

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 23394 of 2012 (Y)

PETITIONER(S) :

1. M/S. HOTEL MALIKA RESIDENCY
VIII/729-G, M.C.ROAD, ETTUMANOOR-686631
KOTTAYAM DISTRICT
REPRESENTED BY ITS MANAGING PARTNER
C.P.VISWANADHA MENON, AGED 48 YEARS
S/O. LATE BALAKRISHNAN NAIR.
2. C.P.VISWANADHA MENON, AGED 48 YEARS
S/O. LATE BALAKRISHNAN NAIR, MANAGING PARTNER
M/S. HOTEL MALIKA RESIDENCY, VIII/729-G, M.C.ROAD
ETTUMANOOR-686631, KOTTAYAM DISTRICT.

BY SENIOR ADVOCATE SRI. C.C. THOMAS
BY ADVS.SRI.M.G.KARTHIKEYAN
SRI.NIREESH MATHEW

RESPONDENT(S) :

1. ETTUMANOOR GRAMA PANCHAYATH
ETTUMANOOR P.O., KOTTAYAM DISTRICT, PIN-686631
REPRESENTED BY ITS SECRETARY.
2. THE SECRETARY
ETTUMANOOR GRAMA PANCHAYATH, ETTUMANOOR P.O.
KOTTAYAM DISTRICT, PIN-686631.
3. K.N.SREEKUMAR
PARTNER, BEE BEES PALACE, KURUPPENKUNNEL HOUSE
ATHIRAMPUZHA P.O., KOTTAYAM-686562.
4. JOBY CHERIAN
PARTNER, BEE BEES PALACE, PLACKYTHOTTIYIL HOUSE
POONTHURA WEST P.O., ETTUMANOOR, KOTTAYAM DISTRICT.
5. BIJUMON THOMAS
PARTNER, BEE BEES PALACE, ITHITHARA HOUSE
POONTHURA WEST P.O., ETTUMANOOR, KOTTAYAM DISTRICT.

6. BAIJU K.N., PARTNER
BEE BEES PALACE, KURUPPANKUNNEL HOUSE
KIZHAKKUM BHAGOM KARA, ETTUMANOOR
KOTTAYAM DISTRICT-686631.

R1 & R2 BY ADV. SRI.SIBY CHENAPPADY, SC
BY ADV. SMT.ANU GEORGE

R3 BY ADVS. SRI.ASP.KURUP
SRI.SADCHITH P. KURUP

R4 TO R6 BY ADVS. SRI.N.RAGHURAJ
SMT.K.AMMINIKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-02-2015,
ALONG WITH WPC. 25122/2012 & CONNECTED CASES, THE COURT
ON 22/05/2015 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1- PHOTOCOPY OF THE ORDER DATED 04-09-2012 IN REVISION PETITION NO. 24/2012 PASSED BY THE COURT OF THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM.

EXHIBIT P2- PHOTOCOPY OF THE LEASE DEED DATED 13-04-2010 EXECUTED BETWEEN THE PETITIONERS AND PARTNERS OF M/S. BEE BEES PALACE.

RESPONDENTS' EXHIBITS :

EXT. R3A COPY OF AGREEMENT FOR SALE DATED 5.11.2009 EXECUTED BETWEEN PETITIONER AND 3RD RESPONDENT.

EXT. R3B COPY OF PARTNERSHIP DEED DATED 9.12.2009 EXECUTED BETWEEN RESPONDENTS 3 TO 6.

EXT. R3C COPY OF SALE DEED NO. 1365/2010 DATED 13.4.2010 OF KOTTAYAM SUB REGISTRY.

EXT. R3D COPY OF LICENCE DATED 23.11.2010 ISSUED TO NATIONAL RESIDENCY BY 2ND RESPONDENT.

EXT. R3E COPY OF APPLICATION FOR LICENCE DATED 21.3.2011 SUBMITTED BY PETITIONER BEFORE THE FIRST RESPONDENT.

EXT. R3F COPY OF LICENCE DATED 24.3.2011 ISSUED IN THE NAME OF PETITIONER.

