
(2016) 12 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 37156 of 2015 and 12547 of 2016

Nuthakki Sri Lakshmi

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 ALT 611 : (2017) 3 AndhLD 124 : (2017) 1 HLT 413

Hon'ble Judges : Sri P. Naveen Rao, J.

Bench : Single Bench

Advocate : Sri Rahul Reddy, counsel holding for Sri D. Anil Kumar, counsel, for the Petitioners; Sri Rahul Reddy, counsel holding for Sri D. Anil Kumar, counsel, for the Respondent No. 3 in WP No. 37156 of 2015; Prabhunath Vasi Reddy, learned counsel, for the Petiti

Final Decision : Disposed Off

Judgement

Sri P. Naveen Rao, J.—Heard Sri Rahul Reddy, counsel holding for Sri D.Anil Kumar, counsel on record for petitioner in WP No.37156 of 2015 and 3rd respondent in W.P.No.12547 of 2016, Sri. Prabhunath Vasi Reddy, learned counsel for petitioner in W.P.No.12547 of 2016 and 3rd respondent in W.P.No.37156 of 2015, learned Government Pleader for Municipal Administration (AP) for respondents 1 and Sri.T.Balaswamy, learned standing counsel for respondent 2 in both writ petitions. With the consent of learned counsel for respective parties, writ petitions are taken up for final disposal.

2. In W.P.No.37156 of 2015, petitioner claims to be the owner of the property bearing Door No.29-14-49, Prakasam Road, Vijayawada. The grievance of the petitioner necessitating institution of this writ petition is that in spite of notice issued to the 2nd respondent, no action is taken to cancel the trade licence and to revoke all permissions granted to M/s. Abhiruchi Hotel and Drushya Optical.

3. This Court by order dated 16.11.2015, while referring to clause 3(2)(b) of the Hyderabad Municipal Corporation Control and Supervision of Premises used for

certain purposes Bye-laws 1973, (for short, "Bye-Laws 1973") required the tenant to file lease deed and since lease period has expired, restrained the 2nd respondent from renewing the trade licence, if not already renewed.

4. Petitioner in W.P.No.12547 of 2016 was granted trade licence to run hotel, by name, Abhiruchi Hotel and Drushya Opticals in the premises bearing Door No.29-14-48 & 49, Prakasam Road, Suryaraopet, Vijayawada. The licence was due for renewal. On his application for renewal, he was served final notice signed on 01.04.2016 directing the petitioner to submit copy of title deed or lease deed or any other document enabling the use and occupation of the above said premises in order to consider the request for renewal of licence. He was further directed that not to carry on any trade/operation in the said premises. He was further informed that if the said condition is not fulfilled, (i), the same would be treated as infringement of Bye-law No.14 and the licence would be cancelled/revoked. This final notice is assailed in this writ petition.

5. Petitioner in W.P.No.37156 of 2015 is 3rd respondent in W.P.No.12547 of 2016. Petitioner in W.P.No.12547 of 2016 is the 3rd respondent in W.P.No.37615 of 2016. Respondents 1 and 2 in both writ petitions are same. For convenience, the parties are referred to as arrayed in WP No.12547 of 2016.

6. Since subject matter of both the writ petitions concern the entitlement of the petitioner to seek renewal of trade licence in the subject premises to run M/s. Abhiruchi Hotel and Drushya Opticals, the writ petitions are disposed of by this common order.

7. The facts which are necessary for consideration of the issue in these writ petitions are under:

i) Petitioner took lease of the subject premises from the owner of the premises, by name, Nutakki Arunakumari. The lease deed dated 26.12.2009 grants lease of the subject premises for the period from 26.12.2009 to 31.07.2012 for carrying on optical and hotel business. Petitioner claimed to have paid amount of Rs.10 lakhs towards security deposit, refundable at the time of vacation of the premises. Petitioner claimed to have made alterations to the premises by spending money on his own. Though lease period mentioned in the lease deed was only till 31.07.2012, but the understanding was that lease would subsist for ten years. Therefore, even though lease period expired on 31.07.2012, petitioner was allowed to continue in the leased premises.

