
(2004) 07 KL CK 0029

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19785 of 2004

Reghunath

APPELLANT

Vs

Thiruvalla Municipality

RESPONDENT

Date of Decision : 21-07-2004

Acts Referred:

Kerala Municipalities Act, 1994 — Section 411, 492, 492(9)

Citation : (2004) 3 KLT 75

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : K. Ramakumar and T. Ramprasad Unni, for the Appellant; R. Subash Chand, Babu Karukapadath and M.A. Vaheeda Babu, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—As a tenant the petitioner had been occupying building No. 232 of Ward No. 10 of Thiruvalla Municipality. This was one of the rooms in a three storied building consisting of six rooms. The case of the petitioner is that he had obtained the premises on lease from one K.V. Gopalan Achari, the father of the third respondent but from 1988 onwards the landlords were attempting to evict him. R.C.P.No. 3 of 1998 met with no success, and the judgment had been confirmed in C.R.P.No. 639 of 1993. When there was forcible demolition attempted, in view of the intervention of the Munsiff's Court, by way of O.S.No. 280 of 2003, the third respondent, who had come to the shoes of his father by that time, had been constrained to give an undertaking that he will not take any steps for forcible eviction/demolition. As at present, R.C.P.Nos. 4 and 6 of 2004 also have been filed by the landlord, for the purpose of eviction and they are yet to attain finality.

2. In the meanwhile, by surreptitious methods, the petitioner avers, the third respondent could obtain an order from the Municipality as Ext.P2 dated 8.6.2004. The effect of the order was that the third respondent was authorised to demolish the building expeditiously. A finding had been entered into by the Secretary in

Ext. P2 order that on the basis of the application filed by the landlord dated 25.5.2004, the issue had been got examined and it was found that the building is in a totally unsafe condition, and it required to be demolished.

3. The petitioner further submits that coming to know of the above, though formal notice had not been issued to him, he had filed an appeal on 15.6.2004 before the Municipal Council as Ext.P3 and apprehending demolition he had also moved this Court. As directed by this Court, the Municipality had heard the appeal, but by order dated 25.6.2004, the Municipal Secretary had informed him of the decision of the Standing Committee that the appeal had been rejected. Ext.P5 showed that parties were heard and the authorities had made a local inspection and were of opinion that there was no necessity or reason to differ from the finding that the building was unstable. The said order inter alia directed the petitioner to shift his belongings immediately from the shop room.

4. As a matter of fact, during the pendency of the appeal itself by Ext.P4 the petitioner had been informed that taking notice of the application of the third respondent and finding that building Nos. 230 to 233 were found as danger to the general public, he is to show cause as to why the licence that had been issued to him should not be cancelled.

5. After the disposal of the appeal, by letter dated 2.7.2004 (Ext.P6), the Secretary had informed that as the appeal stood rejected, further steps had been envisaged. It also informed him that the objection filed by him against the proposal in Ext.P4 for cancellation of licence was not acceptable and the licence is cancelled. There also he had been required to remove the articles in his possession within a period of seven days. These orders were under challenge.

6. Though Ext.P2 had been subjected to challenge by W.P.(C) No. 17997 of 2004, no interim order had been passed, as had been requested for by him. There was only a direction for disposal of the appeal expeditiously. It had been submitted at the bar that after Ext.P6 the building has been wiped out.

7. The issue that has arisen for decision is as to whether there was irregularity in the issuance of Ext. P2 and the consequential proceedings. The justifiability and legality of the proceedings of the Municipality, whereby the petitioner's licence has been cancelled, also is subject matter of the Writ Petition.

8. The third respondent had entered appearance and with reference to the counter affidavit filed, it is submitted that the petitioner was unjustified in making the allegations and accusations when there were only exercise of powers authorised under the Municipality Act, though such proceedings might have caused him inconvenience. He submits that the eviction petition had been submitted for own occupations of the building, after necessary reconstruction. He admits that there was an undertaking that forcible eviction will not be there at his hands. The building, which is about 60 years old, was a threat which could cause danger not only to the occupants, but also to general public and properties. All other tenants expecting the petitioner had vacated, and the

petitioner was there though he had other premises for carrying out his business. It was a case where objections were created, even by risking oneself. He submits that finding the extreme danger on 24.5.2004 he had intimated about the danger to the Municipality, as expected of an owner of a building. It was only after due enquiries by the competent authorities and in exercise of powers u/s 411 of the Kerala Municipality Act (for short "the Act") follow up action had been taken. He also submits that the contention of the petitioner that the licence could not have been cancelled also was an argument without substance, only technical and this had no sanction of law.