EXT. R3G COPY OF LEASE DEED DATED 22.3.2011 PRODUCED BY THE PETITIONER BEFORE FIRST RESPONDENT.

EXT. R3H COPY OF LICENCE APPLICATION DATED 29.8.2011 GIVEN BY 3RD RESPONDENT BEFORE THE FIRST RESPONDENT.

EXT. R3I TRUE COPY OF LICENCE DATED 13.9.2011 GIVEN TO THE 3RD RESPONDENT.

EXT. R3J COPY OF STATEMENT DATED 17.11.2011 GIVEN BY 5TH RESPONDENT BEFORE C.I. POLICE.

EXT. R3K COPY OF APPLICATION DATED 8.12.2011 GIVEN BY 5TH RESPONDENT BEFORE THE FIRST RESPONDENT.

EXT. R3L COPY OF NOTICE DATED 27.12.2011 ISSUED BY THE 2ND RESPONDENT TO 3RD RESPONDENT.

(Contd...)

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EXT. R3M	COPY OF REPRESENTATION DATED 19.1.2012 GIVEN BY THE 5TH RESPONDENT TO THE 2ND RESPONDENT.
EXT. R3N	COPY OF CERTIFICATE DATED 17.1.2012 GIVEN BY C.I. OF POLICE, ETTUMANOOR.
EXT. R3O	COPY OF NOTICE DATED 31.1.2012 ISSUED BY 2ND RESPONDENT TO PETITIONER.
EXT. R3P	COPY OF LEASE DEED DATED 13.4.2010 PRODUCED BY PETITIONER BEFORE THE FIRST RESPONDENT.
EXT. R3Q	COPY OF LEASE DEED DATED 13.4.2010 WRITTEN ON STAMP PAPER NO. D 414941.
EXT. R3R	COPY OF COMMUNICATION DATED 15.12.2012 GIVEN BY 2ND REPSONDENT TO PETITIONER.
EXT. R3S	COPY OF DECISION DATED 12.3.2012 PASSED BY THE PANCHAYAT COMMITTEE IN THE APPEAL PREFERRED BY 5TH RESPONDENT.
EXT. R3T	COPY OF ORDER DATED 4.9.2012 PASSED BY TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS IN REVISION PETITION NO, 24/2012.
EXT. R3U	COPY OF WPC NO. 12557/2012 FILED BY PETITIONER BEFORE THIS HON'BLE COURT.
EXT. R3V	COPY OF ORDER DATED 12.4.2012 ISSUED BY 2ND RESPONDENT TO PETITIONER.
EXT. R3W	COPY OF REJECTED APPLICATION DATED 15.3.2012 FILED BY PETITIONER TO PANCHAYAT.
EXT. R3X	COPY OF JUDGMENT DATED 5.9.2012 PASSED BY THIS HONOURABLE COURT IN WPC NO. 12557/2012.
EXT. R3Y	COPY OF DECISION DATED 6.10.2012 ISSUED BY 2ND REPSONDENT.
EXT. R3Z	COPY OF REPORT DATED 12.3.2012 SUBMITTED BY JOINT EXCISE COMMISSIONER.
EXT. R3AA	COPY OF DEMAND NOTICE DATED 25.8.2011 ISSUED BY KERALA FINANCIAL CORPORATION TO THE 3RD RESPONDENT.
EXT. R3AB	COPY OF APPLICATION DATED 31.10.2012 SUBMITTED BY 3RD RESPONDENT TO THE SECOND RESPONDENT.
EXT. R3AC	COPY OF REPLY DATED ISSUED BY THE 2ND RESPONDENT TO 3RD RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.23394 & 25122 of 2012,
8851 of 2013 and 18453 of 2014

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Dated this the 22nd day of May, 2015

JUDGMENT

These writ petitions pertain to the issue of a restaurant licence to a partnership firm by name M/s. Hotel Malika Residency at Ettumanoor.

