

(2022) 01 KL CK 0010
In the High Court Of Kerala
Case No : Writ Petition (C) No. 19774 Of 2021

Radhakrishnan

APPELLANT

Vs

Corporation Of Thiruvananthapuram Represented By Its
Secretary

RESPONDENT

Date of Decision : 04-01-2022

Acts Referred:

Constitution of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 380
Kerala Municipalities Act, 1994 — Section 492(3)

Citation : (2022) 01 KL CK 0010

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : D.Kishore, Meera Gopinath, R.Muraleekrishnan, Ms.Arya Joseph,
N.Nandakumara Menon, P.K.Manojkumar, B.Mohanlal

Final Decision : Disposed Of

Judgement

T.R. Ravi, J

1. The petitioners, aggrieved by the refusal of the respondents 1 to 3 to issue them trade license on the ground that they have not produced the consent

from the landlord, have filed the writ petition.

2. The 1st petitioner is the father of the 2nd petitioner. They are engaged in textile and other related businesses and they are conducting the business

in the land and shed owned by the 4th respondent. Exhibits P1, P1(a), P2, P2(a), P3 and P3(a) are copies of the licence agreements entered into

between the 2nd petitioner and the 4th respondent during various periods. Initially, the business was carried on under the name and style "New

Maharaja Dress World". Later, it was changed as "Avani Textiles" for a short period and it is submitted that the business is now carried on

under the name of Pulimoottil Textiles. It would appear that there were arrears of rent which resulted in the execution of Ext.P5 agreement.

Petitioners submit that they have made improvements worth Rs.1,30,00,000/- and that textile stocks worth Rs.2,20,00,000/- are available. It is also

stated that the petitioners had helped the 4th respondent to evict one of their tenants by paying him a sum of Rs.6 lakhs. It is stated that for the

purpose of GST registration, the parties had executed Ext.P6 agreement and that the petitioners have obtained GST registration as per Ext.P7, in the

name of Pulimoottil Textiles. The petitioners have also obtained registration under the Micro, Small and Medium Enterprises Development Act, which

has been produced as Ext.P8. According to the petitioners, after the execution of Exts.P5 and P6, the respondents 4 and 5 have asked them to vacate

the premises, as they have a prospective purchaser for the property, which the petitioners did not agree to since they had made large investments and

had converted the shed into a building where the business was to be inaugurated on 9.8.2021. It is stated that on the day fixed for inauguration, the

respondents 4 and 5 had filed a complaint before the Cantonment Police Station against the petitioners alleging that Ext.P6 agreement was forged,

which resulted in the Hon'ble Mayor who was to inaugurate the business backing off. The petitioners state that they had started the business on

11.8.2021 and on 12.8.2021, the 5th respondent issued Ext.P9 communication asking the 1st petitioner to remove all the goods stored in the property

and building with immediate effect. Another communication Ext.P10 was issued on the same date to the employees of the petitioners pointing out that

Pulimoottil Textiles was functioning without the consent and knowledge of the 4th respondent and on forged documents. The petitioners have

produced Ext.P11 communication dated 30.6.2021 in which the 4th respondent had agreed to reimburse the cost of renovation and maintenance

incurred by the petitioners. Ext.P12 is stated to be the reply sent to Ext.P11 communication informing that a sum of Rs.98,10,500/- had been expended

by the petitioners for renovation. It is the petitioners' case that till 30.6.2021, there was no dispute between the petitioners and the 4th and 5th

respondents.

3. The 4th respondent has filed O.S.No.421 of 2021 before the Munsiff Court, Kollam, against the 2nd respondent, for recovery of the possession of

the building and for ancillary reliefs. Ext.P13 is the plaint in the suit. Ext.P14 is the FIR in Crime No.1058 of 1991 of Cantonment Police Station

registered against the 2nd petitioner on the basis of the complaint of the 5th respondent. It is stated that the 4th respondent had submitted the cheque

for Rs.10 lakhs issued by the 2nd petitioner as security deposit, for encashment. On 24.8.2021, the 3rd respondent Corporation issued notice to the 1st

petitioner stating that the establishment was being run without obtaining necessary licence from the Corporation. On 26.8.2021, the petitioner

submitted an application for issuance of trade licence. The same is stated to have been not accepted, for want of consent from the landlord. On

9.9.2021, the 1st petitioner submitted Ext.P16 representation before the 2nd respondent seeking to issue trade licence. The receipt for payment of

property tax had also been annexed with the representation. On 15.9.2021, the Health Supervisor attached to the office of the 3rd respondent also

issued a notice to the 2nd petitioner intimating him that the business is being conducted without the required licence. The petitioners submit that the

licence is in force till 16.4.2022 and going by the dictum laid down by the Hon'ble Supreme Court in Sudhakaran v. Corporation of Trivandrum & Anr.

reported in [2016 (3) KHC 803], the licence cannot be denied to the tenant merely for the want of consent from the landlord, since a valid tenancy

itself has the implied authority of the landlord for legitimate use of the premises by the tenant.

