IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:26.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.11581 of 2016
&
W.M.P.No.9979 of 2016

P.Poomalai .. Petitioner

-Versus-

1.The Sub Collector / District Manager,
TASMAC Ltd.,
Kancheepuram North District,
Thirumazisai-III,
Chembarambakkam,
Chennai-600 123.

3.Mrs.Helen Justin .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records pertaining to the proceedings of the first respondent in Na.Ka.No.554/15, dated 15.03.2016 and quash the same and consequently direct the first respondent to renew the Bar License attached with the TASMAC Shop No.4136 at Door No.145, Bharatha Matha Street, East Tambaram, Chennai-600 059 to the petitioner.

For Petitioner : No Appearance

For Respondents: Mr.B.Neduncheyian
Standing Counsel for R1

Mr.G.Justin for R2

O R D E R

None appears for the petitioner. Heard Mr.B.Neduncheyian, learned Standing Counsel, on behalf of the first respondent and Mr.G.Justin, learned counsel, on behalf of the second respondent.

2. The petitioner was granted a license to sell eatables and collect empty bottles in the Bar attached to the TASMAC

Retail Shop No.4136, No.145, Bharatha Madha Street, East Tambaram, Chennai-600 059. The license was granted for a period of one month on 28.01.2015, which was extended from time to time and it was valid upto 31.03.2016.

3. The petitioner in this Writ Petition has challenged the proceedings issued by the first respondent dated 15.03.2016, by which, the first respondent has insisted upon a "No Objection Certificate" to be produced from the owner of the premises so as to enable the first respondent to consider the petitioner's Application for renewal of license beyond 31.03.2016. Since the petitioner could not produce "No Objection Certificate", the bar has now been closed.

4. The petitioner in the affidavit filed in support of the Writ Petition, more particularly, in grounds 'C' and 'D' has set out the dispute between the petitioner and the owner of the premises, the second respondent and contended that insisting upon production of "No Objection Certificate" for renewal of license from the owner is causing unnecessary hardship to the petitioner.

5. The petitioner's further contention is that the second respondent who is the owner of the premises receiving monthly rent regularly even after expiry of the lease period on 30.11.2015 and has also illegally received exorbitant money, in addition to the excessive daily rent under duress and the problem started when the second respondent started to demand exorbitant daily rent of Rs.15,000/- per day. It appears that there are other collateral proceedings between the petitioner and the second respondent owing to the dispute between them. However, this Court is not inclined to go into those aspects, but will test as to whether impugned proceedings is justified.

6. The insistence upon "No Objection Certificate" from the owner of the premises is on account of Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989. The said Rule was subject matter of challenge in the Hon'ble Division Bench of this Court in the case of S.Ganesan Vs. Assistant Commissioner Excise reported in 2000 (I) CTC 193, upheld the validity of the Rule, wherein, the Hon'ble Court held that a tenant does not have a fundamental right to carry on any business of his in the premises belonging to another.

7. I had an occasion to consider the similar matter, wherein, the owner of the premises sought for issuance of a Writ of Mandamus, to forbear the respondents from issuing any license to collect empty bottles and to sell eatables in the Bar attached to the TASMAC Retail Shop without producing No Objection Certificate from the owner. This Court, by placing reliance on the decision of the Hon'ble Division Bench of this Court in the case of S.Ganesan, allowed the Writ Petitions and while doing so, a Circular issued by the TASMAC, dated 22.07.2014 was also referred to. At this stage, it would be