(ii) The original owner died on 05.11.2013 leaving behind her daughter, 3rd respondent herein, and 3rd respondent succeeded to the property. It appears there were disputes between the petitioner and the 3rd respondent regarding amount of rent payable and/or continuation of the petitioner in the premises.

(iii) Apprehending threat of eviction from the subject property, petitioner instituted O.S.No.1760 of 2014 pending on the file of I Additional Senior Civil Judge at Vijayawada. In I.A.No.445 of 2014, the trial Court granted injunction,

which was extended until further orders on 30.12.2014. In view of the said injunction order, petitioner continue to occupy the subject premises.

(iv) One Vallurupalli Anand Prasad, GPA holder of the 3rd respondent, instituted O.S.No.68 of 2015, praying to grant decree of ejectment of the petitioner from the suit schedule property, which is pending on the file of II Additional District Judge, Vijayawada.

v) On 27.02.2015, legal notice was served on the Commissioner of 2nd respondent-corporation on behalf of 3rd respondent requesting not to renew licence to the petitioner and not to allow the petitioner to run the business. The Special GPA Holder of the 3rd respondent filed W.P.No.37156 of 2015 questioning the inaction of the 2nd respondent on the notice dated 27.02.2015 issued on behalf of the 3rd respondent to cancel the trade licence and to revoke all the permissions granted.

(vi) On 09.12.2015, the Commissioner of the 2nd respondent Corporation issued notice to the petitioner under Section 622 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, GHMC Act), referring to the order passed by this Court and directed the petitioner to furnish copy of the title deed or lease deed or any of the documents, by which he is enabled to use and occupy the subject premises. Petitioner was granted 10 days time to respond.

(vii) In the reply filed by the petitioner, he contended that G.O.Ms.No.288, Municipal Administration Department, dated 04.07.1974 has no application to renewal of licence as held by this Court in D.V. Konda Reddy v. Government of Andhra Pradesh 1987 (2) ALT 96 and that Corporation cannot insist for production of renewal of lease deed as the same is not contemplated by the Rules.

(viii) Not acceding to the request of the petitioner, final notice was issued on 01.04.2016 directing the petitioner to submit documents as required within a period of three days.

8.1. Learned counsel for petitioner would submit that petitioner was granted lease on the subject premises by the original owner and as per the mutual agreed terms, the lease was to continue for 10 years from 26.12.2009 and, therefore, the petitioner is entitled to occupy subject premises. Merely because there is no formal agreement extending the lease does not amount to expiry of lease. He would submit that even though according to the lease deed dated 26.12.2009, the lease was valid only till 31.07.2012 in view of the understanding between the owner of the property and the petitioner, even after 31.07.2012 petitioner continued to occupy the leased premises. Even after the demise of the original owner the 3rd respondent allowed the petitioner to occupy leased premises and even now, the 3rd respondent receives the rental amount. He, therefore, submitted that valid lease in existence as on today.

8.2. He further submitted that after expiry of original lease, there was no lease

drafted and registered and, therefore, petitioner cannot produce the lease deed as demanded by the respondent Municipal Corporation. However, the fact that petitioner is in lawful possession and enjoyment of the subject premises as a lessee and the owner of the property is receiving the rent, in proof of the occupation of the premises by the petitioner is sufficient for consideration of the renewal application of the petitioner. He further submitted that in accordance with the terms and conditions of the lease, petitioner is entitled to continue as a lessee until lease is permanently terminated with mutual consent.

8.3. He further submitted that petitioner instituted O.S.No.1760 of 2014 on the file of I Additional Senior Civil Judge, Vijayawada to grant permanent injunction against the 3rd respondent. In I.A.No.445 of 2014, the trial Court granted injunction restraining the 3rd respondent from interfering with the petitioner's possession and enjoyment of the suit schedule property. The order granted by the trial Court is in operation. In terms of the said order, petitioner is deemed to be in legal possession of the subject premises and, therefore, he is entitled for renewal of trade licence.

