

(1998) 09 MAD CK 0115

In the Madras High Court

Case No : Writ Petition No. 7499 of 1998 and W.M.Ps. 11428 and 11852 of 1998

Smt. Mary Celin

APPELLANT

Vs

The Assistant Commissioner (Excise), The Taluk Excise
Tahsiyar and Thiru. Ganesan

RESPONDENT

Date of Decision : 04-09-1998

Acts Referred:

Tamil Nadu Liquor (Retail Vending) Rules, 1989 — Rule 13

Citation : (1998) 09 MAD CK 0115

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; Patti. B. Jagannathan, Additional Government Pleader for Respondents 1 and 2 and K. Duraisamy for S. Chakravarthi, for 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of Writ of Mandamus or any other appropriate writ or direction to forebear the Respondents 1 & 2 from issuing licence to vend liquor to the 3rd Respondent at the premises bearing Door No. 8A. Whannals Road, Egmore, Madras and pass such further orders.

2. The affidavit is sworn by the Petitioner Amavasai. It is stated that the Petitioner is a lessee under the Adi Ponniamman & Adikesava Perumal Temple, Chindadripet. Madras. After getting the lease from the temple, Petitioner has put up a construction therein. In view of the Petitioner's husband's untimely death, she has to leave for her native place and she is now residing in Kanyakumari District. She has executed Power of Attorney in favour of the Petitioner Amavasai.

3. It is said that the deponent is running a shop of the Petitioner Mary Celin. First Respondent also issued a licence or privilege to vend liquor valid upto the year 1997. The third Respondent is attempting to have a wine shop located in and around Chindadripet, who is a partner of the Petitioner. But the said business was closed and there is no connection between the Petitioner and the third

Respondent and the third Respondent also has no rights whatsoever over the premises.

4. The third Respondent has now bid at the auction for vending liquor and the building which the deponent is using is identified as premises of third Respondent also for his business. Even though deponent filed a complaint before the Respondents, no action was taken.

5. It is said that the temple has recognized only the Petitioner as tenant and the entire shop is in the possession of deponent and the third Respondent was never in possession. But with the help of some rowdy elements, he is now attempting to take possession of the building. The deponent also filed complaint before the Assistant Commissioner of Police seeking necessary police protection. It is said that the Petitioner has right to object the grant of licence in her premises. The third Respondent is politically powerful and has influenced the authorities and is trying to get licence by concocting documents. It is said that the establishment of Wine shop in the premises is not in the interest of the Petitioner and will affect the public peace and tranquillity. Under the above circumstances, it is prayed to forbear the Respondents 1 and 2 from issuing licence to vend liquor to the 3rd Respondent at the above-mentioned premises.

6. A detailed counter affidavit has been filed by the third Respondent wherein it is said that the entire story put forth by the deponent is false. It is said that even though the land belongs to the temple, the tenancy arrangement with the Petitioner has come to an end. The temple filed O.S. 8324 of 1984 on the file of VII City Civil Court, Madras and obtained a decree of eviction on 6.2.1985. Once the tenancy has come to an end by a decree of eviction neither the Petitioner nor the deponent having power of attorney are entitled to claim status as tenant.

7. It is said that the contention that the building was put up by the Petitioner is false and the same is also belongs to the temple. The allegation that the power of attorney was executed by the deponent in view of the untimely death of her husband is also denied. It is said that the Petitioner's husband died in 1984 and the power of attorney was executed in 1997.

8. In fact after the death of her husband, in the year 1996-97. Petitioner lent her name to obtain liquor shop business and the same was run by the third Petitioner alone.

9. After the decree for eviction was obtained by the temple, the Petitioner along with the third Respondent entered into a partnership in the year 1989 and were running South Indian Lodge in the present premises. Subsequently, another partnership was also inducted by including the name of one C. Doss. After some time. Doss retired from the firm and the Petitioner i.e., Man Celin also retired from the business and the same was dissolved.

10. While settling the accounts at the time of dissolution, the Petitioner agreed that she has no objection in transferring the tenancy in respect of third

Respondent and she directed to pay all the arrears of rent then payable to the temple. The Petitioner also received a sum of Rs. 85,000/- as full and final settlement amount due to her. Thereafter, Petitioner herself wrote to the temple that the lease right may be transferred in the name of the third Respondent. Ever since 1991, it is the third Respondent who is paying rent to the temple and the temple also recognised the rights of third Respondent as its tenant.

