

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

WP(C).No. 11989 of 2009 (P)

PETITIONER(S) :

**RAZIA, W/O.ABDUL SHUKKUR, AGED 37 YEARS,
KALLINGAL HOUSE, MOOCHIKKAL, TIRUR,
MALAPPURAM DISTRICT.**

BY ADV. SRI.K.K.MOHAMED RAVUF

RESPONDENT(S) :

- 1. THE TIRUR MUNICIPALITY, TIRUR,
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY, TIRUR MUNICIPALITY,
TIRUR, MALAPPURAM DISTRICT.**
- 3. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY, LOCAL SELF GOVERNMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM.**

*** ADDITIONAL R4 IMPEADED**

- 4. KAINIKKARA MUHAMMED ABDURAHIMAN,
S/O.SAIDU MOOPAN, CHEMBRA ROAD, PAYYANANGADI,
TIRUR.P.O., MALAPPURAM DISTRICT, PIN - 676 101.**

*** ADDITIONAL R4 IS IMPEADED AS PER ORDER DATED 19/03/2013 IN
I.A.NO.2507/2013.**

**R1 & R2 BY ADV. SRI.K.J.MOHAMMED ANZAR
R3 BY GOVERNMENT PLEADER SRI.SOJAN JAMES
R4 BY ADVS. SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-01-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

Msd.

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE LEASE AGREEMENT.

EXHIBIT P2: TRUE COPY OF THE PARTNERSHIP DEED.

EXHIBIT P3: TRUE COPY OF THE JUDGMENT IN W.P(C).NO.23592 OF 2007.

EXHIBIT P4: TRUE COPY OF THE APPLICATION FOR LICENCE.

EXHIBIT P5: TRUE COPY OF THE ORDER OF THE 2ND RESPONDENT.

EXHIBIT P6: TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT.

EXHIBIT P7: TRUE COPY OF THE APPEAL MEMORANDUM.

EXHIBIT P8: TRUE COPY OF THE ORDER OF THE TRIBUNAL.

RESPONDENT(S)' EXHIBITS :

**EXHIBIT R4(A): TRUE COPY OF THE ORDER DATED 22.10.2012 OF
THE DISTRICT COURT, MANJERI.**

EXHIBIT R4(B): THE TRUE COPY OF THE COMPLAINT DATED 14.08.2012.

**EXHIBIT R4(C): THE TRUE COPY OF THE COMPLAINT DATED 04.10.2011 OF
JOINT RECEIVERS TO THE 2ND RESPONDENT.**

//TRUE COPY//

P.A.TO JUDGE.

Msd.

C.K. ABDUL REHIM, J.

W.P.(C)No.11989 of 2009

Dated this the 15th day of January, 2015

JUDGMENT

The petitioner is challenging the decision taken by respondents 1 and 2, through which grant licence under Section 492 of the Kerala Municipality Act 1994(for short the Act) was refused on the ground that the petitioner had failed in obtaining and producing a written consent of the owner of the building.

2. Averments in the writ petition are to the effect that, the husband of the petitioner had taken a shop room bearing No.314 of Ward No.VI in Tirur Municipality on rent on executing Ext.P1 agreement with the 4th respondent, as the owner of the building. It is stated that, the building belongs to one Smt.Aysumma, who is a person of un sound mind, and the 4th respondent had executed Ext.P1 agreement as if he is the Managing Partner of the building.

Ext.P1 lease agreement was executed on 01/11/2005. According to the petitioner, despite the fact that the period of lease stipulated in Ext.P1 was for 11 months, her husband was continuing in possession. The husband of the petitioner submitted an application for grant of licence for conducting business in the premises, on 24/08/2006. Thereafter Ext.P2 partnership deed was executed by the petitioner with two others, including her husband, for constituting a firm under the name and style 'Rehmath Mobiles'. It is recited in Ext.P2 that the firm is situated in above said room. It is alleged that, due to interference of the 4th respondent the 2nd respondent has not granted licence for running the business and also issued a 'stop memo' directing stoppage of the business. The petitioner challenged the action of the 2nd respondent in a writ petition filed before this court. Before this court, the 1st respondent Municipality took a contention that the petitioner had never applied for licence in her own name, but the application was filed only by her husband.

