
(2022) 02 KL CK 0129
In the High Court Of Kerala
Case No : Writ Petition (C) No. 22193 Of 2021

V.Mammu

APPELLANT

Vs

Excise Commissioner Nandavanam, Thiruvananthapuram
695033

RESPONDENT

Date of Decision : 15-02-2022

Acts Referred:

Citation : (2022) 02 KL CK 0129

Hon'ble Judges : Sathish Ninan, J

Bench : Single Bench

Advocate : R.K.Muraleedharan, Nireesh Mathew, M.G.Karthikeyan, K.M.Rashmi

Final Decision : Allowed

Judgement

Sathish Ninan, J.

1. The petitioner is the co-owner of a commercial building. The building is taken on lease by the 4th respondent, for conducting a bar hotel. Ext.P1 is

the lease agreement between the parties. It is dated 18.08.2017. As per Ext.P1, the term of lease is for five years from 01.08.2017.

2. On 08.10.2020, the 4th respondent issued Ext.P2 notice, terminating the lease with effect from 31.03.2021. As per Ext.P3 dated 23.11.2020, the

petitioner accepted the termination. However, thereafter, the 4th respondent submitted an application for renewal of FL-3 licence for the premises

with effect from 01.04.2021. In spite of the objections raised by the petitioner and the other co-owners, the authorities renewed the licence.

Thereupon the petitioner approached this Court in W.P.(C) No.8701/2021. This Court as per Ext.P8 judgment dated 12.08.2021 directed the

authorities to consider the objection. Pursuant thereto, Ext.P10 order dated

26.09.2021 has been issued rejecting the objection. The said order is under challenge in this writ petition.

3. Heard Sri.R.K.Muralidharan, learned counsel appearing on behalf of the petitioner, Sri.M.G. Karthikeyan, the learned counsel appearing on behalf of respondents 4 and 5 and Smt.K.M.Rashmi, the learned Government Pleader.

4. To overrule the objections of the petitioner, the third respondent has stated that, no document evidencing termination of the lease agreement was produced.

5. Clause-8 of Ext.P1 lease agreement deals with "TERMINATION". Clause 8.1 of Ext.P1 reads thus:-

"8.1-This agreement shall terminate by mutual agreement by the parties after giving a notice of six months."

6. Section 111(e) of the Transfer of Property Act, 1882 provides for determination of lease on surrender by the lessee. As per Ext.P2 notice, the 4th respondent lessee has terminated the lease by surrender with effect from 31.03.2021. As per Ext.P3, the petitioner has accepted the surrender. Both the notices have been referred to by the authority. Therefore, the third respondent is not right in his stand that no document evidencing termination of the lease arrangement is produced.

7. The learned counsel for the petitioner refers to the judgment of the Apex Court in Calcutta Credit Corporation Ltd. and Anr. v. Happy Homes

(Private) Ltd. [1968 SC 471] and a Division Bench of this Court in Sulaikha Beevi v. K.C.Mathew [1997 (1) KLT 69] to contend that, for

determination of tenancy at the instance of the tenant, actual delivery of possession is not necessary.

8. Be that as it may, in the light of the above, it is for the third respondent to reconsider the objection in the light of the documents as above and pass appropriate orders.

9. Accordingly Ext.P10 order is quashed. The third respondent shall pass fresh orders on the objections urged by the petitioner regarding renewal of

FL3 licence to respondents 4 and 5. Let orders be passed after affording an opportunity of hearing to the parties and within a period of one month

from the date of receipt of a copy of this judgment. Writ Petition is allowed as above.