9. The Municipality has filed a counter affidavit and submits that the criticism about the speed of action was totally unwarranted. On receipt of a letter from the building owner on 24.5.2004, steps had been taken for verification. The issue deserved some expedition, because of the nature of the complaint. The competent authority had reported that immediate action might be necessary for demolition. Ext.P2 came to be passed in the circumstance. The petitioner, who was an occupier, had filed an appeal and in view of the directions passed by this Court, the Standing Committee had heard all the parties concerned, and had made arrangements for a local inspection. Satisfied about the structural unsoundness and instability, they had confirmed the order of the Secretary. There was nothing irregular in the whole procedure. In respect of the cancellation of the licence, it is pointed out that when the premises were no more available this was a natural follow up procedure and the arguments of the petitioner in these respects could not have been countenanced. There cannot be a licence without specifying the premises in which the activities were to be carried out. It was therefore submitted that the Writ Petition was without any merit.

10. Mr. K. Ramakumar, counsel for the petitioner, submits that the powers exercisable u/s 411 of the Act are intended to protect the interest of the owner as well as the occupier. It is submitted that unscrupulous land owners may mis-utilise the provisions, and he suggested that this was one of such case. If adequate notice had been given, it would have been possible for him to place sufficient materials to show that the decision was not on tenable grounds.

11. However, it may not be possible to accept the above contentions. The first is that though formal notice had not been issued to him before order u/s 411 was passed, it is conceded that he was aware of the proceedings and had utilised opportunity to file an appeal to the Appellate Authority. At the intervention of this Court, he got an expeditious hearing as well, and at least the Appellate Authority had opportunity to examine his objections.

12. As per the wordings of the section, it is not possible to be spelt out that an occupier like the petitioner is entitled to a notice, as of right on all occasions. Chapter XIX of the Act refers to nuisances pertaining to dangerous structures, trees, places etc. Where a structure is found by the Secretary as in a ruinous state and dangerous to the passers-by or to the occupiers of neighbouring structures, the Secretary may by notice require the owner or occupier of such

structure to fence off, taken down, secure, demolish or repair the same so as to prevent any danger therefrom. There might be structures attached to a premises put up by the occupier, for example a signboard or the like about which there might arise an apprehension that it is situated in a dangerous position to the general public. Or as in the present case, enquiries may reveal that the building as a whole is in a dilapidated condition requiring to be pulled down. When we examine the definition of "occupier" and "owner", it could be seen that the inclusive definitions are capable for one to assume that an owner can be an occupier in certain cases and therefore the occupier can also be an owner. Chapter XIX refers to notice, but in cases where an occupier, who is not an owner, is incapable of effectively attending to the defect pointed out, his version may not be of any help. And almost always he will not see eye to eye with the proposal, for reasons which are obvious. As in this case, if the structure as a whole is unsound, it may not be possible for an occupier of a single room to repair it. Especially in this case the averments were to the effect that the support available to the room had become precariously feeble. In such and similar cases, notices need be issued only to the owner. The case of the occupier that the position available was due to the contribution of the building owner, itself might be irrelevant as the cardinal issue is whether the structure is sound to be retained. This distinction as between the roles of the parties is gatherable from the other situations spoken to in Chapter XIX. Section 412 deals with cases of dangerous trees, where the owners are directed to remove the nuisances. Likewise, Section 413 which refers to dangerous tanks, wells etc., Section 414 which deals with dangerous quarrying and the like, will give a guidance as to the person to whom notice is to be addressed. Therefore even though a notice formally had not been issued to the petitioner, that cannot be taken as a defect for challenging the follow up action taken. That, in the present case the Municipality came to notice the structure, because of the intimation of the third respondent also does not alter the position.

