

relevant portion of the decision reads thus:

The High Court finally recorded its satisfaction or otherwise in the case of signatures resulting in double voting and impersonation and signatures

and thumb impression not tallying at all. No meaningful argument on facts in regard thereto was addressed before us except to the approach of

employing Section 73 of the Evidence Act. It was urged that the High Court should not have become an expert. We, however, are of the view that

when larger public interest is served by expeditious disposal of an election petition, then the course adopted by the High Court, as suggested from

the afore-extraction, is in conformity therewith. Although courts should be slow in resorting to this method, we do not find it faulted, more so when

the courts resort to exercise of such power is approved in two other cases of this Court in *State (Delhi Administration) v. Pali Ram* and *Murari Lal*

v. State of M.P. As a sequitur the finding recorded by the High Court on issue 1 is perfectly sound.

24. In view of my finding that the lease agreement which is purported to have been executed by the Petitioners in favour of the fourth Respondent

is invalid, the Petitioners are entitled to the relief as prayed for.

25. In regard to the Writ Petition No. 9281/98 is concerned, no relief can be granted to the Petitioner since his claim is based on the very same

lease deed which I have found as invalid. Even though the Petitioner herein has stated that the schedule of the property is not correct and there was

vast difference on the boundaries, I do not find any argument can be put forward on that basis. It is admitted that the third Respondent in this case

is in pos session and he is also an owner. A licence was also obtained by him to conduct the liquor business.

26. The relief sought for in this petition is that the third Respondent should not be allowed to do liquor business in that portion of the building since

the Petitioner has taken the whole building on lease. The third Respondent is entitled to do business and the authorities were also satisfied that he is

entitled to do business in his own building. At the time, when the third Respondent starts his business, the Petitioner herein was admittedly not

doing any business in that portion of the building. According to him, he was using that portion for storing wastes. No evidence is also let in, in this

regard.

27. The learned Counsel appearing for the Petitioner therein has further contended that already suit has been filed against the real owners and the

Petitioner has also obtained an order of injunction. In this case, we are only concerned as to what is the right of the Petitioner to do liquor business

in the building. So long as he is not a lessee nor an owner, he cannot do business in that building, whether he is entitled to be in possession on the

basis of injunction order passed by this Court is not the concern of this Court. Under Rule 13 of the Tamilnadu Liquor (Retail Vending) Rules,

1989, the Petitioner has to prove either he is the owner or he is in possession on the basis of a lease deed for a period not less than one year. Only

in those circumstances, the authorities are entitled to issue licence. If the statutory conditions are not satisfied, licence cannot be granted. The

Petitioner herein, has produced a fraudulent document and has obtained a licence. Writ Petition No. 9281/98 has to be dismissed.

28. In the result, Writ Petition No. 8640/98 is allowed and there will be a direction to Respondents 1 to 3 to take necessary action to cancel the

licence issued to the fourth Respondent, herein, without any further delay and

there will be a further direction to Respondents 1 to 3 that they shall not supply liquor for the purpose of sale and they are further directed to see that no liquor business is done by the fourth Respondent in the premises bearing Door No. 49, South West Boag Road, T. Nagar, Madras-17. They are bound to stop the business forthwith. This writ petition is allowed with costs. Advocate's fee is Rs. 3,000/- .

29. The Writ Petitioner in W.P. No. 9281/98 is not entitled to any relief and the same is dismissed with costs. Advocate's fee is Rs. 3,000/- .

30. The Petitioners in W.P. No. 8640/98 have initiated contempt proceedings in Cont. Application No. 405/98 for the alleged violation of

impugned order in WMP No. 13133/98 in W.P. No. 8640/98. I have disposed the main writ petition directing Respondents 1 to 3 that they shall

take immediate action for cancellation of the licence within 48 hours. I do not think that I should initiate steps for contempt application separately

though from the file I find that the authorities have not obeyed the orders of this Court. Contempt Application is disposed of as above.

Consequently, the connected WM Ps are also disposed of.