

SUDHAKARAN

v.

CORP. OF TRIVANDRUM & ANR.

(Civil Appeal No. 5435 of 2016)

JULY 05, 2016

[V. GOPALA GOWDA AND ADARSH KUMAR GOEL, JJ.]

Kerala Municipality Act, 1994 – s.492(3) – Requirement of consent of landlord – For obtaining licence – Whether required only when the licence is obtained for the first time or also at the time of its renewal – Held: As per s.492(3) requirement of consent of landlord is required only when the tenant intends to obtain a licence for the first time – Such consent is not required for renewal of the licence – However, even for obtaining the licence for the first time, applicant-tenant cannot be deprived of running lawful business merely because landlord withheld the consent – Valid tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant – Kerala Buildings (Lease and Rent Control) Act, 1965.

Allowing the appeal, the Court

HELD: The statutory provision i.e. s. 492(3) of Kerala Municipality Act, 1994 shows that the requirement of consent of landlord is applicable only when a person intends to obtain a licence for the first time. Renewal or subsequent application for obtaining licence on expiry of the period of the existing licence, during the currency of the tenancy, is not applicable for obtaining licence. Even in the case of application for obtaining licence for the first time, the tenant cannot be deprived of running lawful business merely because the landlord withheld the consent. Valid tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant. [Para 8] [1047-A-B]

Marimuthu & Ors. v. D.G.P. & others (1999 3 KLT 662) – approved.

Case Law Reference

(1999 3 KLT 662)

approved

Para 6

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5435 of 2016.

From the Judgment and Order dated 06.03.2013 of the High Court of Kerala at Ernakulam in W. A. No. 356 of 2013.

B Raghunath, Adv. for the Appellant.

P. V. Dinesh (For Ms. Mridula Ray Bharadwaj), Adv. for the Respondents.

The Judgment of the Court was delivered by

ADARSH KUMAR GOEL, J.

C 1. This appeal has been preferred against the judgment and order passed by the High Court of Kerala at Ernakulam in W.A. No.356 of 2013 in C.W.P. No.9843 of 2011 dated 06.03.2013 whereby the High Court has held that the consent of the owner of the premises is necessary for renewal of tenant's licence for running a hardware shop.

D 2. Short question involved in this appeal is the interpretation of Section 492 (3) of the Kerala Municipality Act, 1994, which reads as under :

E *"(3) Where any person intending to obtain a licence or permission for the first time and where the applicant is a person other than the owner of the premises in question, he shall, along with the application produce the written consent of the owner of the premises and the period of the licence shall not exceed the period, if any, specified in the consent."*

F 3. Facts of the case are not in dispute. Appellant is the tenant of suit premises in Trivandrum District of Kerala since 01.06.2001. He was issued a licence with the consent of the landlord to run hardware business on 22.10.2001 by the village panchayat in question. His application for renewal was rejected on the ground that he did not produce consent of the landlord. But the Tribunal for Local Self Government Institutions, Thiruvananthapuram vide order dated 21st March, 2011 upheld the plea of the appellant that the consent of the landlord was required when applying for the first time. Renewal cannot be refused only on the ground that the fresh consent was not produced by the statutory tenant. A person once inducted as tenant continued as statutory tenant by virtue of statutory provisions of Kerala Buildings (Lease and Rent

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Control) Act, 1965 till the tenancy is terminated in accordance with law. A
The operative order of the Tribunal is as follows :

“15. It is to be noted in this context that the Revision Petitioner has not applied for a licence for the first time, I already said that the petitioner has been running the trade on the basis of a valid licence at least up to 31.3.2008. Under Section 492(3) of the Kerala Municipality Act, a consent of the owner is needed only for obtaining licence for the first time. Since the petitioner has not applied for licence for the first time the Corporation cannot impose a condition for obtaining a consent from the landlord. The ground for rejection does not appeal to me. B
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16. It is to be noted that on expiry of the original lease period the petitioner continues as a statutory tenant or tenant holding over. The Corporation cannot insist upon such a tenant for production of a written consent from the landlord for the purpose of issuing of the licence. A statutory tenant can be evicted from the leased premises only in accordance with the various provisions contained in the Kerala Buildings (Lease and Rent Control) Act 1965. It appears that the Corporation is dancing to the tunes of the landlord or has become a puppet in the hands of the landlord in insisting for a consent. It is quite evident and clear that landlord will never give consent. The idea of the landlord is to see that the trade being conducted by the petitioner is stopped forever and he vacates the premises. With such a wicked idea the landlord is attempting to evict the petitioner not in accordance with the provisions of law but through indirect illegal means and unfortunately the Corporation has acted in a way actively aiding the said attempt.” D
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4. The above view was upheld by the learned Single Judge of the High Court as follows :