Therefore it is contended that such an application cannot be entertained. However, it was conceded that, in case the petitioner submits an application in her name with necessary documents, the same will be considered by the Municipality. In view of the said stand taken by the Municipality, the case was disposed of through Ext.P3 judgment directing the petitioner to submit a fresh application for getting licence in her name. The Municipality was directed to verify the same and to take appropriate decision. Till such time, it was directed that, status quo obtaining as on date of the judgment has to be continued. But the application for licence submitted by the petitioner, based on the direction contained in Ext.P3 judgment, was declined by the 2nd respondent through Ext.P5 proceedings, observing that the petitioner had failed to produce consent of the owner of the premises as required under Section 492(3) of the Act. The 2nd respondent found that, the licence arrangement was with Sri. Abdul Shukoor, the husband of the petitioner,

and it was only for a period of 11 months. Merely because the petitioner is the wife of the person who had taken the premises on lease, she is not entitled to get the licence is the finding. It is stated that the 4th respondent had raised objection against the grant of licence. Hence on rejecting the application for licence, the 2nd respondent had directed stoppage of business conducted in the room.

3. It is evident that the petitioner had preferred an appeal before the 1st respondent against Ext.P5 decision. But the 1st respondent had rejected the appeal through Ext.P6 proceedings, observing that the petitioner is not entitled to get licence, because she had failed in producing consent from the building owner. Aggrieved by Ext.P6 the petitioner further approached the Tribunal for Local Self Government Institutions in a revision petition. The Tribunal had disposed of the revision through Ext.P8 order. The Tribunal found that the petitioner has no case that she had produced consent as required under Section

492 (3) of the Act. It was also observed that, despite specific notice issued by 2nd respondent calling upon production of such consent, the petitioner failed in producing the same. Hence it is found that the refusal to grant licence by the 2nd respondent, which is confirmed in Appeal by the 1st respondent, are sustainable. The petitioner is challenging Ext.P5 proceedings confirmed in appeal through Ext.P6 proceedings and further in revision in Ext.P8 Order, in this Writ Petition.

4. Contention of the petitioner is mainly that, the building owner had already given consent as per Ext.P1 lease agreement by letting out the building to the petitioner's husband and had received rent of the building throughout. Therefore he cannot say that he will not give consent for doing business in the premises. Any objection made against granting of licence in violation of Ext.P1 agreement need to be discarded. The fact that the lessor cannot say that he has not given written consent for objecting grant of licence, when he had let out the

said building, has omitted notice of any of the authorities, is the contention.

5. Learned counsel for the petitioner placed heavy reliance on a Division Bench decision of this Court in **Marimuthu v. Director General of Police [1999 (3) KLT 662]**. On the facts of the said case the Division Bench observed that, if the court is satisfied that the landlord is purposefully and with malafide intention is withholding the consent, in spite of direction from this court, the Corporation cannot insist upon production of the written consent for the purpose of issuance of licence or for conduct of business in the premises. There the court considered as to whether the possession of the tenant is legal and whether under the facts and circumstances of the case, consent of the landlord as required under Section 492(3) is necessary, for directing to issue the licence.

6. This court is of the considered opinion that, the statutory requirement contained under Section 492(3),

which insist upon production of written consent from the owner to obtain licence for the first time, cannot be dispensed with, as long as the said provision remains in the statute book. There is no dictum contained in **Mari muthu's** case (supra) to the effect that in all the cases where the tenancy is established, the tenant is entitled to get the licence, even without production of a written consent. In **Marimuthu's** case, it is true that this court had directed for grant of licence considering the factual circumstances prevailing. The petitioner therein had *prima facie* established before this court that, he is occupying the premises based on a valid rental arrangement. Further, this court in the said case had issued specific direction to the landlord to issue written consent, which he had disobeyed. But it cannot be said that the Division Bench had in any manner nullified the effect of the provisions contained under Section 492(3) or in any manner diluted the statutory requirement contained therein.

7. In the case at hand, Ext.P1 lease agreement was seen executed by the 4th respondent in favour of the husband of the petitioner. There is nothing to indicate that the 4th respondent had consented or accepted the constitution of partnership, as per Ext.P2. Further there is nothing to indicate that the petitioner had applied for licence on behalf of the partnership firm. Under such circumstances, this court is not in a position to declare that there exists a tenancy with respect to the room in question in favour of the petitioner. Consequently, this court cannot issue any direction for grant of licence, even without production of a written consent as required under Section 492(3).

