

(2015) 04 KL CK 0082

In the High Court Of Kerala

Case No : Writ Petition (C) No. 2055 of 2015 (F)

Shaju P.D.

APPELLANT

Vs

The Licencing Authority and Assistant Drug Controller, Drugs
Control Department and Others

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Specific Relief Act, 1963 — Section 6

Citation : (2015) 04 KL CK 0082

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : Jacob Sebastian, for the Appellant; Joseph George, Government
Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P.R. Ramachandra Menon, J—Ext. P8 communication issued by the second respondent, expressing inability to accede to the request made by the petitioner, vide application dated 05.11.2014 (as discernible from Ext. P5 receipt) to grant drug licence to run a medical shop in the name of the petitioner, for want of consent of the landlord of the building is under challenge in this writ petition.

2. The petitioner was a partner of the erstwhile firm consisting of three partners, who was running the business on the strength of Ext. P2 licence issued in Form 21C by the first respondent, conducting the medical shop in the building belonging to the 3rd respondent. The said licence was issued on the basis of the consent given by the 3rd respondent/landlord. The licence was originally issued in October 2007, which was subsequently renewed in October 2012 and it is valid till October 2017. Licence was also issued by the local authority, which was lastly renewed in August 2014, vide Ext. P3, and the same stands in the name of the petitioner herein, who is the sole surviving partner/proprietor, and is running the medical shop as on date.

3. The case of the petitioner is that the partners of the firm decided to put an end to the partnership arrangement and accordingly, Ext. P4 Deed of Resolution was executed on 17.10.2014. As per the deed of resolution, all the issues among the partners were settled and the petitioner was set at liberty to run the medical shop in his name. It was in the said circumstances, that an application was submitted by the petitioner before the concerned respondent for changing the licence, which originally was in the name of Haridas (one of partners of the erstwhile firm), to be transferred to the name of the petitioner; receipt of which is acknowledged as per Ext. P5. The petitioner has satisfied the statutory fees payable in this regard, as evident from Ext. P6 and has filed Ext. P7 affidavit to the effect that the petitioner is in lawful possession of the shop room, where the medical shop is being run. The application preferred by the petitioner was considered by the second respondent, who issued Ext. P8 communication on 23.12.2014, informing that the request cannot be acceded to in the absence of current lease agreement or ownership certificate. The case of the petitioner is that, the petitioner, not being the owner of the building cannot aspire to have any ownership certificate. Regarding the current lease agreement, the said course is also not possible, as the 3rd respondent/landlord has already moved against the petitioner by filing O.S. No. 313 of 2012 before the Munsiff's Court, Palakkad as borne by Ext. P1 plaint, to evict the petitioner from the premises. The contention of the petitioner is that the petitioner is in lawful possession of the shop room as "tenant holding over" and is entitled to have the licence transferred, without the consent of the landlord, he not being an encroacher or trespasser. Reliance is sought to be placed on the decision rendered by this Court in Marimuthu and Others Vs. D.G.P. and Others, (1999) 2 KLJ 288 , which was followed in the subsequent decisions viz. Muhammed Ishock Vs. Malappuram Municipality [2000 KHC 107] and Sathees M. Vs. Secretary, Cherthala Municipal Council [2008 (4) KHC 249]. It is in the said circumstances that the petitioner has approached this Court challenging Ext. P8 and seeking for appropriate direction to be given to the respondents 1 and 2 to cause the licence to be transferred to the name of the petitioner.

4. A counter affidavit has been filed on behalf of the second respondent, pointing out that the drug licence was issued in favour of the partnership firm, which existed earlier and it stands renewed upto 05.10.2017. On 17.10.2014, the firm was dissolved and the petitioner was allowed to run business in the same name and style, by the other partners. But as per the condition No. 5 of the drug licence in Form 20 and condition No. 6 of the licence in Form 21, the licensee shall inform the licensing authority in writing, in the event of any change in the constitution of the firm operating under the licenses and where any change in the constitution of the firm takes place, the current license shall be deemed to be valid for a maximum period of "three months" from the date on which the change takes place; unless, in the meantime, a fresh licence has been taken from the licensing authority in the name of the firm with the changed constitution. It is also pointed out that, as per the Rule 65A of the Drugs and

Cosmetics Rules 1945, the Licensing Authority can require documentary evidence for verification in respect of the ownership or occupation on rental or other basis of the premises specified in the application for licence. It is further stated in paragraph 3 of the said affidavit that, as against the version of the petitioner that he is occupying the premises as lawful tenant of the building owner i.e. 3rd respondent, in view of the petitions filed by the 3rd respondent before the first and second respondents, intimating that the 3rd respondent Devaswom has not given any consent to the petitioner for running the medical shop in the room and requesting to cancel the existing drug licence, they are not willing to issue any "NOC" to the aforesaid medical shop.

5. Referring to the necessity to keep various medicines in refrigerated condition; necessity to ensure continued availability of electricity and the consequences which may be resulted because of want of consent of the building owner are also adverted to, simultaneously pointing out that presently, the shop is running without valid drug licence, as the validity of the existing license expired on 16.01.2015 due to change of constitution of the firm.

6. A counter affidavit has been filed by the 3rd respondent as well, pointing out that they have never given any consent to the petitioner to be in lawful possession of the shop room, adding that the petitioner is only a trespasser and that possession after termination of the tenancy, i.e. after issuance of notice of termination, is illegal. It is also pointed out that the petitioner is also not a "tenant in sufferance", since, after issuance of notice of termination of tenancy, the third respondent has initiated eviction proceedings and that the amount demanded as per the notice issued in this regard is not rent, but damages for illegal occupation.

