

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WP(C).No. 3319 of 2015 (L)

PETITIONER:

M.I.SHAJAHAN, S/O.MOHAMMED ISMAIL,
P.O.BOX NO. 40555, RIYADH-11511, KSA,
FROM KUNNIL VEEDU, KURMANGANOOR MURI,
KOWDIAR VILLAGE, PATTOM P.O.,
THIRUVANANTHAPURAM
REPRESENTED BY HIS POWER OF ATTORNEY
HOLDER - P.MOHAMMED BEEVI,
KUNNIL VEEDU, KOWDIAR VILLAGE, PATTOM P.O.,
THIRUVANANTHAPURAM - 695 004.

BY ADVS.SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL

RESPONDENTS:

1. ALICE GEORGE, WIFE OF GEORGE THOMAS,
T.C.11/957(2), NANTHENCODE,
THIRUVANANTHAPURAM - 695 003.
2. CORPORATION OF THIRUVANANTHAPURAM
REPRESENTED BY ITS CHAIRMAN,
THIRUVANANTHAPURAM - 695 034.
3. THE SECRETARY,
CORPORATION OF THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM - 695 034.
4. HEALTH OFFICE GR.I,
CORPORATION OF THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM - 695 034.
5. HEALTH INSPECTOR, NANTHENCODE CIRCLE,
CORPORATION OF THIRUVANANTHAPURAM,
THIRUVANANTHAPURAM - 695 034.
6. STATE OF KERALA REP. BY SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM - 695 001.

ADDL.R7 IMPEADED

TRIBUNAL FOR LOCAL SELF GOVERNMENT
INSTITUTIONS, THIRUVANANTHAPURAM-695 001.

Impleaded as per order dated 12.2.2015 in IA 2080/2015

R6 BY GOVERNMENT PLEADER SMT.C.K.SHERIN
R2 TO R5 BY ADV. SRI.P.K.MANOJKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
12-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 3319 of 2015 (L)

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE NOTICE NO.H10/154343/2012, H10/MS/1044/13 & H10/80439/13 DATED 18/02/2014 ISSUED BY 4TH RESPONDENT.

EXT.P2: COPY OF THE ORDER DATED 11/12/2014 IN REVISION PETITION NO. 27/2014 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

EXT.P3: COPY OF THE ORDER DATED 29/11/2013 IN APPEAL NO.1058/2013 OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.3319 of 2015 L

Dated this the 12th day of February, 2015

JUDGMENT

The issue in this writ petition lies in a very narrow compass: whether a consent letter from the landlord is required for renewal of trade licence?

2. The petitioner, a landlord, has a grievance that the first respondent, while seeking renewal of her business licence from the respondent Corporation, forged his signature and produced a consent letter, based on which the third respondent renewed the licence. Evidently, on a complaint made by the petitioner, the third respondent seems to have gone into the issue and found that the first respondent indeed produced a forged letter of consent. Under those circumstances, through proceedings dated 18.02.2014, he cancelled the licence renewed in favour of the first respondent.

3. Aggrieved by the cancellation of licence, the first respondent filed a statutory appeal before the Council of the respondent Corporation, which affirmed the decision of the third respondent through its order dated 31.01.2014. Further aggrieved, the first respondent approached the Tribunal for Local Self Government Institutions, Thiruvananthapuram, by filing R.P.No.27/2014, which was allowed through Exhibit P2 order dated 11.12.2014. Assailing Exhibit P2 order of the learned Tribunal, the petitioner, the landlord, has filed the present writ petition.

4. The learned counsel for the petitioner has strenuously contended that both the third respondent and the Council of the respondent Corporation — the primary and appellate authorities — have concurrently found that the first respondent produced a forged consent letter and secured renewal licence. According to him, the third respondent has got plenary powers to suspend or cancel the licence in terms of Section 492(9) of the Kerala Municipality

Act ('the Act' for brevity).

5. In elaboration of his submissions, the learned counsel for the petitioner has drawn my attention to Section 492(3) of the Act, which speaks of the procedure for obtaining a licence. It is the singular contention of the learned counsel for the petitioner that since the licence period cannot exceed one year, even at the time of its renewal, consent of the landlord is mandatory. In other words, once the licence comes to an end, though it is termed as renewal, what is issued subsequently is, in fact, a new licence for the next year; thus, essentially, while obtaining the new licence, the whole process is to be replicated, including that of the consent letter from the landlord. The learned counsel has also submitted that there is no discernible reason why the requirement of obtaining a consent letter for the next year should be dispensed with once it is a pre-condition at the beginning for obtaining the licence.

6. Referring to the observations of the learned Tribunal in paragraph 14 of the order, the learned counsel would contend that essentially the third respondent renewed the licence based on the forged consent letter and as such, it ought not to have brushed aside the concurrent findings of the primary and appellate authorities. Eventually, the learned counsel has submitted that once any benefit is obtained by playing fraud, the beneficiary cannot stake any claim to equities, since fraud vitiates the most solemn of the acts of whatever nature. Thus, the learned counsel has urged this Court to set aside Exhibit P2 order of the learned Tribunal and restore the findings of the third respondent as well as those of the Council of the respondent Corporation.