W.P(C) No.23394/2012

2. In this writ petition filed by M/s. Hotel Malika Residency and its managing partner, they are challenging an observation made by the Tribunal for Local Self Government Institutions in Ext.P1 order. The petitioners allege that the first petitioner firm holding an FL3 licence in the name of the second petitioner sold the hotel premises to a firm of which respondents 3 to 6 were partners and on the very same day of execution of the sale deed, respondents 3 to 6 executed Ext.P2 lease deed in favour of the petitioners. Subsequently, there arose disputes between the third respondent on the one side and

respondents 4 to 6 on the other side. Allegedly, the third respondent holding only 25% of the share disputed the lease deed and objected the renewal of the licence issued by the panchayat in favour of the first petitioner firm contending that the lease deed is a forged one and that he is in possession of the hotel premises and was conducting the bar as well as the hotel business.

3. The second respondent, who is the Secretary of the local authority, cancelled the licence in the name of the petitioner firm. Though an appeal was filed by the petitioners, the same was dismissed by the first respondent. Therefore, the first petitioner firm filed a revision petition before the Tribunal for Local Self Government Institutions which dismissed the review petition by Ext.P1. In the meanwhile, the petitioners have applied for fresh licence and, therefore, the petitioners were not interested in pursuing the matter because the period expired on 31.3.2012. However, the petitioners are aggrieved by the observation made by the Tribunal in

paragraph (21) of Ext.P1 wherein the Tribunal has “concluded that the plea of lease set up by the petitioners is not acceptable”. According to the petitioner firm, the said finding goes against the judgment of this Court in **Hotel Malika Residency v. State of Kerala** [2012 (3) KLT 310] wherein this Court found that the petitioners are in possession of the hotel premises and, therefore, directed the Excise Commissioner to renew the FL3 licence and also permitted the petitioners to conduct the business. According to the petitioners, the learned Tribunal has not properly appreciated the facts and circumstances of the case while entering such a finding. It is with this background, the petitioners have filed this writ petition.

W.P(C) No.25122/2012

4. This writ petition is also filed by M/s. Hotel Malika Residency and its managing partner. In this writ petition, they allege that due to financial difficulties, the petitioner firm sold the hotel and premises as per Ext.P1 dated 13.4.2010 to a firm by name M/s. Bee

Bees Palace, of which respondents 3 to 6 are the partners with equal share of 25%. It was stated that on the same day, respondents 3 to 6 executed Ext.P1 lease deed in favour of the first petitioner on condition that the petitioners shall pay ₹2.5 lakhs towards rent per month by crediting to the loan account of the purchasing firm, Kerala Financial Corporation, Kottayam branch. The petitioners further allege that thereafter they were conducting the hotel without any interruption.

5. However, there arose disputes between the third respondent and other respondents. It is alleged that the third respondent, who wanted to see that the hotel and the bar were closed down, filed a petition before the excise authorities and filed cases before the civil court. It was further alleged that the third respondent also obtained restaurant licence from the local authority by forging the signatures of respondents 4 to 6 in the name of Hotel National Residency and by influencing the second respondent, the restaurant licence issued to

the petitioners were cancelled on 12.3.2012 by the second respondent. Writ petitions were also filed by the 3rd respondent before this Court for cancelling the bar licence to the petitioners. The excise authorities refused to renew the licence on the ground that the sale of the property is without the previous consent of the Excise Commissioner and, therefore, it is in violation of Rule 19 of the Foreign Liquor Rules.

6. The first petitioner firm filed WP(C) No.6499 of 2012 for getting renewal. As per Ext.P2 interim order dated 29.3.2012 this Court renewed the licence for three months. Though it was challenged in writ appeal, the same was dismissed as per Ext.P3 judgment. The matter was taken before the Apex Court in S.L.P which was also dismissed vide Ext.P4 on 27.4.2012. The petitioners challenged that the cancellation of licence issued by the local authority before the panchayat committee which dismissed the appeal. Against that, the petitioners filed R.P No.24 of 2012 before

the Tribunal for Local Self Government Institutions. As the licence period expired on 31.3.2012, the petitioners filed Ext.P6 application for getting licence for the year 2012-13. Respondents 4 to 6 submitted before the second respondent that they have no objection in granting the licence to the petitioners.

