THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.36681 OF 2015

O R D E R

The grievance of the petitioner is that the excise authorities are renewing/extending the Form 2-B licence of the fifth respondent in relation to the premises bearing Door No.1/618-D, Gudivada Municipality, Krishna District, though the fifth respondent is not in lawful possession thereof. A consequential direction is sought to the excise authorities not to renew the licence.

The petitioner stated that he is the owner of the subject premises which were given on lease to the fifth respondent. The lease was for a fixed period and was not extended after its expiry on 30.09.2015. The fifth respondent filed O.S.No.216 of 2015 before the learned Principal Junior Civil Judge, Gudivada, seeking a declaration that she was entitled to continue her tenancy in the scheduled premises till she was evicted through the process of law and secured a temporary injunction. While so, the petitioner issued legal notice dated 12.10.2015 to the excise authorities requesting them not to renew the licence granted in favour of the fifth respondent for running a Bar in the subject premises. His complaint presently is that the excise authorities continued to permit the fifth respondent to operate the Bar in the subject premises despite the fact that there was no lawful lease in her favour.

The excise authorities did not choose to file a counter-affidavit.

The fifth respondent filed a counter-affidavit admitting that the petitioner is the owner of the subject premises which were given on lease to her under the registered lease deed dated 28.06.2013. She admitted that the lease was for a period of two years but it was extended by a further period of three months and expired on 30.09.2015. According to her, the subject premises were initially leased to her husband by the mother of the petitioner. This lease was stated to be operative till the Bar licence remained in force without stipulating any lease period. She stated that after the death of her husband, the Bar licence was transferred in her name in the year 2012. The registered lease deed dated 28.06.2013 was then executed by the mother of the petitioner in her favour for two years and thereafter, the petitioner executed a lease agreement for a period of three months i.e. from 01.07.2015 to 30.09.2015. The initial lease agreement in her husband's favour was stated to be coterminous with the Bar licence and she claimed that she had applied to the excise authorities for a copy of the said lease deed but to no avail. She asserted that if that lease deed was brought to light, it would demonstrate that the lease originally granted was intended to operate until expiry of the Bar licence. She contended that the petitioner, being the legal heir of the original owner, was bound to abide by the terms and conditions of the original lease deed and the subsequent transfer of the property in his name would not invalidate the same. She further claimed that the Bar licence in her favour was being renewed by the excise authorities in the light of the injunction secured by her in the pending suit. According to her, the injunction order was sufficient for this purpose and there was no need for insistence upon a regular lease deed. She claimed that she had fulfilled all other conditions for renewal of her Bar licence except production of a lease deed and in the light of the injunction order, the necessity for such lease deed could be dispensed with.

Heard Sri O. Manohar Reddy, learned counsel for the petitioner, learned Assistant Government Pleader for Excise and Sri K.V. Raghuveer, learned counsel for the fifth respondent.

In so far as the legal position relating to grant and renewal of a Bar licence is concerned, the same is governed by the Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for brevity, 'the Rules of 2005'). Rule 6 of the Rules of 2005 deals with the grant of a licence while Rule 9-A thereof deals with renewal of such licence. Rule 6(1)(vi) of the Rules of 2005 demonstrates that production of a lease deed in relation to the premises where the Bar is to be established is mandatory for grant of a licence. The question, however, is whether this condition requires to be complied with even for renewal of a licence thereafter. This issue is no longer *res integra*. This Court had occasion to consider this aspect of the matter in ***MANDAKINI RESTAURANT AND BAR V/s. DEPUTY COMMISSIONER OF PROHIBITION AND EXCISE***[1], wherein it was held that Rule 9-A of the Rules of 2005 was introduced in the statute book in the year 2007 only for the purpose of providing for renewal instead of going through grant of a fresh licence every time. This Court held that the conclusion is inescapable that to claim renewal of an existing licence, it is incumbent upon the applicant to satisfy all the conditions which are envisaged in Rule 6 for grant of a licence. This Court further held that all such conditions should be read into Rule 9-A and therefore, failure to produce a lease deed from the owner of the premises would disentitle a licensee to renewal of the licence.

This being the legal position, Sri K.V. Raghuveer, learned counsel, would however contend that as the original lease granted to the husband of the fifth respondent was coterminous with the Bar licence, there is no necessity for the fifth respondent to even seek renewal of a licence.

This argument is liable to be rejected for the following reasons.

To begin with, the original lease deed has not even been placed before this Court. Even if such a lease deed existed, the fact remains that upon her husband’s death, the fifth respondent was not attorned as a tenant under the said lease deed. Admittedly, the mother of the petitioner executed a separate registered lease deed in favour of the fifth respondent for a period of two years. After the expiry of the stipulated two year period, the petitioner himself executed another lease deed for a period of three months. In the light of these subsequent developments, the leasehold right of the fifth respondent is no longer relatable to the original lease deed said to have been executed in favour of her husband and she necessarily has to fall back upon the lease deeds executed in her favour. The terms and conditions of the original lease deed in favour of her husband would therefore stand extinguished in the light of the terms and conditions of the fresh lease deeds executed in favour of the fifth respondent herself. Thus, as matters stand, the lease in favour of the fifth respondent is not coterminous with the Bar licence as it was temporally restricted under the lease deeds executed in her favour.

No doubt, as law requires a tenant to be evicted in accordance with the due procedure, the expiry of the term reserved in the lease deed would not result in automatic divesting of her possession over the leased premises. It may also be noted that her prayer in the suit is also to that effect as she claimed that she was not liable to be evicted from the leased premises except in accordance with the due procedure laid down by law. However, her continuance of possession over the leased premises by virtue of this legal protection would not have the effect of extending the lease for the purposes of Rule 6 or Rule 9-A of the Rules of 2005. As Rule 6 specifically requires production of a lease deed from the owner of the premises, the protection afforded by the injunction order in so far as the possession of the fifth respondent is concerned cannot be a substitute for the legal requirement of producing a lease deed. The fifth respondent's possession would only be protected by such injunction but she is not entitled to seek renewal of a Bar licence without a lease deed in relation to the subject premises.

On the above analysis, this Court finds that the action of the excise authorities in renewing the Bar licence in favour of the fifth respondent by virtue of the interim injunction order granted by the civil Court is contrary to the statutory position as well as the law laid down by this Court.

The writ petition is accordingly allowed. The excise authorities are directed to take note of the aforestated legal position and take immediate action in the matter accordingly. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

22nd FEBRUARY, 2016

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[1] 2008 (4) ALD 188