8.4. He would further submit that as per the provision in clause- 3 of Bye-laws 1973, submission of lease deed is relevant only for grant of licence at the first instance and it is not applicable for renewal of licence. Learned counsel contended that in D.V. Konda Reddy (WP No.5472 of 1983, dated 08.10.1987), this Court held that clause 3 of Bye-laws 1973 is not attracted for renewal of licence.

8.5. He would further submit that even assuming that said clause 3 of the Bye-laws 1973 is applicable, as per clause 3(2)(b) production of any one of the documents mentioned therein is sufficient and what is required is proof of possession and use. He would submit that in view of the order passed by the trial Court in I.A.No.445 of 2014, the petitioner is in occupation and use of the subject premises and, therefore, in accordance with the said clause, petitioner is entitled to seek renewal of the licence granted.

8.6. He would therefore submit that insisting by the respondent Corporation for production of original lease deed is erroneous and amounts to arbitrary exercise of power and authority and exercise of such power is also not bona fide. He further submitted that the demand to submit original lease deed is erroneous and no such demand can be made, which is impossible of compliance. When there is no written lease deed, it is impossible for compliance by the petitioner. In support of his contention that an Act which is impossible of compliance cannot be insisted upon, he placed reliance on the decision of the Supreme Court in Mohammed Gazi v. State of Madhya Pradesh and others 2000 (4) SCC 342.

9.1. Sri Rahul Reddy appearing for 3rd respondent would submit that the lease granted to the petitioner expired on 31.07.2012 and thereafter he does not have lease in his favour and, therefore, he is not entitled to seek renewal of trade licence from the Municipal Corporation.

9.2. By referring to clause 3 of Bye-laws, 1973, he would submit that even for renewal of licence, it is mandatory for the lessee to produce copy of the lease deed of subject premises in support of his claim that he continues to be a lessee.

9.3. He would further submit that occupation of the petitioner in the subject premises is on account of injunction order granted by the Civil Court in the suit instituted by him and, therefore, the possession vested in him would at the most amount to litigious possession and is therefore not lawful possession. Unless a person is in lawful possession, he cannot claim himself as lessee and seek extension of licence.

9.4. In support of his contention that petitioner is not in lawful possession and is in litigious possession, learned counsel placed reliance on the decision of Full Bench of this Court in Smt. Y. Anasuya v. Government of Andhra Pradesh, rep.by its Secretary, Home (General-A) Department, Hyderabad and others 1993 (1) ALT 661 (F.B.) and the decision of the Supreme Court in the case of R.V. Bhupal Prasad v. State of A.P. and others AIR 1996 SC 140.

10. In response to the said contention, Sri Prabhunath Vasi Reddy would submit that the decisions relied upon by the counsel for 3rd respondent arise out of A.P. Cinemas (Regulation) Act 1955 (for short, Cinemas Act) and A.P. Cinemas (Regulation) Rules, 1970 (for short, Rules, 1970). Rules, 1970 require "lawful possession" as primary consideration for grant/renewal of licence. Those Rules were interpreted and Full Bench of this Court and Supreme Court have held that unless a person is in lawful possession of the subject premise, he cannot ask for renewal of licence to operate cinema hall. The same principle is not applicable as the Bye-Laws, 1973 do not prescribe lawful possession as primary requirement for grant of renewal. He would submit that the decision of this Court in D.V. Konda Reddy (supra) is directly on the point and the said decision is not overruled.

11. The issue for consideration is whether petitioner is entitled to ask for renewal of licence to operate hotel and optical business in the subject premises even though he does not have a lease deed executed by the owner of the property continuing the lease of the subject premises?

