

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.32511 of 2006

M/s.HOTEL VEEYES,
No.2, Police Commissioner of Office Road,
Egmore, Chennai 600 008.
Represented by its Authorized Signatory,
Mr.V.S.A.Ashrafali,
No.76, Linghu Chetty Street,
Chennai 600 001.

...Petitioner

Vs

- 1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai 600 005.
- 2.The Managing Director,
Tamil Nadu State Marketing Corporation,
C.M.D.A. Building, Tower -2,
Gandhi Irwin Bridge, Chennai 600 008.
- 3.The District Collector,
Chennai Collectorate,
Chennai.
- 4.The Deputy Commissioner (Excise)
Office of the Chennai Collectorate,
Rajaji Salai, Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or order of direction or any other Writ in the nature Writ of Certiorari, to call for the records in Proc. No.P & E 2 (4) 20176/2006, dated 08.09.2006, on the file of the first respondent and quash the same.

For Petitioner : Mr.E.J.Ayyappan

For Respondents: Mr.R.Pratap Singh,

Government Advocate for R1, 3 and 4

Mr.K.Sathish Kumar,

Standing Counsel for R2.

O R D E R

The petitioner is the legal heir of one Mr.V.S.Abdul Hussain, who had been issued licence to run a Bar in his hotel managed and run under the name and style of 'VEEYES' .

2. Mr.Abdul Hussain, passed away in the year 1997 and the Hotel and Bar are stated to be managed by his legal heirs continuously from that period till date. Privilege Fee is also being paid regularly and there is no dispute on this question.

3. While this is so, the respondents appear to have inspected the Hotel in July 2006. Based on the aforesaid inspection, a show cause notice was issued on 31.07.2006 alleging that the Hotel and Bar had been let out to a person by name Mr.Sabari Girison for three years from 1996. The allegation was that the change in ownership from the original licence holder Mr.Abdul Hussain was without obtaining prior permission of the licensing authority, in contravention of Rule 24 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 ('Rules').

4. The relevant portion of the show-cause notice is extracted below:

'2.The Joint Commissioner-II of this Commissionerate has inspected the above said hotel on 25.07.2006 along with Tahsildars (Flying Squad) and noticed that the hotel property was owned by one Thiru.V.S.Abdul Hussain, who has let out the hotel and bar to one Thiru A.Sabari Girison for three years on rental basis with effect from 07.06.1996 and the FL.3 licence was issued in the name of Tvl.Hotel Vee Yes, that the owner of the property Tvl.Hotel Vee Yes expired on 25.07.1997 leaving five sons as legal heirs, and has also stated that one of the legal heirs of the deceased Thiru V.S.Jamal Mohamed has applied for the renewal of FL.3 licence for the year 2006-2007 and that a perusal of this office records reveals that after the demise of the original owner of the hotel properties, Thiru.V.S.Abdul Hussain, the ownership of the Management of the Hotel and the Bar has not been changed in favour of the deceased legal heirs and

that enquiry reveals, that there is change of ownership in this case without obtaining prior permission of the licensing authority.'

5. Heard learned counsel for all parties, barring R2, who is unrepresented.

6. Rule 24, which deals with transfer of licence is extracted below:

'24. Transfer of licence, change of premises or locality. -- Licences issued under these rules shall not be sold, transferred or sub-rented without the previous permission of the licensing authority. A licence holder shall not change the premises in which he carries on business under his licence except with the previous permission of the licensing authority. Permission to shift the business during the currency of the licence outside the area in which the licence is intended to serve shall be treated as the grant of a fresh licence and all the provisions relating to the grant of a new licence shall likewise apply to granting of such permissions except those relating to payment of the licence fee and collection of security deposit with reference to rule 23'

7. As per the counter filed by the respondents, the change in management from the erstwhile owner to his legal heirs including his son, the present petitioner, is not automatic and the authorities concerned should have been informed of the same. Moreover, the counter states that the F.L.3 Licence for the Bar had been applied for by Mr.Sabari Girison and was issued on 18.07.1996 to Tvl.Hotel Vee Yes. During the inspection on 25.07.2006, it was noticed by the authorities that the hotel was under the ownership of the petitioners' father who had let out the same to Mr.Sabari Girison for three years on rent with effect from 07.06.1996.