7. The petitioners point out that the second respondent under the influence of the third respondent, has not passed any orders. Meanwhile, this Court by Ext.P5 common judgment disposed all the writ petitions holding that the petitioners are entitled to get renewal of bar licence and to conduct the same. It was also held that the petitioners are in possession of the hotel and conducting the hotel with bar licence. It was further held that since the renewal licence expired on 31.3.2012, the cancellation of licence on 12.3.2012 have no relevancy. The local authority, therefore, was directed to consider Ext.P6 application dated 15.3.2012 and to issue licence to the petitioners. This Court also permitted the petitioners to conduct the

licence on the basis of deemed licence. The petitioners' bar licence was also renewed. In the meantime, the review petition before the Tribunal challenging the cancellation of licence was dismissed. The petitioners challenged the said order by filing W.P(C) No.23394 of 2012 (discussed above).

8. The petitioners filed W.P(C) No.12557 of 2012 for a direction to consider and pass orders on Ext.P6 for renewal of licence for the year 2012-13. This Court vide Ext.P7 directed the second respondent to pass orders on Ext.P6 within one month. The petitioners produced the judgment of this court and the preliminary decree dissolving the partnership form M/s.Bee Bees Palace before the second respondent. The third respondent filed petition to review Ext.P7 judgment where he produced Ext.P9, which is purported to be an order passed by the second respondent rejecting Ext.P6 as Annexure-6. The petitioners allege that Ext.P9 was not communicated to them and also not mentioned before this Court in

the writ petition which lead to Ext.P7 dated 5.9.2012. When the petitioners came to know about Ext.P9, they submitted Ext.P10 before the second respondent to revoke Ext.P9 and to pass fresh orders. Later, the petitioners received Ext.P11 order rejecting Ext.P6 on technical grounds, including Ext.P9. The ground stated was that the petitioner did not show the proof for ownership/possession of the hotel. The petitioners further allege that they submitted Ext.P12 application filling all the columns correctly on 16.10.2012. However, no orders were passed by the second respondent.

9. The petitioners further allege that the second respondent is duty bound to pass orders on Ext.P2 untrammelled by Exts.P9 and P11 orders. Subsequently, the review petition filed by the third respondent was dismissed as not pressed on 16.10.2012. The petitioners point out that going by the findings in Ext.P5 judgment of this Court, the petitioners are entitled to get restaurant licence as per Ext.P12 application. Respondents 4 to 6 who are the three partners of

the purchasing firm also support the case of the petitioners; it is alleged. It is with this background, the petitioners have come up before this Court.

W.P(C) No.8851/2013

10. This writ petition is filed by the third respondent in W.P(C) No.25122 of 2012 against the local authority and the second petitioner in the second writ petition mentioned above for issuance of a writ of mandamus directing the panchayat not to issue/grant renewal/fresh licence to the second petitioner in W.P(C) No.25122 of 2012 and the third respondent without considering Ext.P13 objection filed by him.

W.P(C) No.18453/2010

11. This writ petition is also filed by the third respondent in W.P(C) No.25122 of 2012 for a direction to the local authority not to grant fresh restaurant licence to respondents 3 to 6 and also for a direction to the panchayat to consider Ext.P18 objection before

considering the applications for D&O licence filed by the first petitioner in W.P(C) No.25122 of 2014.

12. The third respondent in W.P(C) No.25122 of 2012 who has filed W.P(C) Nos.8851 of 2013 and 18453 of 2014 has filed detailed counter affidavits in the writ petitions filed by the partnership firm alleging that he is the managing partner of M/s. Bee Bees Palace which has purchased the hotel owned by M/s. Malika Residency through a sale deed. His case is that in spite of the same, by projecting the lease deed which the petitioners in W.P(C) No.25122 of 2012 claim to have been executed by the petitioners in W.P(C) Nos.8851 of 2013 and 18453 of 2014 on the same day of the sale deed was successful in obtaining D&O licence from the local authority and thereafter on his complaint, an FIR was launched for forgery with regard to the execution of lease deed and Police has filed final report with a finding that his signature has been forged in the lease deed. Therefore, he has preferred objection before the local

authority to consider the aforesaid circumstances also while considering the application preferred by the petitioners in W.P(C) Nos.25122 of 2012 and 23394 of 2012.