7. Heard both the sides in detail.

8. During the course of hearing, the learned counsel for the petitioner heavily relied upon the decisions rendered by this Court in 1999 (3) KLT 662 (cited supra), 2000 KHC 107 (cited supra), 2008 (4) KHC 249 (cited supra) and M.I. Shajahan Vs. Alice George and Others(2015) ILR (Ker) 264 : (2015) 1 KHC 811 : (2015) 2 KLJ 68 : (2015) 1 KLT 995 . It is pointed out that the factual position considered by the learned Single Judge of this Court in 2000 KHC 107 (cited supra) was involving civil suit for eviction and in all the above cases, it was held that the tenant was occupying the premises in lawful possession and as such, the petitioner is having every right to have the license transferred to his name. The version of the petitioner is vehemently disputed by the learned counsel appearing for the 3rd respondent, pointing out that the decisions cited across the Bar and sought to be relied on by the petitioner, are not at all applicable to the case in hand. In all the above cases, the concerned tenant was a statutory tenant, which is not the position involved herein. Admittedly, the third respondent Devaswom is outside the purview of the Rent Control Act, by virtue of the notification issued by the Government in this regard. Even during the subsistence of partnership firm, which was dissolved as per Ext. P4 only in the

year 2014, the third respondent had filed Ext. P1 civil suit before the concerned Civil Court, way back in the year 2012, after terminating the tenancy by issuing notice. This being the position, the occupancy of the premises is not as a "tenant holding over" and the petitioner's occupation can only be termed as illegal, he being a trespasser, submits the learned counsel for the 3rd respondent.

9. The learned counsel for the 3rd respondent also places reliance on the decision rendered by the Apex Court in *M.C. Chockalingam and Others Vs. V. Manickavasagam and Others*, AIR 1974 SC 104 : (1974) 1 SCC 48 : (1974) 2 SCR 143 and *Ram Bharosey Lal Gupta (D) by L.Rs. and Others Vs. Hindustan Petroleum Corp. Ltd. and Another*, (2013) 5 AD 129 : (2013) 3 CTC 248 : (2013) 6 JT 542 : (2013) 3 RCR(Civil) 23 : (2013) 6 SCALE 232 : (2013) 9 SCC 714 : (2013) AIRSCW 2477 to explain the term "tenant holding over". The question considered in the decision reported in *M.C. Chockalingam and Others Vs. V. Manickavasagam and Others*, AIR 1974 SC 104 : (1974) 1 SCC 48 : (1974) 2 SCR 143 was whether the tenant, who is not a statutory tenant, is entitled to claim as in lawful possession of the premises, on termination of tenancy/on expiry of the lease. After referring to the relevant provisions of Cinemas (Regulation) Act 1955 (T.N.) and the provisions of the Specific Relief Act 1963, the Apex Court held that the tenant, on the expiry of the lease, cannot be said to continue in "lawful possession" of the property against the wishes of the landlord, if such possession is not otherwise statutorily protected under the law such as under the Rent Control Act. The Bench made it clear that, Section 6 of the Specific Relief Act does not offer any such protection, but only forbids forcible dispossession, even with the best of title.

10. In the decision reported in *Ram Bharosey Lal Gupta (D) by L.Rs. and Others Vs. Hindustan Petroleum Corp. Ltd. and Another*, (2013) 5 AD 129 : (2013) 3 CTC 248 : (2013) 6 JT 542 : (2013) 3 RCR(Civil) 23 : (2013) 6 SCALE 232 : (2013) 9 SCC 714 : (2013) AIRSCW 2477, the Apex Court dealt with the relevant provisions of the Transfer of Properties Act 1882 and held that automatic renewal of the lease is not permissible and that when the lessor is not at all acquiescing to continued possession after the valid termination of lease, upon its non-renewal, the continued possession by the lessee could only be as a trespasser. It is also pointed out that the verdict passed by the Apex Court in the earlier decision AIR 1974 SC 174 (cited supra) was not brought to the notice of the learned Single Judge when the judgment in 2000 (1) KLT 607 : 2000 KHC 107 (cited supra) was rendered.

11. The learned counsel for the petitioner put up a contention with reference to the pleadings in the plaint and a written statement filed before the Civil Court that the respondent Devaswom is not entitled to maintain the suit or to avoid the process and procedure under the Rent Control Act, as it is not a notified institution having exemption under the said Act. The learned counsel for the respondent Devaswom submits that it is a matter to be established before the trial Court and that the protection available to the petitioner for the time being

can only be from eviction; which by itself will not make it a "lawful possession" as explained by the Apex Court as referred to earlier.

12. After hearing both the sides, this Court finds that the version of the petitioner that he is in lawful possession of the premises in question is not at all correct or liable to be entertained, in view of the law declared by the Apex Court as mentioned above. The proceedings now pending consideration before the concerned Civil Court are only to get him evicted and to get back the premises, which in no way will recognize the possession as a "lawful possession". In so far as the petitioner is not in lawful possession of the premises, no writ of mandamus can be issued to the respondents 1 and 2 to transfer Ext. P2 drug licence to the name of the petitioner herein, nor can they be directed to issue fresh licence contrary to the Scheme of the Statute. This Court finds that the writ petition is devoid of any merit and none of the grounds raised in support of the same is tenable. Interference is declined and the writ petition is dismissed.