8. Thereafter, the counter goes on to invoke the provisions of Rule 24 alleging that there has been no change in ownership after the expiry of the petitioners' father in the name of the Legal Heirs after obtaining necessary prior permission. At paragraph No.6, R1 states that the licence was issued only on the request of the said Sabari Girison based on the rental agreement executed between the petitioners' father and the said lessee. After the expiry of the rental agreement, according to

R1, Mr.Sabari Girison had neither surrendered the licence nor extended the agreement. One of the Legal Heirs viz., the petitioners' brother was however seen to have been running the Bar continuously. R1 states that this constitutes abuse of the privilege granted to Sabari Girison and is a violation of Rule 24.

9. It is admitted before me that the Legal Heirs of Mr.V.S.Abdul Hussain have been remitting privilege fee consistently from 1997 till date. Moreover, the inspection and show-cause notice were in the year 2006 whereas, the events referred to therein have transpired in 1996-97, one decade ago. No documents have been produced before me to establish the sequence of events alleged either by the petitioner or by the R1. Mr.Sabari Girison is not a party to the Writ Petition.

10. In the light of the fact that the respondents are clearly aware of the Management of the Hotel by the legal heirs of V.S. Abdul Hussain since his demise in 1997 and have also been received privilege fee consistently, non-adherence to the provisions of Rule 24 in such circumstances would not be fatal. The very fact that the respondents have woken up after 10 years to pass the impugned order and that too without the support of any materials or documents whatsoever, leads to the conclusion that the impugned order has no legs to stand.

11. In the light of the aforesaid discussion, this Writ Petition is allowed and impugned order is set aside. No costs.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

rkp

To

1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai 600 005.

2.The Managing Director,
Tamil Nadu State Marketing Corporation,
C.M.D.A. Building, Tower -2,
Gandhi Irwin Bridge, Chennai 600 008.

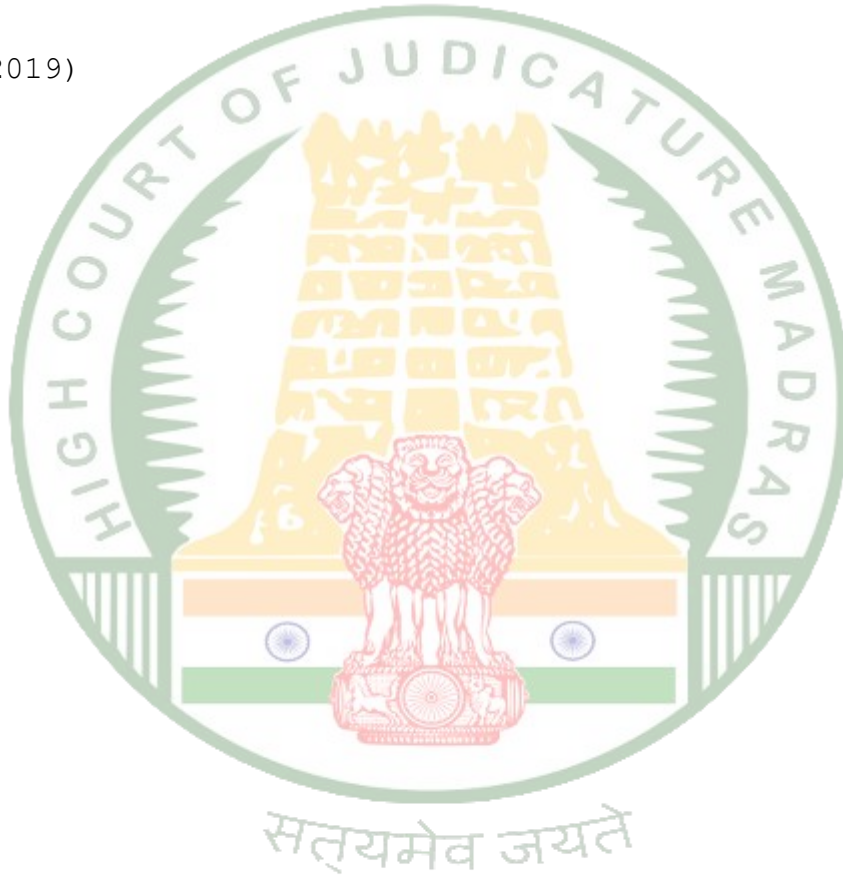
3.The District Collector,
Chennai Collectorate, Chennai.

4.The Deputy Commissioner (Excise)
Office of the Chennai Collectorate,
Rajaji Salai, Chennai.

+1cc to Mr.K.Sathish Kumar, Advocate SR.77895
+1cc to the Government Pleader SR.78135
+1cc to Spl Government Pleader(Taxes) SR.78091

W.P.No.32511 of 2006

RSI(CO)
CB(13/12/2019)



WEB COPY