HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.7070 of 2017

ORDER:

The present Writ Petition came to be filed seeking issuance of writ of mandamus declaring the action of the official respondents in returning the renewal application of the petitioner vide proceedings Rc.No.SPL/BI/KNL(U)/2016 dated 04.01.2017 as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India.

2) The facts in issue are as under:-

The averments in the affidavit filed in support of the Writ Petition show that the petitioner herein is a registered partnership firm registered on 01.04.1992. The said partnership firm is running its business in sale of medical drugs in retail, after obtaining necessary licence from the concerned Department. It is stated that in the year 1973, the petitioner took premises bearing Dr.No.46/780 opposite Government Hospital, Kurnool on a oral lease from Smt. Eeramma, who is the predecessor in title of respondents 4 and 5, on a monthly rent of Rs.72/-, which was being enhanced from time to time. It is stated that in the year 2013, the Kurnool Municipal Corporation acquired the said premises for widening the road. As the landlords were having another shop room bearing Dr.No.46/781, behind the shop that was acquired for widening of the road, it was agreed by both the parties that the said shop would be let out to the petitioner herein

for carrying out business on certain terms and conditions. It is stated that as on today, the petitioner is carrying on business in shop No.46/781, by paying monthly rent of Rs.9,000/-. It is stated that the petitioner has furnished the said shop by spending huge amounts after obtaining necessary consent from the landlords. It is averred that, the licence of the petitioner was going to expire on 31.12.2016, he made an application for renewal of the licence on 26.12.2016, along with the requisite fees, but the same was returned basing on the legal notice dated 04.12.2016 said to have been issued by the unofficial respondents and also on the ground that no declaration from the building owner is enclosed to the said application. Challenging the return of the application, the present Writ Petition is filed.

3) By an order dated 30.06.2017, this court directed the respondents/authorities not to take any coercive steps against the petitioner.

4) The main ground urged by the learned counsel for the petitioner is that since the Drugs and Cosmetics Act prescribe certain conditions for renewal of lease, the authorities cannot refuse to renew the licence on the ground that the application for renewal does not contain the certificate from the landlord. He further placed on record, documents evidencing filing of O.S.No.501 of 2014 before the court of Principal Junior Civil Judge, Kurnool, seeking permanent injunction against the respondents herein from interfering with

peaceful possession and enjoyment over the subject shop. By an order dated 06.11.2014 in I.A.No.1664/2014, the learned Judge granted ad interim injunction as sought for. Since the reason for return of renewal application does not fall within the parameters laid down by the Act, he submits that the same is illegal, improper and incorrect.

5) A counter came to be filed by the respondents 1 to 3 disputing the averments made in the affidavit filed in support of the writ petition. According to him, when the licence was granted for Dr.No.46/780, the question of renewing the licence for D.No.46/781 would not arise. According to him, the Dr.No.46/780 was demolished in 2013 itself. It is stated that in the month of April 2016, the petitioner applied for a change of the registered pharmacist, showing the address as 46/780. It is also stated that since the renewal application submitted at the office, was with Door No.46/780, the question of renewing the licence as sought for in the Writ Petition for Dr.No.46/781, cannot be granted. The counter also refers to receipt of a legal notice from the 5th respondent, who claims to be the owner of the said door number, requesting them not to renew the licence granted to the petitioner, as no legal agreement is in force and that the premises bearing Dr.No.46/780 is removed to a certain extent.

6) A counter came to be filed by the respondents 4 and 5 admitting the fact that the petitioner/firm has taken the premises bearing Dr.No.46/780 on lease from their predecessors in title. He