12. The basic facts are not in dispute. The lease granted to the petitioner expired on 31.07.2012. Thereafter lease was not renewed by way of a written document. However, till the year 2014, there was no objection by the owner of the property on continuation of the petitioner in the subject premises. It appears disputes cropped up in the year 2014 and the owner of the premises directed the petitioner to vacate the premises. At that stage, petitioner instituted O.S.No.1760 of 2014, which is pending on the file of I Additional Senior Civil Judge at Vijayawada, in which petitioner sought for temporary injunction restraining respondents not to interfere with the peaceful possession and enjoyment of the plaint schedule property. The trial Court granted injunction, which injunction order is operating as on today. In terms of injunction granted,

petitioner continues to occupy the subject premises. On the ground that petitioner has not produced the renewed lease deed, the application for renewal of licence is not granted. The Commissioner issued final notice directing the petitioner to submit copy of the title deed or lease deed or any other document enabling the use and occupation of the above said premises. Petitioner expressed his inability to produce the documents on the ground that there is no written deed of renewal of lease and civil disputes are pending between them. It is also not in dispute that the 3rd respondent is accepting the rent, though learned counsel for 3rd respondent submitted that rent is accepted without prejudice to the claim of the 3rd respondent in the pending suit and as a consequence to the injunction order granted by trial Court only the rent is accepted.

13. Section 521 of the GHMC Act, 1955 (Act, 1955), requires a person to obtain trade licence to run hotel or optical business. In exercise of power vested in the Government under Section 586 read with Section 521 of the Act, 1955, Bye-laws, 1973 were notified. These Bye-laws prescribe procedure for application for grant of licence, for renewal and the conditions to be fulfilled for application of licence, for renewal and maintenance of premises, where licence is granted, etc. Clause 3 of Bye-laws deals with application for grant or renewal of licence.

14.1. A bare reading of the clause 3 (i)(a) &(b), it is clear that even for renewal of licence, application has to be submitted and Byelaws, 1973 are applicable for renewal also. The rival contentions are centered on the scope of clause 3(2)(b) of Bye-Laws.

14.2. Clause 3(2)(b) of Bye-laws reads as under:

"Clause 3. Every application to the Commissioner, Municipal Corporation of Hyderabad (hereinafter referred to as the Commissioner) for grant or renewal of licence for any of the purposes mentioned in schedule-P to the Act or otherwise required under Section 521 of the Act shall be made in the form in Appendix "A" signed by the applicant or his authorised agent.

(2) The premises proposed to be used for the purposes mentioned in Section 521 of the Act.

(b) A true copy of the title deed if the applicant is the owner of the premises/ place or a copy of lease deed or any other document enabling the applicant to use and occupy the premises/place attested by a Gazetted Officer or any officer duly authorised by the Commissioner in this behalf or a Magistrate. "

14.3. Clause 3(2)(b) of Bye-laws, 1973 requires a person to submit, (1) title deed if the applicant is owner of the premises; or (2) copy of the lease deed; or (3) any other document enabling the applicant to use and occupy the premises attested by a Gazetted Officer or an Officer duly authorised by the Commissioner in this behalf or a Magistrate.

15. Petitioner is not the owner of the property and, therefore, 1st requirement is not attracted. Petitioner is unable to supply copy of the lease deed as there is no

subsisting lease deed after 31.07.2012. Petitioner is in occupation of the subject premises and is enjoying the subject premises on account of injunction order granted by the 1st Senior Civil Judge at Vijayawada in the pending suit. There is no dispute regarding possession of the petitioner and the order passed by the trial Court is not in dispute. Thus, petitioner is in possession of the subject premises. Municipal Corporation does not accept this position and insists for production of the lease deed. On the other hand, though 3rd respondent does not dispute possession, the contention urged is that present possession vested in the petitioner, is not a lawful possession, but is only litigious possession and, therefore, the petitioner is not entitled to ask for renewal of lease.

16.1. The two decisions relied upon by the learned counsel for 3rd respondent arise out of the provisions of A.P.Cinemas (Regulation) Act, 1955 and A.P.Cinemas (Regulation) Rules 1970. Rules 11 and 12 make it mandatory for an applicant seeking for renewal to be in "lawful possession" of the building.

16.2. In Smt. Y.Anasuya (supra), Full Bench of this Court, on consideration of the relevant provisions of the Rules, 1970 held that "lawful possession" is mandatory for a person even to seek renewal of licence under the Act. By following the earlier decisions of the Supreme Court, Full Bench of this Court held that "litigious possession" is not "lawful possession" and a person can be said to be in "lawful possession" only if there is valid lease subsisting and not otherwise and "lawful possession" is the relevant consideration while granting renewal of licence.