beneficial to refer to the operative portion of the order:-

> "7. In the case of S. Ganesan cited supra, the question which fell for consideration was the validity of Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989, which requires the person in whose favour the sale of the privilege of vending Indian made Foreign Liquor in retail is confirmed, should produce necessary documents and certificates including the lease agreement executed with the landlord of the building wherein the proposed shop is to be located. While considering the validity of the conditions imposed under Rule 13 (1) of the said rules, Hon'ble Division bench has held as follows :
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> > " 15. Rule 13(1) of the Rules requires the production of a xerox copy of the document showing that the auction purchaser himself is the owner of the building, or the production of a xerox copy of the lease agreement executed with the landlord of the building, wherein the proposed shop is to be located. Such copies are to be furnished within seven days of the receipt of the orders of confirmation of the sale of the privilege. The lease agreement, having regard to the purpose for which it is to be produced, and the context in which the requirement is mandated is clearly lease agreement which covers the period for which license is sought. In the case of the owner, of the building as long as he continues to be owner, there is no possible threat to his continued enjoyment of the premises, in normal circumstances. A person, who is not a owner can assert a right to remain in occupation of the premises belonging to another only when such a right is granted to him by the owner. The grant of such a right, which would enable the grantee to have undisturbed possession and enjoyment can only be under a lease. That is the reason why in the Rule, it is provided that a lease agreement executed with the landlord of the building shall be produced before the license can be received by the person, whose offer for the purchase of the privilege has been accepted confirmed by the authority.

16. A contractual tenant, who has a valid and subsisting lease in his favour, has a right to retain possession of the premises for the duration of the lease subject to the conditions of the lease. So long as he complies with the condition, he has a right to remain in occupation. The duration for which he is in occupation, in the context of the grant of the license for the retail vend of liquor, has necessarily to include the duration for which the license is sought. Even before the grant of the license, the copy of the lease deed is, therefore, required, so as to assure the state that the licensee will be in a position to carry on uninterrupted trade in that premises for the period for which the license has been granted.

17. The express reference to "lease agreement" in this Rule clearly excludes statutory tenants from the scope of the Rule. Statutory tenants as a class are incapable of becoming licensees as their right to retain possession of the premises is not derived from the lease agreement valid for the duration of the period of license, but is only traceable to the immunity conferred by law against their dispossession except in accordance with the provisions of the Rent Control Legislation. The statutory irremovability of such tenants while it may entitle them to remain in occupation till such time, as the landlord institutes a proceeding under the provisions of the Rent Control law and obtains a decree for eviction and execute the same, does not confer on them the status of a tenant under a lease agreement.

23. The policy adopted by the State requiring persons, who seek licenses for the retail vend of Indian Made Foreign Liquor to be contractual tenants in all cases, where they are not owners of the premises in which the business is to be carried on can by no means be regarded as arbitrary. Had the State decided to permit statutory tenants also to obtain such licenses, it would have been well within the competence of the State to do so. The policy decision of the legislature to exclude the statutory tenants from the

eligibility for grant of a license for the retail vend, is in the realm of policy, and is not table to be interfered with. The policy, on the face of it, is neither mala fide nor arbitrary and no fundamental right of the statutory tenant can be said to have been violated by such policy of the state.

24. The rights of a statutory tenant are limited to those recognised by the statute, which protects his continues occupation of the premises, even against the will of the landlord. The provisions of the Rent control Act do not provide that statutory tenants shall enjoy the right to carry on business in liquor in their premises against the will of the landlord, and notwithstanding any rule that the state may make in exercise if it's powers to regulate the grant of privileges for the retail vend of liquor. No such right could possibly be extended to statutory tenants by the Rent control legislation and advisedly such legislation does not recognise any such right. The limited right of retaining possession of the property till such time as the person is evicted in due course by invoking the machinery provided under the Rent control legislation cannot be enlarged to anything more that what is expressly saved by the Rent control Act. The Apex Court has held that such statutory tenancy is heritable, unless the terms of the statute prohibit it. That, however, does not enable the statutory tenancy to make further claim that the state be complete to grant licenses and privileges for the retail vend of liquor in the premises in which they are statutory tenants.