4. A statement has been filed by the 1st respondent stating that the petitioners are conducting business without obtaining the necessary licence and

that despite notices being issued on 24.8.2021 and 15.9.2021 to stop the business, the business is still being continued. The respondents 4 and 5 have

filed a counter affidavit. It is contended that the petitioners have suppressed material facts. The execution of Exhibits P1, P1(a), P2, P2(a), P3, P3(a),

and P4 are admitted. Exhibit P5 has also been admitted and it has been stated that the agreement has been executed incorporating the licence fee

arrears. It was further stated that when the 2nd petitioner failed to clear the rent arrears, they were compelled to file Exhibit P13 suit praying for a

direction to surrender vacant possession. Exhibit R4(b) has been produced along the counter affidavit, which is the affidavit filed by the 2nd petitioner,

challenging the maintainability of the suit. The respondents 4 and 5 have denied knowledge about payment of money by the petitioners to another

tenant as well as the improvements that are said to have been made by the petitioners. It was further contended that the license was issued earlier to

the 2nd respondent and that the petitioners are not entitled to contend that they are conducting the business together. There is also a contention that

Exhibit P6 is not genuine and has been created by the petitioners by forging the signature of the respondents including the seal of the Executive

Director of M/s.Rajan Pillai Foundation. It is further contended that the petitioners are not entitled to the protection of the Rent Control Act and that

they cannot continue on the basis of Exhibit P6 forged licence. It is stated that the respondents have filed O.S. No.971 of 2021 before the Munsiff

Court, Thiruvananthapuram against the 1st petitioner, praying for permanent prohibitory injunction and for other reliefs. Exhibit R4(f) which is the

F.I.R in Crime No.1297 of 2021 registered against another staff of the petitioners and other identified persons has also been produced. In the above

circumstances, it is submitted that the petitioners are not entitled to get renewal of the licence by invoking Section 492(3) of the Kerala Municipalities

Act,1994.Â Â

Â 5. HeardÂ Sri D.Kishore,Â counselÂ forÂ theÂ petitioners, Sri Nandakumara Menon,Â Senior Advocate, instructed by Sri P.K.Manojkumar

onÂ behalfÂ of respondents 1Â toÂ 3 and Sri B.Mohanlal, counsel for the respondents 4 and 5.

6. Admittedly, the 2nd petitioner had been inducted by the respondents 4 and 5 as a licensee and the 2nd petitioner was conducting business in the

premises in question. It is also admitted that since the 2nd respondent was in arrears of rent, a suit O.S.No.421 of 2021 (Ext.P13) has been filed

before the Munsiff Court, Kollam, seeking eviction of the 2nd respondent. It is stated in the plaint that the suit will be amended at the appropriate time

for seeking relief of arrears of rent and damages. The suit is seen to have been filed on 5.8.2021. The respondents 4 and 5 have also admittedly filed

O.S.No.971 of 2021 before the Munsiff Court, Thiruvananthapuram, praying for a decree of permanent prohibitory injunction against the 1st petitioner.

Two criminal complaints have also been filed, one against the petitioners on the allegation of forgery and another against a person stated to be an

employee of the petitioners and some other persons under section 380 of IPC.

7. In the light of the above proceedings which are admittedly pending, the

question whether Ext.P6 is forged or otherwise is a matter that has to be finally adjudicated in those proceedings and this Court cannot go into the issue in exercise of the jurisdiction under Article 226 of the Constitution of India. So also, the question regarding eviction of the 2nd petitioner and whether the 1st petitioner should be enjoined from entering into the premises has also to be gone into in the above said proceedings. The only question that this Court is called upon to consider is whether the 1st respondent is justified in denial of renewal of licence/issuance of licence to the petitioners for the conduct of the business, solely for the reason that they have not obtained consent from the landlord.

8. In *Marimuthu v. Director General of Police* [1999 (3) KLT 662], a Division Bench considered the question of withholding of consent by the landlord for conduct of business by the tenant, after the period of lease. The Bench took note of the fact that eviction petition was pending and held that possession cannot be held as unlawful and that Corporation cannot insist on production of written consent. In *Swapna Jestus K. v. Secretary, Pulpally Grama Panchayat & Anr.* [2013(1)KLT 444], a Single Judge of this Court held that the Panchayat cannot insist on fresh consent when licence had been issued earlier for carrying out the business. In *Shajahan v. Alice George* [2015 (1) KLT 995], this Court held that landlord's consent cannot be insisted upon for renewal of trade licence. In *Sudhakaran (supra)*, the Apex Court categorically held that requirement of consent from landlord under Section 492(3) of the Kerala Municipality Act, 1994 is only applicable when a person intends to obtain a licence for the first time. The Court further held that even in the case of application for licence for the first time, tenant cannot be deprived of running a lawful business for reason that landlord withheld consent. It was held that valid tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant. In *Vijaya Jyothi Traders v. Municipal Corporation of Thrissur & Ors.* [2018 (5) KHC 680], this Court held that non-renewal of trade licence for the reason that the tenant forged the signature of the landlord in the NOC is not sustainable since the Secretary of the Municipality has no authority to adjudicate on the issue whether signature in a consent letter is forged, which is a matter that comes within the domain of the police.

9. In the light of the law laid down by the Hon'ble Supreme Court and by this

Court in the aforesaid judgments, the writ petition is disposed of directing respondents 1 to 3 to consider and pass orders on the application for trade licence submitted by the petitioners, without insisting on the consent of the 4th respondent, at the earliest, at any rate within one month from the date of receipt of a certified copy of this judgment. It is however made clear that the above direction will not in any way prejudice the contentions of respondents 4 and 5 regarding the validity of Ext.P6 agreement. It is further made clear that this Court has not made any observation on the merits of the contentions of either the petitioners or the respondents 4 and 5 as well as the issues raised in the civil suits and the criminal proceedings initiated at the instance of respondents 4 and 5.