
(2017) 02 KL CK 0022
In the High Court Of Kerala
Case No : WP(C).No. 8540 of 2014

M/s. S.C.M Silk Private Ltd.	Vs	APPELLANT
Corporation of Cochin		RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Municipality Building Rules, 1999 — Rule 3(i)(c)

Citation : (2017) 1 KLT 1066

Hon'ble Judges : Mr. Devan Ramachandran, J.

Bench : Single Bench

Advocate : Sri. Joby Jacob Pullickekudy and Sri. Anil George, Advocates, for the Petitioner; Sri. S. Chandrasenan, S.C and Sri. P.K. Soyuz, S.C, for the Respondents

Final Decision : Disposed Off

Judgement

Devan Ramachandran, J.—The petitioner is the owner of a 9 storied building on the M.G.Road, Ernakulam, where he is running a textile showroom under the name and style "The Chennai Silks".

2. He has filed these writ petitions because the Corporation of Cochin had declined to renew the licence for conducting the showroom for certain reasons. He has impugned these orders in this batch of writ petitions, which have been filed challenging such denial for the year 2014-15 in W.P.(C) No.8540/2014; for 2015-16 in W.P.(C) No.7954/2015 and for the year 2016-17 in W.P.(C) No.11270/2016 as being illegal, unlawful and without sufficient reasons.

3. I have heard Sri. Joby Jacob Pullickekudy, the learned counsel appearing for the petitioner, the learned standing counsel for the Corporation of Cochin and the learned Government Pleader for the Local Self Government Department of the State of Kerala.

4. The pleadings on record would indicate, even though the impugned orders do

not specifically say so, that the petitioner was denied renewal of licence for the reason that he had put the building to use in variance to the purposes for which it was originally constructed and for which sanction was obtained. It is submitted by the parties that originally the building was constructed to provide for a car parking area on the 7, 8 and 9th floors operated with the assistance of a car lift to elevate the cars from the ground floor to the said area.

5. It appears that the Corporation, on an inspection, just prior to the genesis of this controversy, as is discernible from Ext.P2 in W.P.(C) No.8540/2014, found that the said floors are not being used as car park but as storage area and for such other ancillary uses. The learned counsel for the petitioner says that they have always put these floors to use in the manner it was originally sanctioned and prescribed and that what was found by the Corporation, during inspection, were only a few bales of textiles and such articles which were temporarily kept there since there were no cars available for parking at that point of time. He says that the petitioner has a different land behind the building which is normally being used as a car parking area and it is only after the said area is full that the car lift is operated to elevate the cars to the floors on the higher levels of the building. He essentially, thus, asserts that there has been no variation in the use of the building and that what the officials of the Corporation saw, during inspection, was only an isolated and singular incident. He, therefore, says that this is a fit case where the Corporation ought to reconsider the issue without insisting on being fixated with technical reasons.

6. I have considered the pleadings on record and the submissions made by the parties at the Bar. It is virtually admitted that the use of the building, at least as regards floor Nos.7, 8 and 9, are intended, prescribed and sanctioned as a car parking area. Any variation in the use of those floors would ineluctably visit the petitioner with consequences under the relevant Act. If the floors are not being put to use for the purposes for which it is originally sanctioned, obviously, the competent authorities of the Corporation would be entitled by the terms of the Statute to take appropriate action as is permitted and prescribed by law.

7. The only question is as to whether the petitioner has put these floors to proper use, which is one in the domain of evaluation of facts and which require certain degree of proof and conclusiveness to be obtained. There is no doubt that the inspection made by the Corporation showed otherwise. But the question is whether this would sufficiently establish a pattern of deliberate design by the petitioner in putting the building to use in dissonance with the manner in which it was originally sanctioned for. In fact, the learned counsel for the petitioner says that it is obvious from Ext.P2 that there is no such wilful transgression on his part and that what was identified by the Corporation during inspection was only an isolated incident.

8. It is perspicuous from the pleadings on record and the materials available that the essential controversy involved in these cases are exclusively in the realm of facts which this Court cannot, acting under Article 226 of the Constitution,

resolve. This is an issue that requires to be considered and adjudicated by the competent authority who has jurisdiction to do so under the terms of the applicable and relevant Acts. There is better or competent authority under the applicable Law than the Secretary of Cochin Corporation who shall immediately cause an inspection of the building and find out if the said building is being put to use for the purposes for which it was originally sanctioned. Obviously, if there is any variation in the use of the building at the hands of the petitioner, it would necessarily expose him to act under the Act and Rules which would then be completely justified. So what is important and what is relevant now is to find out if the building is being put to use in the manner it was originally prescribed.

9. In such circumstances and in order to cause a proper enquiry, I direct the Secretary of the Cochin Corporation (second respondent in all these writ petitions) to cause an inspection of the petitioner's building and make a report as to the use of the building and then take a decision as to the renewal of the licence of the petitioner in terms of such report. If, after such enquiry, the Secretary of the Corporation finds that the building has been put to use in the manner it was originally prescribed, then the licence for the years 2014 onwards shall be granted without insisting on any penalty and without adverting to the objections raised and without being fettered by any of the proceedings in these writ petitions. If it is found otherwise, obviously, the petitioner would not be entitled to any relief with respect to any of these years or any further renewal of the licence.

10. Since the petitioner would be required to apply and obtain a licence for the year 2017-18 by the 1st of April, 2017, it is only appropriate that the Secretary of the Corporation cause an inspection and take a decision as early as possible and not later than the 25th of March, 2017. I am making these directions also for the reason that this Court has already granted interim orders for the years in question to the petitioner entitling them to continue the business in the said building and because I recognize that nothing would be served to either of the parties by keeping these writ petitions pending here since all the considerations required in these writ petitions fall within the realm of factual controversy.

11. These writ petitions are ordered as above. In the nature of the facts and circumstances of the case, I make no order as to costs and the parties are directed to suffer their respective costs.