states that the building bearing Dr.No.46/780, for which licence was granted, is very much in existence and the petitioner is doing business in it. The averments in the counter also show that the 4th respondent owns a shop bearing No.46/781 adjacent to the shop bearing No.46/780, which was leased out to one T.Keshava Rao, who is running a canteen in the premises bearing No.46/781, in the name of M/s. New Rama Darshan. He placed on record the TIN Number given to the shop which is used for running a canteen. Hence, it is urged that the averments in the petition, seeking permission for the house bearing No.46/781 on lease from the unofficial respondents and running a medical shop, is improper and incorrect. In paragraph 4 of the counter, it is stated that the injunction granted to the petitioner in I.A.No.1664 of 2014 expired long back and subsequently there was no extension. Having regard to the objections raised with regard to renewal of licence for the premises bearing No.46/780 and since the petitioner failed to file the returned renewal application, it is urged that the question of granting renewal for the premises bearing No.46/781 would not arise. He further placed on record, documents to show that when the petitioner applied for change of the name of a qualified Pharmacist in the year 2016, he showed the premises of his business as 46/780. It is pleaded that if really the premises bearing No.46/780 was acquired in the year 2013 and if it was demolished during road widening, there was no reason for him to mention the old

number instead of the new number. He also relied upon the bills issued which show that the petitioner is doing business from Dr.No.46/780 and not in 46/781.

7) It is an admitted fact that the licence was granted to the petitioner to run a medical shop for the premises bearing Dr.No.46/780. It is also not in dispute that renewal application submitted at the office of respondents 1 to 3 was for 46/780. Now, in the Writ affidavit, it has been stated that the application for renewal is for Dr.No.46/781. For the reasons best known, the application made by the petitioner for renewal the licence is not placed on record, but however, it is to be noted that the petitioner herein, who is plaintiff in O.S.No.501 of 2014, stated that he is running the medical shop from D.No.46/781 on a monthly rent of Rs.9,000/-. It was further stated that the said shop is situated on the back side of the demolished premises bearing Dr.No.46/780. From the above averments, it is clear that there is any amount of doubt/dispute with regard to very existence of Dr.No.46/780. On one hand, the petitioner claims that during the road widening made in the year 2013, the said property was demolished by the Kurnool Municipal Corporation. On the other hand, the owners of the said building state that the said property is still in existence, to a certain extent. In the suit which was filed in the year 2014, it was stated that the said premises was demolished. If that is so, no explanation is

forthcoming from the petitioner as to why he showed the address of his shop as 46/780, in the application made by him in the year 2016 for a change in the name of a qualified Pharmacist. If the plea of the unofficial respondents is to be accepted, then no reason is forthcoming as to why in the legal notice, dt:04.12.2016 issued by them to the Assistant Director, Drugs Control, referred to the existence of the medical shop run by the petitioner in Dr.No.46/780 and 46/781.

8) Disputed questions of fact with regard to very existence of the said premises cannot be adjudicated in this Writ Petition. Therefore, the question would be whether the authorities were justified in returning the application of the petitioner on the basis of a legal notice said to have been issued by the counsel for the unofficial respondents to the official respondents and whether non-enclosure of the declaration by the house owner would be a ground to refuse renewal. There are inconsistent versions as to whether the petitioner is running the shop from D.No.46/781 as on date, since the unofficial respondents claim that a Tiffin centre is being run in 46/781. The petitioner herein placed on record the certificate issued by Labour Department, Government of Andhra Pradesh showing the place of establishment of new Mamtha Medical Store at premises bearing Dr.No.46/781. The date of shifting was 01.01.2016 and the registration is valid till 31.03.2019. Similarly he also placed on record

certificate of registration in Form II issued by the Department of Shops and Establishment and Registration Act, showing the place of Establishment at 46/781. The said certificate was issued in the month of January, 2015.

9) At this stage, the learned counsel for the respondent placed on record Drugs and Cosmetic Rules more particularly, Rule 62B, which reads as under:-

"62-B. Conditions to be satisfied before a license in Form 20-A or Form 21-A is granted.

(1) A license in Form 20-A or Form 21-A shall not be granted to any person, unless the authority empowered to grant the license is satisfied that the premises in respect of which the license is to be granted are adequate and equipped with proper storage accommodation for preserving the properties of drugs to which the license applies:

Provided that this condition shall not apply in the case of license granted to itinerant vendors.

(2) In granting a license under Rule 62-A the authority empowered to grant it shall have regard to:

(i) the number of licenses granted ;in the locality during one year immediately preceding; and

(ii) the occupation, trade or business carried on by such applicant:

Provided that the licensing authority may refuse to grant or renew a license to any applicant or licensee in respect of whom it is satisfied that by reason of his conviction of an offence under the Act or these Rules or the previous cancellation or suspension of any license granted thereunder, he is not a fit person to whom a license should be granted under this Rule.