13. Arguments have been heard.

14. For convenience of discussion, the parties can be referred to as they are arrayed in W.P(C) No.25122 of 2012.

15. The definite case of the petitioners is that the petitioner firm sold the hotel and immovable properties by sale deed dated 13.4.2010 to another firm by name M/s. Bee Bees Palace, of which respondents 3 to 6 are the partners, with equal share of 25% each. Admittedly, the third respondent was the manager of the said firm. The petitioners further allege that on the date of the sale deed itself as per understanding between the two firms, a lease deed was executed which was signed by the second petitioner who is the managing partner of Hotel Malika Residency and respondents 3 to 6 who were the partners of the purchasing firm. On the basis of the

lease deed, the first petitioner is conducting hotel with bar licence; it is alleged.

16. The definite stand taken by the third respondent is that he was the managing partner of M/s. Bee Bees Palace which purchased the property owned by Malika Residency and the lease deed said to have been executed on the same day is a forged document and a criminal case is pending regarding the same.

17. It is submitted by the learned senior counsel appearing for the petitioners that a final charge is laid without any evidence and also against the findings in Ext.P5 common judgment and also even without producing original of Ext.P1 which is alleged to have been forged. The case is now pending as C.C No.433 of 2013 on the file of the Judicial First Class Magistrate Court, Ettumanoor for offences alleged under Sections 406, 409, 418, 420, 468, 471, 120B, 201 r/w. 34 IPC. It was further submitted by the learned senior counsel that though there are eight charge witnesses cited as witnesses, there is no

witness to prove the alleged forgery, especially when counter affidavit is filed by respondents 4 to 6 herein in W.P(C) No.6494 of 2012, which lead to Ext.P5 common judgment that Ext.P1 is a genuine document and the signatures in Ext.P1 are genuine. It was further pointed out by the learned senior counsel that this Court admitted a Crl.M.C filed by the second petitioner and respondents 4 to 6 praying to quash the final report. Interim order dated 29.11.2013 staying all further proceedings in C.C No.433 of 2013 was issued initially for a period of two months. Thereafter it was extended until further orders by order dated 21.11.2014. The said Crl.M.C is pending.

18. It is not necessary to re-state the facts once again since I have made an attempt to sum up the history of the case in the earlier paragraphs.

19. The learned senior counsel for the petitioners would submit that the partners of the first petitioner firm has decided to reconstitute

a partnership deed by retiring two partners, who are the wife and mother of the second petitioner, and to permit one Baiju K. N. and one Bijumon Thomas, who are respondents 5 and 6, to become the partners. Application is submitted before the Excise Commissioner under Rule 19 of the Foreign Liquor Rules and the Excise Commissioner by Order No.XC7-31521/11 dated 14.6.2013 allowed the request and permitted to reconstitute the partnership deed. Accordingly, partnership deed was reconstituted on 18.6.2013 whereby the respondents 5 and 6 are the joint managing partners with 40% share each and the second petitioner is continuing as partner with 20% share. Necessary endorsement was made in the FL-3 licence by the excise authorities as per sanction order of the Excise Commissioner. That is the reason why the additional respondents 5 and 6 submitted application for D&O licence on 19.2.2012 which was accepted and an amount of ₹6,505/- was received as evident from the receipt issued by the panchayat on 29.5.2014.

20. Since FL3 licence was not renewed on the ground that the sale of hotel and premises was without the permission of the Excise Commissioner as per Rule 19 of the Foreign Liquor Rules, the petitioners filed W.P(C) No.6494 of 2012 on 14.3.2012 seeking a declaration that the first petitioner firm is entitled to have FL-3 licence renewed in terms of the policy of the Government for the year 2012-2013 and the subsequent orders. The third respondent filed W.P(C) No.32515 of 2011 for a direction to the Commissioner of Excise and the Deputy Commissioner of Excise, Kottayam to enquire into his complaint dated 2.12.2011 and to take action to cancel/suspend the licence issued to the first petitioner firm therein. He also sought an order directing the Excise authorities not to permit the managing partner of the first petitioner firm to run the bar attached hotel on the strength of FL-3 licence.

