

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

MONDAY, THE 13TH DAY OF JULY 2015/22ND ASHADHA, 1937

WP(C).No. 3648 of 2014 (E)

PETITIONER:

BABU
S/O.VELAYUDHAN, KEEZHPADAVALAPPIL HOUSE
MOOKUTHALA.P.O., MALAPPURAM DISTRICT.

BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU

RESPONDENTS:

1. THE NANNAMUKKU GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, NANNAMUKKU SOUTH.P.O.
MALAPPURAM DISTRICT, PIN-679 575.

2. THE SECRETARY
THE NANNAMUKKU GRAMA PANCHAYATH
NANNAMUKKU SOUTH.P.O., MALAPPURAM DISTRICT
PIN-679 575.

* ADDL.R3.MOIDUNNIKUTTY, S/O. MAYINKUTTY,
AGED 67 YEARS, NOORUKKILAYIL HOUSE,
KANJIYOOR P.O, PALLIKKARA AMSOM,
PONNANI TALUK, MALAPPURAM DISTRICT, PIN 679 574
IMPLEADED AS PER ORDER DATED 25.3.2015 IN IA.NO.3621/2015

R1-R2 BY ADV. SRI.SANTHEEP ANKARATH
R1-R2 BY ADV. SRI.ARUN MATHEW VADAKKAN
RADDL.3 BY ADV. SRI.T.KRISHNAN UNNI (SR.)
RADDL.3 BY ADV. SRI.K.C.KIRAN
RADDL.3 BY ADV. SMT.MEENA.A.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
13-07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

RKC

WP(C) .No. 3648 of 2014 (E)

APPENDIX

PETITIONER'S EXHIBITS

P1- TRUE COPY OF THE NOTICE ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT DATED, 13.9.2013 AS NO.B3-3846/13.

P2- TRUE COPY OF THE REPLY SUBMITTED BY THE PETITIONER DATED, 24.9.2013 TO THE 2ND RESPONDENT.

P3- TRUE COPY OF THE JUDGMENT DATED, 10.10.2013 IN W.P[C] NO.24948/2013 OF THIS HON'BLE COURT.

P4- TRUE COPY OF THE ORDER ISSUED BY THE 2ND RESPONDENT AS ORDER NO.B3/3846/2013 DATED, 6.1.2014.

ADDL.R3'S EXHIBITS

EXT.R3(A): A TRUE COPY OF THE AGREEMENT OF LEASE DATED 20.1.09 ENTERED INTO BETWEEN THE PETITIONER IN THE WRIT PETITION AND MOIUNNIKUTTY.

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.

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W.P.(C) No.3648 of 2014
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Dated this the 13th day of July, 2015

JUDGMENT

The petitioner is challenging Ext.P4 order issued by the 2nd respondent cancelling the license issued to the petitioner to conduct his hardware shop, on the ground that he did not produce the consent letter or lease deed from the additional 3rd respondent who is the owner of the building.

2. The petitioner is running a hardware shop in a building taken on lease arrangement with the additional 3rd respondent, since the year 2009. A notice threatening cancellation of license was issued to petitioner, by the Secretary of the Grama Panchayat based on a complaint from the landlord-the additional 3rd respondent, objecting to the continuance of the petitioner in his building, saying that there is no rent deed in existence and he has not given consent for issuing the license to petitioner for conducting the shop. At the same time, the additional 3rd respondent had filed R.C.P No.30 of 2013 to evict the petitioner from the premises. Petitioner submitted his objections to the

complaint. Thereafter he approached this Court earlier in W.P.(C) No.24948 of 2013. By Ext.P3 judgment, this Court directed the Panchayat to consider the objection submitted by the petitioner on the complaint of the additional 3rd respondent and to pass orders after hearing the petitioner as well as the landlord. Thereupon the Panchayat issued Ext.P4 order cancelling the license, saying that he did not produce the rent deed or consent letter from the landlord and that the owner of the building-the additional 3rd respondent has objected to his continuance in the building.

3. Smt.Smitha Babu, the learned Counsel for the petitioner relying on the provisions contained in sub section 9 and 10 of section 236 of the Kerala Panchayat Raj Act, 1994, asserts that Secretary can suspend or revoke a license only in a case where the person who is granted license has been convicted or violated any of the restrictions/limitations/conditions in the license or if the license is granted on misrepresentation. It is contended that petitioner has not violated any of the conditions in the license; he is not convicted by any court of law and it is merely on the

basis of the complaint of the landlord and based on the proceedings initiated by the landlord to evict the petitioner that the license is cancelled.

4. The additional 3rd respondent has filed a counter affidavit, pointing out that he has already demanded the petitioner to vacate the premises and he is not interested in continuing the tenancy. As long as he has not given any consent letter, the Panchayat cannot renew the license. It is stated that in R.C.P.No.30 of 2013, the Rent Control Court, Ponnani has already ordered eviction of petitioner. According to the learned Counsel appearing for the landlord -3rd respondent, as long the tenancy arrangement is not renewed, the petitioner, who is in unauthorised occupation, cannot be permitted to run the business and therefore the license has to be cancelled.

5. Smt.Smitha Babu, learned counsel appearing for the petitioner, relied on the judgment of this Court in **Marimuthu V. Director General of Police** [1999 (3) KLT 662], in which a Division Bench of this Court held that the Corporation cannot insist production of written consent from the landlord for the

purpose of issuance of license for conducting business. In paragraph 17 of the judgment, it was held that a statutory tenant can be evicted only under the provisions of the Kerala Buildings (Lease & Rent Control) Act, on the grounds enumerated therein. When the landlord is purposefully and with malafide intention withholds the consent, the Corporation cannot insist upon production of written consent from the land lord for the purpose of issuance of license.

6. The aforesaid judgment is followed in the judgment dated 16.7.2010 in W.P.(C) N.14269 of 2010 wherein, the order passed by the Secretary of the Panchayat, rejecting an application for renewal of license, was held illegal and this Court directed the Panchayat to receive the application for renewal of license without insisting consent or rent deed from the landlord.

7. It is seen that the factual circumstances arising in the case are more or less similar to those in W.P.(C) No.14261 of 2010. As long as there is no violation of the conditions stipulated in sub section 9 of Section 236 of the Kerala Panchayat Raj Act, 1994, there cannot be any impediment in permitting the

petitioner to run the business and there is no reason to cancel the license based on the complaint of the landlord. The landlord cannot be permitted to execute the order in RCP by adopting such short cuts, to evict the petitioner. It is admitted on either side that the order in RCP is taken up in appeal and the matter is pending consideration. Therefore the action of the Panchayat in cancelling the license granted to petitioner for want of consent from the landlord or non-production of rent deed is improper and illegal. More over petitioner has been running the business from 2009 onwards based on the license granted to him, which was being renewed. Panchayat has no case that petitioner has violated any of the conditions of license or provisions in the Act or rules or that he has been convicted by any court of law, or that the license was granted to him on any misrepresentation. In such circumstances when petitioner has not incurred any disqualification, as provided under section 236(9) of the Panchayat Raj Act, 1994, his license cannot be cancelled. Hence Ext.P4 order cannot stand.

Under these circumstances, I quash Ext.P4. There will be a

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direction to the 2nd respondent to restore the license in favour of the petitioner. In case any renewal of license is required, the 2nd respondent shall consider the application of petitioner without insisting production of consent from the additional 3rd respondent/landlord or rent deed in respect of the building. 2nd respondent shall pass orders within a period of one month. The petitioner shall be allowed to run the business in the premises in the meanwhile.

Sd/-

**P.V.ASHA,
JUDGE.**

rkc