13. The circumstance that he had been given a hearing also plugs the loopholes which might have been there as alleged. The petitioner has not been able to substantiate the mala fides or malice in the matter, though a suggestion to the above effect had been put in. In such matters, subjective satisfaction of the officers concerned and experience and their skill to assess the situation alone becomes relevant. Presumption is that official acts are carried out in the most just and equitable manner. The existence of the RCP by itself would not have tied the hands of the third respondent to inform the Municipality about the danger of the structure. His contribution itself to the said situation is beyond scrutiny in these proceedings, and it is emphatically denied also.

14. The learned counsel for the respondent had also referred my attention to the judgment reported in 2001 (1) KLT 536, *Sunder Raj v. Corporation of Cochin*, where I had occasion to deal with the above aspects. The facts of the case appear to be identical. The records placed before me are sufficient to indicate that there has been due application of mind to all the relevant aspects and

therefore the decision of the Local Authority cannot be faulted.

15. At this juncture, it may also be relevant to look into Section 433 of the Act. It deals with the control which the Municipality has in respect of buildings which are unfit for human habitation. Where a building or portion thereof intended for use as a dwelling place are found to be unfit for human habitation, Secretary has powers to prohibit use of such structures, after giving the owner or occupier of the structure a reasonable opportunity of showing cause why such order should not be made. It is seen that notice has to be given and the parties are to be heard. There is reference to the formalities that are to be followed. But such preconditions of a hearing are not there, where the building is occupied not for habitation. I find that in such matters, the enquiries are made in the nature of administrative action and the officer has to come to a subjective satisfaction from the materials he collects.

16. Now the question arises whether there was irregularity in cancelling the licence, as has been done. Sri. Ramakumar refers to Section 492 of the Act which deals with the general provisions regarding licences and permissions. It is submitted that under Sub-section (9) any licence or permission could be suspended or revoked, if any of the restrictions, limitations or conditions is evaded or infringed by the grantee. Likewise, if the grantee is convicted of a breach of any of the provisions of the Act, rule bye-law or regulation made thereunder, in any matter to which such licence or permission relates the licence could be revoked. It is pointed out that these circumstances are not in existence when the impugned orders are passed. Normally, he would have been entitled to continue for a period of one year and the cancellation therefore has landed him in troubles, since it may be difficult for him to obtain a licence in future.

17. These contentions also do not have any legal basis. As far as I could see. Section 492(9) deals with the situation where the licence is revoked or suspended. This necessarily presuppose a conduct of the licence at least where there would have been any default. That is not the case here. Sub-section (2) of Section 492 specifically provides that licence issued should specify certain details. The person, the premises and the trade or business or undertaking for which the licence is granted has to be specified in the licence. It goes on to say that any change in the person, the premises or the business, a fresh licence or permission has to be taken, with or without liability for payment of further fee. Therefore, licence had been granted to the petitioner to run a business earmarking the premises. The Municipality had passed orders whereunder the building in which the business was located was directed to be demolished. Essentially, the Municipality was expected to anticipate the impact of such orders. When the building was to disappear the licence would not have survived. The petitioner had been asked to shift his belongings in this contingency. Further, on the specific issue as to whether the licence was to be cancelled or not, he had been heard. It could not have been possible for the Municipality on the basis of the statutory prescriptions to permit him to have the licence in tact without

specifying the premises. This would have offended other provisions of the Act and also would have exposed procedural difficulties. Therefore, there was nothing improper or irregular in cancelling the licence, and the objections raised do not find any statutory or legal support for this Court to interfere. Perhaps the learned counsel will be justified in pointing out that there was no provisions envisaging such contingencies specifically incorporated in the Act, but the attendant circumstances have to be looked into, since the issue has been posed,

18. Sri. Subhash Chand, learned counsel for respondents 1 and 2, points out the usual conditions which are attached to a licence, a copy of which is produced as Ext.R1(e), are sufficient enough to indicate that the petitioner was deemed as having been given permission to carry out the activities as per the terms notified by Ext.R1 (e) alone. Essentially, possession of a premises was necessary and Clause (9) of Ext.R1 (e) indicated that when there was change of persons, business or premises, a new licence has to be obtained. The counsel is also justified in pointing out that the import of Clause 17 also authorised the Municipality to pass such orders. Over and above, acceptance of the argument would lead to absurdity, as the counsel has no dispute about the factual position that the building is no more there.

The Writ Petition has no merit and it is dismissed.