21. The third respondent had filed another writ petition as W.P (C) No.8414 of 2012 for a direction to the Excise Commissioner to

take immediate action upon a report to suspend the licence for the reason that the first petitioner firm does not possess a valid D&O licence issued by the Ettumanoor Grama Panchayat. This was filed because the licence issued in the name of the petitioner firm was cancelled by the local authority at the instance of the third respondent on 12.3.2012 on the ground that the third respondent was also having another D&O licence in respect of the same premises in the name of National Residency. This, according to the petitioners, was obtained without the knowledge of respondents 4 to 6.

22. All the aforesaid three writ petitions were finally disposed of by this Court by a common judgment dated 28.6.2012. The learned single Judge declared that the sale of hotel and premises without the sanction of the Excise Commissioner is not violation of Rule 19 of the Foreign Liquor Rules because rule 19 only prohibits sale, transfer or sub-renting of licence without the previous sanction of the Excise Commissioner. It was further alleged that the first

petitioner was in the absolute possession of the hotel and the building uninterruptedly on the strength of Ext.P1 lease deed. It was held that until it is declared by a competent civil court that the lease deed is a forged one or a created one, the possession of the first petitioner firm is legal and not to be interfered with. It was also held that the cancellation of D&O licence on 12.3.2012, i.e. fag end of the year, is not a ground because the first petitioner applied for fresh licence for the year 2012-13 and the same is pending consideration and that the first petitioner firm would continue the conduct of licence as deemed licence under the Kerala Panchayat Raj (Issue of Licence to Dangerous and Offensive Trades and Factories) Rules, 1996.

23. It is crucial to note that respondents 4 to 6 who are respondents 6 to 8 in Ext.P5 judgment had filed counter affidavits in w.P(C) No.6494 of 2012 supporting the case of the petitioners and accepting the signatures in disputed lease deed. They also have no objection in conducting the hotel with bar licence by the petitioners

herein as they are holding 75% share of the purchasing firm M/s.Bee Bees Palace.

24. Admittedly, civil suits are pending between the third respondent herein on one side and respondents 4 to 6 on the other side for dissolution of the firm M/s.Bee Bees Palace and settlement of accounts. It is the definite case of the petitioners firm that the monthly rental of ₹2.5 lakhs is being paid by the petitioners herein into the loan account taken by the purchasing firm from the Kerala Financial Corporation, Kottayam Branch. The petitioners also have obtained an interim injunction against respondents 3 to 6 not to evict the petitioners without due process of law from civil court.

25. Though Ext.P5 judgment was taken in appeal before a Division Bench of this Court, no interim orders were granted and the first petitioner is conducting the hotel by renewing the licences. As the right of the petitioners were upheld by Ext.P5 judgment, though challenged in appeal, the petitioners are entitled to continue with the

licence and, therefore, they are entitled to get the reliefs prayed for in the writ petitions. As the finding of the learned Tribunal in paragraph (21) of Ext.P1 in W.P(C) No.23394 of 2012 is against the judgment of this Court in *Hotel Malika Residency's case* (cited supra), the same has to be quashed.

26. W.P(C) No.8851 of 2013 has become infructuous as Ext.P13 produced in that case is with respect to the financial year 2013-14 and after hearing the petitioner, the licence is granted by the panchayat for 2013-14.

27. The petitioner in W.P(C) No.18453 of 2014 is not entitled to the relief prayed for as this Court in Ext.P5 judgment produced in W.P(C) No.25122 of 2012 have found that the petitioners in that writ petition are in possession of the hotel premises and they were permitted to continue the restaurant licence.

In the result,

(a)W.P(C) No.25122 of 2012 is allowed. Exts.P9 and

P11 are quashed. It is hereby declared that the petitioners are entitled to get the restaurant licence renewed on proper application submitted by the petitioners for that purpose. As Ext.P12 application was for the year 2012-13 it shall be open to the petitioners to submit fresh application for restaurant licence before the respondent panchayat. In the event of filing such an application as above, the restaurant licence in the name of the petitioner firm shall be renewed or fresh licence shall be issued in accordance with law.

(b)W.P(C) Nos.8851 of 2013 and 18453 of 2014 are dismissed.

Sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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