8. Even though this court found that there exists no ground to interfere with the impugned orders, there exists certain other aspects of general importance and interest. The 4th respondent had resisted the writ petition by filing a counter affidavit contending that, the building in question belongs to his sister Smt.Aysumma, who is a

mentally incapable person. It is pointed out that, by virtue of an order passed by this court on 20/01/2006 in OP No.12957/1998, the 4th respondent along with one Saidalikutty was appointed as joint receivers to manage properties belonging to Smt.Aysumma. Subsequently, Sri. Saidalikutty died. Thereafter this court directed the District Court Manjeri to appoint joint receivers to manage the property. As per the said direction Ext.R4 (a) order was passed on 22/10/2012, appointing the 4th respondent and one Sri.Abdu Rahiman son of Mammy as joint receivers. It is contended by the 4th respondent that, neither the petitioner nor her husband is doing any business in the premises and one Sri.Hussain is doing business in mobile and its accessories in the premises. It is on that basis that the receivers have submitted a complaint before the the 2nd respondent to initiate action for stoppage of the business. Specific contention of the 4th respondent is that, at the time of execution of Ext.P1 lease agreement, he had no authority to deal with the

property which belongs to the mentally incapacitated person. It is further stated that, the receivers have filed a Rent Control Petition as RCP No.10/2012 for getting arrears of rent with respect to the building in question, against the petitioner's husband and others. Based on the above contentions learned Senior counsel appearing on behalf of the 4th respondent had handed over a copy of the order passed by the Rent Control Court, Tirur in RCP No.10/2012. It is evident from that order that the joint receivers have approached the Rent Control Court seeking eviction of the tenants in the building in question, on the ground of rent arrears. The respondents arrayed in that Rent Control Petition are the husband of the petitioner herein and his siblings. It is evident that the Rent Control Court ordered eviction under Section 11(2) of the Kerala Buildings (Lease and Rent Control) Act, 1965 subject to the condition of payment of rent within one month. According to learned counsel for the petitioner the rent arrears was deposited within the time stipulated and the

order in question has become inoperative.

9. From the facts as narrated above, it is evident that the ownership of the building in question rests with a person of unsound mind. It is further evident that the 4th respondent and another person was appointed as joint receivers for management of the said property. Fact remains that the building in question is at present in the possession of the petitioner and her husband, by virtue of tenancy created at some point of time. There is also an allegation raised by the 4th respondent that the building is now occupied by an un authorised sub-tenant. This writ petition is filed on the strength of Ext.P1 lease agreement which was executed by the 4th respondent during the year 2005. But the 4th respondent had conceded that he had no authority to execute the lease agreement at that point of time. However, according to the 4th respondent himself, he was one among the authorised receivers from 20/01/2006 onwards. It is further evident that the 4th respondent along with the

other receiver had filed a Rent Control Petition in the year 2012, alleging that the husband of the petitioner and his siblings are the tenants of the building in question. There is nothing to indicate that 4th respondent or the other joint receiver had initiated any steps to evict the tenants, despite the specific allegation that the room in question is occupied by an unauthorised sub-tenant. All the above facts would indicate that the action of the 4th respondent and other joint receiver with respect to dealing with the building in question is not in the best interest of the mentally incapacitated person. There is no justification in allowing the tenants to occupy the building for quite a long time and in denying consent to them in order to facilitate to get the requisite licence from the local authority. But on the facts of the case, there exists more than sufficient confusion regarding the tenancy. At any rate, this court is concerned about protecting the interest of the mentally incapacitated person, in a proper and effective manner. Therefore it is felt appropriate to

direct the District Court, wherein the original petition under the Mental Health Act, 1987 is pending, to take appropriate decision with respect to protection of best interest of the mentally unsound person in relation to the building in question. The District Court will be at liberty to take appropriate decision either to regularise the tenancy and to direct the receivers to grant consent for obtaining necessary licence, or on the other hand if it is satisfied that the room in question is not occupied by anybody under proper authority, to get the room evicted and taken possession in order to protect the interest of the person of unsound mind.

10. Under the above mentioned circumstances, while disposing this writ petition, the matter is referred to the District Court, Manjeri to deal with the issue in OP(M.H) No.165/1997. The said court will consider the matter after affording opportunity to all the parties concerned. The petitioner will be at liberty to approach the said court seeking appropriate relief with respect to the tenancy,

based on her claims. The matter shall be dealt with in accordance with the observations contained herein above. A decision with respect to grant of consent to the petitioner or any other person who is entitled, shall be taken at the earliest possible, at any rate within a period of three months from the date of receipt of copy of this judgment.

11. Till such time a decision is taken by the District court as directed above, the respondents 1 and 2 shall restrain from taking any further steps for stoppage of the business in the room in question. Such a relief is granted only on the basis of the fact that, there exists a direction to that effect contained in Ext.P3 judgment, and also on the fact that there existed an interim order to the above effect in the present writ petition.

**Sd/-C.K. ABDUL REHIM
JUDGE**