

(1890) 09 MAD CK 0008
In the Madras High Court

Secretary of State for India

APPELLANT

Vs

Choyi

RESPONDENT

Date of Decision : 30-09-1890

Acts Referred:

Citation : (1891) ILR (Mad) 82

Hon'ble Judges : Muttusami Ayyar, J; Best, J

Bench : Division Bench

Judgement

Best, J.—This is an appeal by the Secretary of State against the decree of the Subordinate Judge of North Malabar awarding to the

respondent a sum of Rs. 11,432-8-0 as damages sustained by the latter in consequence of orders directing the closing of certain shops within the

limits of the Abkari farms, of which the respondent had become purchaser for eleven months from 1st May 1885 to 31st March 1886.

2. It is urged on behalf of the appellant that the Collector had, u/s 6 of the Abkari Act, No. III of 1864 (Madras), and also under the sale

notification, Exhibit Y, and the license granted to the respondent, Exhibit AE, power to close the shops; that respondent's suit was therefore not

maintainable; and that the damages awarded are excessive.

3. The first issue recorded in the case is as follows:—"Whether, under the terms of the agreement with the plaintiff (now respondent), the Collector

or other officer exercising his powers had right to pass the orders complained of, directing the closing of the shops within the limits of the farm

leased out to the plaintiff.

4. The terms of the agreement are to be found in the sale notification, Exhibit Y, and in the license, Exhibit AE, granted to the respondent.

5. In Clause 11 of Exhibit Y, after stating that the "shop or shops shall be under the personal management of the licensee," it is added "if he desires to open more shops, or if the above shops are not under his personal management, he must obtain a separate license for each such shop"; and the next clause provides that "the Collector may, whenever he thinks fit, direct shops other than those managed by the licensee to be closed." The license, Exhibit AE, granted to the respondent also contains stipulations as above. (Vide Clauses 10 and 11), These are the two documents from which we can gather what the contract between the parties was, and it appears to me that under them the Collector had a right to close shops without assigning any reasons for his so. doing.

6. A former decree dismissing the suit with costs was set aside by this Court, and the case remanded for re-trial, for the reason that the decision rested on grounds not set up in defence by the defendant. It was then remarked:--"In paragraph 10 of his judgment, he (the Judge) says that the grounds on which the Collector was justified in making his orders were that the plaintiff did not personally manage the shops and that he sold to sub-renters part of the farm and that, as he did so, he should have procured a separate license so to do, which license he did not obtain. The written statement of the defendant or the issues raised no such questions.

7. It is true that neither in the defendant's written statement nor in the issues is there anything said of the Collector's right to close the shops on the ground that the plaintiff did not personally manage them, nor is it even now contended that this was the reason for ordering the shops to be closed, or rather for disallowing their being opened, for most of them (49 out of 55) were new shops that had never before existed. The contention is that as both under the notification of sale, Exhibit Y, and the license, Exhibit AE, the obtaining of a license by the plaintiff was a condition precedent both to the opening of new shops and to the keeping of even old shops under management other than that of the licensee himself, and as the plaintiff had admittedly not obtained any separate licenses as thus required, his claim for damages on account of the profits he might have obtained, if such shops had been allowed to be opened or maintained, is altogether unsustainable. This is, I think, an argument allowable to the defendant and comes within the scope of the 1st issue recorded for trial, and also within

paragraph 2 of the defendant's written statement, which is as follows:--

According to the stipulations of the karars entered into with the plaintiff, the Collector and other officers who exercise the Collector's powers

have full power to regulate the number and situation of shops within the local limits of the plaintiff's farm and for ordering to take away any of the existing shops.

8. I would therefore allow this appeal, and setting aside the lower Court's decree, dismiss the plaintiff's suit with costs throughout.

Muttusami Ayyar, J.

9. I am also of the same opinion.

10. The respondent rented on 1st May 1885 the Abkari farm of 19 amshoms in the Cherakkal Taluq in North Malabar. The sale notice, Exhibit Y,

and the license, Exhibit AE, embody the terms of the agreement between the appellant and the respondent and Clause 12 of the former and

paragraph 11 of the latter reserved power to the Collector inter alia to direct, whenever he thought fit, that shops other than those managed by the

licensee be closed. Exhibits C, L and N are the orders which, it is asserted, the Collector issued in breach of the contract. Those orders related to

shops which had been sub-let and not to those under the renter's personal management, and they are therefore clearly not in excess of the power

reserved by the contract to the Collector. Against this view, four objections are urged on behalf of the respondent. The first is that the orders were

issued arbitrarily. Exhibit C, dated 22nd May 1885, directed that sub-contractors should not keep any shop within the area of three miles from the

boundary of the farm of town arrack contractors. Exhibit L, dated 9th July 1885, stated that the six toddy shops mentioned therein were very near

to the municipal limits, that licenses could not be granted in respect of them, and that the trade in those shops should be immediately stopped.

Exhibit N, dated 13th July 1885, stated that without special grounds, permission could not generally be granted to keep shops in places lying within

a distance of one mile from the municipal limits. It appears that the Board of Revenue since excluded from the operation of this order any old shops

in existence. It is provided in paragraph 10 of the license issued to the appellant (sic) that ""if you desire to open more shops or if the above shops

are not under your personal management, you must obtain a separate license for

each such shop." It is not the appellant's (sic) case that any of the shops ordered to be closed were either those under his personal management or those in respect of which separate licenses had been issued. The orders in question appear to have been designed to ensure what was considered to be reasonable protection against undue interference on the part of the appellant, (sic) with the custom of the town arrack contractors and, in this sense, none of them can be said to be arbitrary. Nor does it make any difference that the Board of Revenue modified the orders issued by the Collector in the exercise of their discretion as to what might be deemed sufficient protection to the town contractors as those orders were issued bona fide in the exercise of the power reserved by the terms of the contract. As regards the contention that neither Exhibit Y nor Exhibit AE specified the number of shops, as was previously the case, which the appellant (sic) was entitled to open or sub-let, I have to observe that the appellant (sic) could only exercise his power subject to the restrictions as renter contained in paragraphs 10 and 11 of the license, Exhibit AE. Another contention is that the orders in dispute were issued not on public grounds, but to protect the interests of the contractors for the municipal town of Cannanore. The appellant's (sic) contract and the town contract were both entered into with reference to the provisions of the Abkari Act and I cannot say that any provision in the latter contract which arms the Collector with power to see that the exclusive privilege conferred by the previous contract is not wantonly interfered with or impaired by the renter from interested motives is not legitimate or unreasonable.

11. On these grounds, I also hold that there was no breach of contract as alleged by the respondent and that the appeal must be allowed with costs.