11. It is said that the deponent was working in the Wine shop for few years. In 1998 auction, the third Respondent participated and became the successful bidder and the sale was also confirmed in his favour. By getting confirmation of the same, the deponent thought of creating disturbance to his business which necessitated filing of complaint before the police. It is said that after the Petitioner Mary Celin has written to the temple expressing her no objection in transferring the leasehold right in the name of the third Respondent and the temple authorities are also awaiting orders from the Joint Commissioner to transfer the lease hold right, this petition by power of attorney is not maintainable. According to him, the Petitioner may not have any knowledge about the writ petition. For such case, it has been prayed for dismissal of the Writ petition.

12. A reply affidavit was also filed by the Petitioner reiterating her contentions in the Writ petition.

13. The learned Government Pleader also placed before me the entire records and contended that the case of the Petitioner is not true and it is a fact that the third Respondent is doing business in the premises.

14. After hearing the counsel of both sides. I do not think that the Petitioner is entitled to any relief. When the deponent claims that he is aware of the facts of the case, naturally he has to place before the Court all materials. But in this case, I find that the deponent has suppressed the material facts which itself is sufficient to dismiss the Writ Petition.

15. It is not disputed by the deponent at the time of the argument that as against the Petitioner i.e., Mary Celin, temple itself filed a suit for eviction, which is also decreed. It is also seen from the type set of papers filed by the third Respondent that between Mary Celin and third Respondent, there was a partnership to do business and they were jointly doing business in the same premises. For some time, the third person also joined himself as a partner, who retired thereafter. Mary Celin also retired from the firm and received whatever amount that was due on settlement of accounts.

16. It is also seen from the type set of papers that Mary Celin has written to the temple that she has no objection to the third Respondent doing business in the schedule mentioned premises and she wanted the temple to transfer the leasehold right in his favour. That letter is dated 1.9.1991. From the said period, third Respondent is in possession of the building.

17. During the year 1996-97, liquor business was conducted in the very same premises though Mary Celin's name was lent for the purpose of the said business. It is also seen, from 1.9.91 till date, it is the third Respondent who is paying rent to the temple. Photocopy of the receipts are also filed in this case. Though it is in the name of Mary Celin, it is the case of the third Respondent that pursuant to the settlement of accounts and pursuant to her letter to the temple, he was paying the rent. So the circumstances are in his favour.

18. The learned Counsel for the Petitioner submitted that the building was constructed by Mary Celin and in so far as the structure is concerned, she is the owner. Whatever may be the relationship in respect of the land, when the structure belongs to Mary Celin and when she has expressed objection to third Respondent conducting liquor business in the shop, the authorities have no right to issue licence. The learned Counsel further submitted that under Rule 13 of the Tamil Nadu Liquor Retail Vending Rules, without the consent of the owner of the building and without the production of the lease deed for a term not less than one year, third Respondent is not entitled to do business and the authorities also have no right to issue licence.

19. With regard to the structure, the third Respondent had seriously disputed the right of Mary Celin over the same. Absolutely no evidence has been let in to show that Mary Celin has put up the construction and she exercised right over the same. In fact, the letter written by Mary Celin to the temple also shows that she was not claiming any right over the building. The decree obtained by the temple against Mary Celin also shows that the premises included the structure also and in respect of the suit premises eviction was ordered.

20. The learned Counsel for the Petitioner further submitted that the decree obtained by the temple is of the year 1985 and 12 years have elapsed and as on date temple may not have right over the same. In this case, we are not concerned whether the decree obtained by the temple is executable or not. We are only concerned about the right of the third Respondent over the same and whether he is entitled to continue in possession to do business.

21. When Man Celin herself had expressed that the lease deed will have to be transferred in the name of the third Respondent and also said in that letter that she has also stated that the third Respondent alone is doing business therein. I do not think any of the contentions raised by the counsel for the Petitioner is to be sustained. The Petitioner has no case that after 1991. There was a change in circumstances and Mary Celin came into possession of the building. The documentary evidence produced by the third Respondent also shows that he was all along in possession of the building. The question of getting consent from the owner of the building for doing IMFS business will not arise in such cases. The Petitioner has no right in the building, and the third Respondent is not claiming as a tenant under Mary Celin in the building. Only in such circumstances, the conditions of Rule 13 will be applicable.

22. I do not find any merit in the Writ Petition. The deponent has suppressed the material facts and the true facts could be traced only after the third Respondent entered appearance and when he filed documents.

23. In the result, I dismiss the Writ petition with costs, making the deponent personally liable to pay the same and I quantify the same as Advocate fee Rs. 3,000/-. Consequently, the W.M.P. Nos. 11428 and 11852 of 1998 are closed.