10) Rule 63B(3) reads as under:-

Any person, who is aggrieved by an order passed in sub rule (1), may within 30 days from the date of receipt of such order, file an appeal to the State Government and the State Government may after enquiry into the matter, if it considers necessary and after giving an

opportunity to represent his views in the matter, make such order in relation thereto, as it thinks fit.

11) In **K.Poruthammal, L.Jaya, E v. The Assistant Director, Drugs,** the Madras High Court was dealing with a case, where M/s. Balaji Medicals submitted a certificate for renewal of licence along with relevant documents prescribed under the Rules. Legal notice was issued stating that licence should not be renewed to the third respondent since the petitioners therein have purchased the property on 22.08.1997 from R.Ronald Santhakumar and others and they have also initiated rent control proceedings, by filing a petition for eviction. Relying upon the Rent Control Rules, 1976 and also the judgment of the Supreme Court, it was urged before the Madras High Court that the licence cannot be renewed to the third respondent therein. After referring to Rule 64 and 65A of the Drugs and Cosmetics Rules, it was held that the said rules apply only at the time of applying for licence and not at the time of renewal of the licence and accordingly the court found that the dispute over the property cannot be a ground to renew the licence moreso when the property in dispute was not a litigation property.

12) **Kadi Taluka Sahakari Kharid v. State of Gujarat** was a case, where the petitioner there in was a landlord and respondent No.4 was a tenant of two rooms of the shopping centre. The respondent No.4 used the premises for running a Dental Clinic. On

17.06.2005, an application was submitted to the licencing authority in the name of M/s. Shivam Medical Stores with the same address which was in occupation of the 4th respondent and was requested that the 4th respondent to give a licence for opening a medical store. On 01.12.2005 the said application was rejected on the ground that in the lease deed, there is no provision to run a medical store and since the owner of the premises had raised an objection. An appeal was preferred under Section 163(2) of the Act but the same was withdrawn. After considering the relevant rules and the provisions of the Act, the Gujarath High Court held that rules do not prescribe a condition that if the applicant intends to start a medical store in a rented premises, the written consent by the landlord has to be attached with the application or has to be produced, if asked. It has been held that it is the right of the applicant, who is a tenant of a premises, to start a medical store, unless there is a specific contract contrary to that effect.

13) As held by the Judgments referred to above, the Rules nowhere indicate that there can be a refusal to renew the licence for want of a certificate from the landlord. A Division Bench of Kerala High Court in Writ Appeal No.872 of 2015 dated 04.06.2015 while dealing with an issue, where there was a dispute between the landlord and tenant and where the petitioner(tenant) was occupying the premises having a valid license, found fault with the learned Single

Judge in dismissing the petition on the ground that the possession was not lawful. The Bench also dealt with Section 65A of Drugs and Cosmetics Rules, 1945 to show that the said provision applies only for grant of licence and not for renewal of license. Therefore, return of the application for want of a letter from the landlord cannot be accepted.

14) In view of the ratio laid down in the judgments referred to above; as there is a dispute with regard to the very existence of shop bearing Dr.No.46/780 at the site; as various versions are forthcoming with regard to its existence, and as license cannot be renewed with a new door number as sought for in the writ petition, the petitioner shall re-submit his application before the authority, explaining the rule position and also the circumstances in issue, more particularly the averments made in the counter with regard to the very existence of D.No.46/780, in which event the said authority shall deal with the same in accordance with law. It is needless to mention that petitioner shall resubmit his application with all the necessary documentary evidence within the period of six weeks from today in which event, the authority shall pass an order after considering the legal and factual aspects, if necessary, by conducting discreet enquiries with regard to the existence of the said door number and pass orders as early as possible preferably within a period of four to six weeks thereafter.

15) The interim order granted earlier by this Court shall continue till such time.

16) With the above direction, the Writ Petition disposed of. No costs. Miscellaneous Petitions pending if any, in this Writ Petition, shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

Dt:25.07.2017

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