16.3. The Full Bench is pleased to hold as under:

"13.....Naturally, Rule 12- Bhas to be read along with this Rule. If so read, there can be no doubt whatever that the discretion is left to the licensing authority not to renew the licence even if the conditions laid down in Clause (b) are satisfied by the applicant. In exercising this discretion, the licensing authority is expected to take into consideration relevant factors. These relevant factors may be expressly set out in the Rules or they may be implicit in the very exercise of the power of renewal or, they may be such considerations as are germane to the exercise of power of renewal of licence. The question is whether "lawful possession" is not one such relevant consideration. In our view, lawful possession is a very relevant factor that could be legitimately taken into account by the licensing authority in the matter of renewal of licence.

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22. At the same time, we are inclined to think that the omission of "lawful possession" in Rule 12-B is not without purpose. It appears to us that the rule making authority wanted to dispense with the obligation on the part of the licensing authority to specifically and on his own, address himself to the question of lawful possession at the time of renewal though lawful possession is, as we have already pointed out, a relevant consideration vis-a-vis renewal of licence. The licensing authority would have already applied his mind to that question and

satisfied himself that the applicant would remain in lawful possession during the period of licence in terms of sub-rule (2) of Rule 11-B or the old Rule 12. The person remaining in possession just before or after the expiry of the licence period could be presumed to be in lawful possession, may be, with the consent-express or implied of the landlord. This presumption could, of course, be rebutted by the landlord by filing objections and relevant material before the licensing authority. But so long as the landlord does not take any objection to the renewal of lease, the renewal could be granted on the footing that the applicant continues to be in lawful possession. The licensing authority need not specifically record his satisfaction regarding lawful possession, not because lawful possession is not a relevant consideration for renewal but because the presumption in favour of lawful possession will operate and the landlord has not come forward to object to the renewal on the ground that the applicant is in unauthorised possession. That seems to be the reason for omitting the words requiring satisfaction as to legal possession. If the landlord objects to the renewal contending that the lease has come to an end, it then becomes necessary for the licensing authority to enquire into the question whether the applicant is in lawful possession of the theatre and the equipment. That is what has been done now pursuant to the directions issued in W.A.No. 1110/91. Incidentally, we may observe that this is the view expressed by the Division Bench in Lakshmi Talkies Case (1) (supra) and to this extent, the said judgment lays down the correct legal position.

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24. We therefore answer the question posed for our consideration against the petitioner. We hold that the licensing authority while renewing the licence can legitimately enquire into the question of lawful possession and he is by duty bound to do so when an objection is raised by the landlord in that regard."

16.4. Same issue has come up for consideration before the Supreme Court in R.V. Bhupal Prasad (supra). Interpreting the provisions of the Rules 1970, Supreme Court held as under:

" 6. For the grant of the licence, one of the requirements is that the applicant should have lawful possession of site, building and equipment. It is true that the right to grant licence and right of grant renewal are separately dealt with by Rule 11(B) and Rule 12(B) respectively. But when Rule 12(B) (1), second proviso itself indicates that the licensing authority should satisfy itself that the licensee has satisfied all the provisions of the Rules, the licensee should satisfy that he is in lawful possession when he seeks renewal."

16.5. Supreme Court held that "Lawful possession" cannot be established without the concomitant existence of lawful relationship between the landlord and the tenant. "Lawful possession" is not "litigious possession" and must have some foundation in a legal right to possess the property. "Juridical possession is possession protected by law" against wrongful dispossession but cannot per se always be equated with "lawful possession".

16.6. In the said case, the original lease period was for 20 years and after expiry of the lease deed, renewal was not granted. When licensee applied for renewal of licence, the owner of the property objected to renewal of licence on the ground that there is no valid lease subsisting. Learned single judge of this Court held that appellant was not in lawful possession and, therefore, grant of renewal was not justified. The said decision of the learned single Judge was upheld by the Division Bench. In *R.V.Bhupal Prasad (supra)*, Supreme Court upheld the decisions of this Court. Supreme Court also overruled the earlier decision of the single Judge of this Court in *M. Kameswara Somayajulu v. State of Andhra Pradesh [(1987) 1 APLJ 82 (SN)]* and upheld the view taken by Full Bench in *Smt. Y.Anasuya (supra)*.