36. .... The rule mandates that the person who wishes to obtain a license for exercising the privilege of retail vend of Indian Made Foreign Liquor should be the owner of the premises in which that business is to be carried on or should be a contractual tenant thereof for the duration of the period of the license. The requirement that he be a contractual tenant would also apply to the place, which he may wish to shift after having obtained the license. The requirement that

> he be a contractual tenant would also apply to the period for which he may seek renewal as a licensee. The rule framed by the state is in the realm of policy which the state is entitled to frame with regard to the conditions subject to which persons would be allowed to enjoy the privileges of carrying on business in liquor a commodity which is recognised as being inherently pernicious, and whose consumption is required to be reduced and not to be increased. The policy framed by the state is in no way arbitrary, nor is it malafide. The fact that the State could have framed a policy in a different way so as to permit statutory tenants also to enjoy the privileges does not render the policy already framed in any way defective. The choice in this matter is entirely for the state to make, and it is not for the court to mandate that the statutory tenants be given the right to carry on the business of retail vend in foreign liquor. Thee consent of the owner of the premises for carrying on such a business is essential. Absent such consent, the authority is not entitled to grant a license to the tenant, even if he be a contractual tenant. The landlords, therefore have the right to question, the grant of licenses for the privileges of retail vend of Indian Made Foreign Liquor to their tenants in case where the landlords have not given their consent in the lease deeds, and they are unwilling to grant such consent for the carrying on of such business in their premises. A tenant does not have a fundamental right to carry on any business of his choice in the premises belonging to another."

From the reading of the decision of the Hon'ble Division Bench, it is clear that the State should insist upon a no-objection certificate from the landlord and the Court finds that such insistence is neither arbitrary or unreasonable nor in any manner malafide. In fact in the case on hand prior to the present notification, such a condition had existed. However, before filing of these writ petitions, notification has been issued by TASMAC on 09.07.2014 in which this condition was conspicuously absent, which made the petitioners to rush to this Court. It is to be further noted that the TASMAC is the licensee of the premises i.e., the shop or the bar.

The license which is granted is only for the purpose of running the bar for consumption of liquor sold by TASMAC. Therefore, when TASMAC inducts a third party into the premises it is mandatory for the TASMAC to insist upon a no-objection certificate from the owner of the premises failing which the rule itself would be vitiated and it would affect the rights of the petitioners, over reaching the scope of the tenancy or going in a manner which is prejudicial to the petitioner/ landlord. The landlord may choose to whom he may grant NOC and therefore the respondents should not have issued the tender notice without such a condition.

8. However, during the pendency of the writ petitions, a circular has been issued on 22.07.2014 which contemplates that the successful bidder/ highest bidder is required to produce the rental agreement with the owner of the premises in which there should be a condition stating that the owner of the premises unconditionally permits the licensee/ successful bidder to undertake business for running bar including collection of empty bottles and sell eatables in the bar attached to the TASMAC shop, during the lease period. Therefore, such condition mandates production of no-objection certificate. The circular dated 22.07.2014 also states that failure to produce such a rental agreement within 7 days, the Tender Inviting Authority may request the next highest bidder to match the offer/ bid price of the highest bidder. Further, the circular states that if the bidder fails to furnish the rental agreement to the Tender Inviting Authority, then the bidders will perpetually be banned/ blacklisted to participate in the subsequent tenders. In the light of the subsequent Circular dated 22.07.2014, the relief sought for by the petitioners has been considered and granted.

9. Accordingly, all the Writ Petitions are allowed and the respondents are directed to insist upon no-objection certificate/ lease agreement from the owner/ landlord of the premises with all the relevant clauses from the highest/ successful bidder, as confirmed by the Tender Inviting Authority and as stipulated in the Circular dated 22.07.2014. Consequently, the connected M.P.s are closed. No order as to costs."

8. The petitioner in this Writ Petition has not questioned the Circular dated 22.07.2014 and the said Circular having been held to be a valid order and the validity of Rule 13(1) of the Tamil Nadu Liquor (Retail Vending) Rules, 1989,

having been upheld by the Hon'ble Division Bench of this Court, the relief sought for in this Writ Petition cannot be granted.

9. Accordingly, the Writ Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Sub Collector / District Manager,
TASMAC Ltd.,
Kancheepuram North District,
Thirumazisai-III,
Chembarambakkam,
Chennai-600 123.

+ 2 ccs to M/s.C.K.M.APPAJI, ADVOCATE SR 42815, 42215

+ 2 CCS TO M/s.C.BALASUNDAR, ADVOCATE SR 42480

KR/1/8/16

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