7. As could be seen, the solitary issue that is to be determined is whether consent letter of the landlord is a pre-condition for renewal of the licence. In the present facts and circumstances, the additional issue that is to be

determined is whether alleged production of a forged consent letter should result in cancellation of the licence renewed in favour of the first respondent.

8. To appreciate the issue, it is essential to examine Section 492 of the Act, which, to the extent relevant, is as follows:

492. General provisions regarding licences and permissions.-

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(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.

(4) Where the applicant seeking renewal of a licence or permission in respect of the trade or business licensed in the premises mentioned in sub-section (3) is a persons different from the original licensee or not the legal heir of the original licensee the consent of the owner shall be required.

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(9) Subject to the provisions in this Chapter regarding buildings and private markets and subject to such sanction as may be required for the refusal of a licence or permission, any licence or permission granted under this Court or any rule or bye-law made thereunder, may, at any time, be suspended or revoked by the Secretary if any of its restrictions, limitations or conditions is evaded or infringed by the grantee, or if the grantee is convicted of a breach of any of the provisions of this Act or of any rule, bye-law or regulation made thereunder in any matter to which such licence or permission relates, or if the grantee has obtained the same by misrepresentation or fraud."

9. Indeed, a perusal of the above provision makes it manifestly clear that at the time of obtaining licence afresh, in terms of sub-section (3) thereof, consent of the landlord is quite essential. If we examine sub-section (4) thereof, it specifies that at the time of renewal, if the person seeking renewal is different from the original licensee or is not the legal heir of the original licensee, only under those circumstances is the requirement of obtaining the consent letter from the landlord essential.

10. It is to be observed that if a statute enumerates the things upon which it is to operate, everything else must necessarily, and by implication, be excluded from its operation and effect. For instance, if the statute in question enumerates the matters over which a court has jurisdiction, no other matters may be included. Similarly, where a statute forbids the performance of certain things, only those things expressly mentioned are expressly forbidden. So also, if the statute directs that certain acts shall be done in a specified manner, or by certain person, their performance by any other manner than that specified, or by any other person than one of those named, is impliedly prohibited. (vide Crawford's Statutory Construction, Reprint Edn.1998)

11. Indeed, the maxim *Expressio Unius Est Exclusio Alterius* (i.e., to express or include one thing implies the exclusion of the other or of the alternative, per Black's Law Dictionary) is cautioned by the Courts to be a useful servant but a dangerous master, if it is resorted to indiscriminately.

It is one of the linguistic aids of construction to know the legislative intent. Of course, if the legislative intent is very plain, this maxim may not have the potential of preventing plain and literal construction.

12. If we examine sub-section (3) of Section 492 of the Act, it can be gathered that if the person seeking licence is not the owner of the property, it is mandatory that he should get the consent of the landlord, lest it should lead to rank trespassers establishing businesses in the premises unconnected to them, leading to chaotic conditions involving not only the landlords but also the civic authority, the municipality. On the other hand, once consent is obtained by the licensee, and that licensee continues as the lessee of the demised premises even beyond the lease period, his possession does not per se become illegal — he may be either a tenant at sufferance or a tenant at will, as the case may be. Sub-section (3) of Section 492 of the Act ensures that the prospective licensee's initial entry into a

particular place of business, a building, is lawful.

13. Now we may examine the efficacy of sub-section (4) of Section 492 of the Act, which only requires strangers to the original licensee to obtain the consent for renewal. If the tenant once again were to require consent, the landlord could very easily stymie the due process requirement of eviction of a tenant holding over the property and use this devise of consent as a weapon to ensure either eviction or compliance with his conditions, thereby leading to an unhealthy practice. Thus, it is salutary to hold that in an array of things, if only a few things find mentioned, it shall be presumed that the other ones stand excluded.

14. It is also essential to address the contention of the learned counsel for the petitioner that fraud vitiates the entire proceedings. Indeed, there can be no other universally accepted common law principle than this one that fraud vitiates all solemn acts. But, what is essential is that the alleged fraud must have been perpetrated with a

nefarious objective of achieving something which could not have been achieved but for the fraud. In other words, the fraud allegedly committed ought to have been one of the essential factors, if not the only factor, influencing the decision making. In the present instance, going by the mandate of Section 492, the learned Tribunal has already concluded, in my view rightly, that for the purpose of renewal of licence no consent is required. If at all the third respondent has also relied on the alleged forged letter produced by the first respondent, it is only an extra legal requirement.

15. Once the first respondent is otherwise eligible for renewal of licence and the licence stood renewed, the incidental aspect of producing a forged letter, per se, will not render the renewed licence nugatory, so long as the so-called forged consent letter is not at all material for decision making. This Court, nevertheless, hastens to add that neither the learned Tribunal nor this Court can be seen

condoning indefensible act of fraud, if proved. In fact, even without any judicial imprimatur of the issue, the petitioner, if aggrieved, is always at liberty to initiate appropriate legal proceedings, punitive or otherwise, against the 3rd respondent on the charge of forging the signature of the petitioner.

In the facts and circumstances, having made it clear that in terms of Section 492(4) of the Act, no consent of the landlord is required for renewal of the licence, I am of the opinion that the order of the learned Tribunal cannot be interdicted as having suffered from any legal infirmity. Accordingly, the writ petition stands dismissed. No order as to costs.

Dama Seshadri Naidu, Judge

tkv