“2. It seems that a Rent Control Petition is pending before the Rent Controller at Trivandrum for evicting the 2nd respondent and therefore the finding of the Tribunal is justified. Apart from that there is no provision which requires an existing tenant, to obtain consent from the landlord every time renewal G
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A *application is filed. This position is covered by the Division Bench judgment of this Court in Marimuthu v. Director General of Police (1999 (3) KLT 662). That being the situation, I do not think that there is any illegality in the order passed by the Tribunal."*

B 5. On further appeal by Respondent No.2 – Landlord, the Division Bench took a contrary view and held that on expiry of the existing licence, the tenant has to seek a fresh licence for which fresh consent of the landlord was required. It was observed :

C *"4. Validity of the earlier licence undisputedly was till 31.3.2008. Later, renewal was sought only on 25.5.2009, that too to the President of the Panchayat. This cannot be treated as a proper application for renewal. Subsequently, on 10.8.2010 he filed a fresh application for licence, therefore, neither letter dated 25.5.2009 nor application dated 10.8.2010 was a proper application for renewal of the earlier licence as contemplated under sub-section (5) of Section 492 of the Kerala Municipalities Act. If the earlier licence comes to an end on 31.3.2008, in the absence of making a renewal application within 30 days before expiry of validity of the existing licence, the tenant cannot get the benefit of renewal of licence and it has to be only a fresh licence. Once it is a fresh licence, permission or consent of the landlord is required as indicated in sub-section (3) of Section 492 of the Kerala Municipalities Act."*

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F 6. We have heard learned counsel for the parties. Learned counsel for the appellant submits that the view taken by the Division Bench of the High Court is patently erroneous and is contrary to the statutory provision referred to above. The learned Single Judge has followed the judgment of the earlier Division Bench in *Marimuthu & Ors. versus D.G.P. & others* (1999 3 KLT 662). The Division Bench failed to advert to the earlier said judgment. It is also pointed out that reference to clause (5) of Section 492 in the judgment of the Division Bench appears to be mistaken.

G 7. Learned counsel for the contesting respondent has supported the view taken in the impugned judgment.

H 8. After due consideration of the issues involved, we find merit in

the submission made on behalf of the appellant. The statutory provision already quoted above shows that the requirement of consent of landlord is applicable only when a person intends to obtain a licence for the first time. Renewal or subsequent application for obtaining licence on expiry of the period of the existing licence, during the currency of the tenancy, is not applicable for obtaining licence. Even in the case of application for obtaining licence for the first time, the tenant cannot be deprived of running lawful business merely because the landlord withheld the consent. Valid tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant.

9. In *Marimuthu & Ors. (supra)*, the Division Bench of the High Court observed :

"16. A statutory tenant under the Kerala Buildings (Lease and Rent Control) Act can be evicted only as per the provisions of the said Act, on the grounds enumerated therein. Since the possession of the tenant is lawful, the landlord is not entitled to withhold his consent for the conduct of the business for which the premises were given on rent. In the instant case, we are satisfied that the landlord is purposefully and with malafide intention withholding consent inspite of the directions from this court. Under such circumstances, the Corporation also cannot insist upon production of written consent from the landlord for the purpose of issuance of licence for the conduct of business in the premises in question. For carrying on business in readymade dresses a licence issued under Sec.492 of the Kerala Municipality Act is necessary. As on date, the petitioner is not having any licence to carry on such business. A person in occupation can be allowed to carry on a trade or business which requires a licence, only after obtaining such licence. In view of the facts and circumstances of the case as above, we direct the Corporation of Thiruvananthapuram to consider Ext.P7 application for licence without insisting upon the production of a written consent of the owner of the premises and pass appropriate orders after giving an opportunity to the petitioners or their representative or their advocate, within two weeks from today. The petitioners are at liberty to file any further documents, if need be, before the Corporation authorities. The

A *Corporation shall pass a reasoned order after hearing the necessary parties and communicate the same to the petitioners within two weeks from today. We make it clear that till such time the petitioners shall not conduct the textile business in the premises in question. Ext.P8 order of the Corporation of Thiruvananthapuram is set aside and Ext.P7 is restored to file for fresh consideration as directed above."*

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10. Thus, the view taken by the Tribunal and the learned Single Judge is the correct understanding of the import of Section 492 (3) of the Kerala Municipalities Act, 1994 (supra). The Division Bench erred in interfering with the said view.

C 11. Accordingly, we allow this appeal, set aside the order of the Division Bench and restore the order of the Tribunal as affirmed by the learned Single Judge.

Kalpana K. Tripathy

Appeal allowed.

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