17. As rightly contended by the learned counsel for petitioner, decisions relied upon by the counsel for 3rd respondent arise out of *A.P. Cinemas (Regulation) Rules, 1970* and in *Rules, 1970*, there is an express clause provided in Rule 11 that the applicant for grant of a licence must have "lawful possession" of the subject premises where Cinema licence is sought and the Full Bench of this Court and Supreme Court held that even for renewal of licence, "lawful possession" is mandatory and "lawful possession" would mean a person has a valid lease granted in his favour and such lease is subsisting and otherwise he cannot be described as in "lawful possession" of the concerned premises to ask for renewal of licence under *Rules, 1970*.

18. In *W.P.No.5472 of 1983*, on consideration of the relevant provisions of *Bye-laws 1973*, learned single Judge of this Court held as under:

"Therefore, what is needed is the production of a certified copy of the lease deed granted by the authority, but not a renewal of the lease granted by the owner of the premises, if the applicant himself is not the owner of the property. It is common knowledge that there will be endless litigation with regard to the leases or renewals thereof and the pendency of the proceedings would not impede the licensee to run his business on obtaining, as required under Section 521 of the Act, a license to get eating house as per the terms and conditions of the licence, issued thereunder. Therefore, while upholding the power to make a rule for directing the applicant to produce the title deed if he is a owner or a lease deed if he is a lessee before the grant of a licence, but for renewal it is not necessary that he should produce the renewal of the lease granted by the owner. The inter-se relationship between the landlord and the tenant is none of the business of the licensing authority under Section 521 of the Act. What is required of is lawful entry into the premises to carry on his business. Once he has lawfully entered into the premises under a lease, the licensing authority is bound to grant the licence or renew the licence so long as he continues in possession. After expiry of the lease, automatically he will be only a tenant holding over or a licensee."

19. At this stage, it is appropriate to note two things. Firstly, *Bye-law No.3 of Bye-laws, 1973* do not mandate "lawful possession" as condition precedent to grant licence or renewal of licence, unlike *A.P.Cinemas (Regulation) Rules, 1970*;

and secondly, as held by learned single Judge in W.P.No.5472 of 1983, there is no requirement to submit lease deed to seek renewal. In terms of said decision, the Municipal Corporation cannot insist for production of lease deed as condition precedent to consideration of application for renewal of licence.

20. Even otherwise, what is required is proof that the applicant is in use and occupation of the subject premises. Thus, submission of lease deed is not mandatory but is one of the documents required to prove use and occupation. By producing injunction order granted by the I Addl. Senior Civil Judge, Vijayawada, made in I.A.No.445 of 2014 in O.S.No.1760 of 2014, petitioner proved that he is in use and possession/occupation of the subject property. The 3rd respondent also does not dispute use and possession by petitioner. The burden of song on behalf of 3rd respondent is, the possession vested in petitioner is not "lawful possession" and, therefore, not entitled to seek renewal. As noticed above, for the purpose of consideration of application for renewal of trade licence, "lawful possession" as sought to be contended by learned counsel for 3rd respondent is not the requirement and it is not on that ground, the request of petitioner for grant of renewal was not processed. Thus, in terms of decision of this Court in W.P.No.5472 of 1983 and on close reading of clause 3(2)(b) of Bye-Laws, 1973 insisting to produce lease deed by the 2nd respondent is erroneous and on that ground, the Commissioner cannot refuse to process the application submitted by petitioner for renewal of his trade licence.

21. Accordingly, the W.P.No.12547 of 2016 is allowed and W.P.No.37156 of 015 is dismissed. The 2nd respondent is directed to process the application of petitioner for renewal of trade licence without insisting for production of lease deed of subject premises.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.