

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 12.09.2019

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.Nos.7555 of 2018 and 5840 of 2019
and
W.M.P.Nos.9426 of 2018 and 6676 of 2019

M.Pryavahiny

...Petitioner
in both W.Ps.

Vs.

- 1.Government of Puducherry,
Rep. by its Secretary to Government,
Excise Department,
Chief Secretariat,
Puducherry 605 001.
- 2.The Deputy Commissioner,
Excise Department,
Government of Puducherry,
Puducherry.
- 3.Food Safety and Standard Authority of India,
Ministry of Health and Family Welfare Department,
Kotla Road, FDA, Bhavan, New Delhi 110 002.
- 4.The Commissioner,
Puducherry Municipality,
Kamban Kalaiararam,
Bussy Street, Puducherry 605 001.
- 5.Commissioner of Food Safety,
Local Administration Department,
Chief Secretariat, Goubert Avenue,
Puducherry 605 001.
- 6.R.Venugopalan
residing at No.8, 7th Cross Street,
Brindivanam, Puducherry 605 013 and
running business at M/s.Hotel Continental,
Old Door No.29 (New No.48),
Labourdonnais Street, Puducherry.

... Respondents
in both W.Ps.

7.Ramaraju

residing at No.8, 7th Cross Street,
Brindivanam, Puducherry 605 013 and
running business at M/s.Hotel Continental,
Old Door No.29 (New No.48),
Labourdonnais Street, Puducherry.

... R7 in
W.P.5840/19

PRAYER in W.P.No.7555 of 2018: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorarified mandamus to call for records relating to Order No.1464/DCE/S2/FL.2/2007-08 dated 23.03.2018 passed by the second respondent and License No.202/FL.2/2018-19 (Tourism Category) dated 24.03.2018 issued by the second respondent and quash the same and forbear the respondents from permitting the sixth respondent from running a Bar or vending of food and liquor in the premises.

PRAYER in W.P.No.5840 of 2019: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of mandamus to impound the Lease Agreement dated 09.11.2012 produced by the sixth respondent for renewal of licence for the year 2019-20 in compliance with Section 33 of the Indian Stamp Act and to reject his application for renewal of liquor licence in the premises at Old No.29, (New No.48), Labourdonnais street, Puducherry-1 by passing orders on the petitioner's representation dated 18.01.2019 after granting a personal hearing.

For Petitioner : Mr.PVS.Giridhar
in both W.Ps. for M/s.Giridhar and Sai

For Respondents : Mr.J.Kumaran for R1,2,4 and 5
in both W.Ps. Additional Government Pleader(P)

Mr.S.S.Pajani Radja for R3
Standing Counsel

Mr.S.Mahimai Raj for R6 in both W.Ps.
and for R7 in W.P.5840 of 2019

COMMON ORDER

Both these writ petitions are filed by one and the same writ petitioner.

2. In W.P.No.7555 of 2018, the petitioner challenged FL.2 license issued by the second respondent in favour of the sixth respondent with a consequential prayer to forbear the official respondents from permitting the sixth respondent running a Bar or vending of food and liquor in the premises.

3. In W.P.No.5840 of 2019, the petitioner seeks for a mandamus to impound lease agreement dated 09.11.2012 produced by the sixth respondent for renewal of license for the year 2019-20 in compliance with Section 33 of the Indian Stamp Act and to reject his application for renewal of liquor license in premises at Old No.29, (New No.48), Labourdonnais street, Puducherry-1.

4. The petitioner's predecessor in title viz., one Saraswati Bai executed a Rental Agreement dated 09.11.2012 in favour of the sixth respondent for a period of five years. The sixth respondent was running a hotel in the said premises. He also obtained a license for possession and sale of liquor from the office of the Deputy Commissioner(Excise) annually. The sixth respondent was duly intimated that the title to the demised property was transferred in favour of the petitioner. The sixth respondent promised to vacate the premises in March 2018, as the liquor license was going to expire on 31.03.2018. However, in January 2018, the petitioner came to know that the sixth respondent had fabricated another rental agreement for a period of ten years, allegedly executed by the said Saraswati Bai in favour of him from 09.11.2012 and applied for renewal of liquor license. The said agreement is not duly stamped nor registered. Therefore, it is not valid in view of the provisions of Section 17 of the Registration Act and Section 54 of the Transfer of property Act. Therefore, the petitioner submitted a representation on 29.01.2018 to the second respondent not to renew the license. By order dated 23.03.2018, the second respondent informed that the issue is purely between the tenant and the land owner and thus, advised the petitioner to approach the competent Court of law, also by stating that the license would be processed as per the provisions of the Pondicherry Excise Act. Hence, the writ petition in W.P.No.7555 of 2018 is filed with the relief as stated supra.

5. Since the lease agreement purportedly produced by the sixth respondent is not duly stamped and registered and consequently invalid, the same is liable to be impounded by the second respondent under Section 33 of the Indian Stamp Act. Since the second respondent has not impounded the said document, the second writ petition in W.P.No.5840 of 2019 is filed with the relief as stated supra.

6. The official respondents filed a counter affidavit. The sixth respondent also filed a separate counter affidavits in both these writ petitions.

7. It is the case of the sixth respondent that though initially the Lessors have executed a Rental Agreement on 09.11.2012 for a period of five years, however, on mutual

negotiations, on the same day, the above Rental Agreement was given up and not acted upon and a fresh Rental Agreement was executed on 09.11.2012 in his favour and his son in law viz., the seventh respondent in W.P.No.5840 of 2019, for a period of ten years with effect from 09.11.2012. Apart from saying so and narrating other facts and circumstances, the Respondents 6 and 7 in W.P.No.5840 of 2019 in their counter affidavit has specifically stated that they have not submitted any application to the second respondent seeking for renewal of liquor license for the period 2019-2020 and that they consciously resolved not to go for the renewal of the license and as a result, they refrained from submitting any application to the Authorities for the grant of license for the period from 01.04.2019 onwards citing the enormous fees for obtaining the license as the reason.

8. I am not extracting all the contentions raised by both parties in their respective pleadings, since I propose to dispose these writ petitions, taking note of the above stand taken by the respondents 6 and 7 in their counter affidavit that they have not filed any application for renewal of liquor license for the period 2019-20 and that they resolved not to go for the renewal of the above license and that they are not going to submit any application to the authorities concerned for the period from 01.04.2019.

9. Learned Additional Government Pleader appearing for the official respondents also submitted that the respondents 6 and 7 have not filed any application for renewal of license and the license already granted also expired as on 31.03.2019. Therefore, he submitted that the respondents 6 and 7 are not having any license (FL.2 licence) and consequently, they cannot run the bar in the subject matter premises.

10. According to the writ petitioner, the lease originally granted by her vendor was only for a period of five years and the sixth respondent has fabricated a document, as if the said lease was executed for ten years. Therefore, the writ petitioner seeks to challenge the license issued in favour of the sixth respondent on the ground that the lease had already expired and that the official respondents cannot act upon the disputed lease deed alleged to have been executed for ten years. The petitioner also seeks for impounding the said document under Section 33 of the Indian Stamp Act.

11. There is no dispute to the fact that the petitioner is the present owner of the premises. It is also not in dispute that there was a lease agreement executed by the petitioner's predecessors in favour of the sixth respondent. The period of lease is now in dispute. However, as it is stated by the sixth and seventh respondents that they are not going to seek for renewal of license after 01.04.2019, I do not think that this

Court need to dwell on the other issues and decide whether the official respondents are entitled to act upon the lease said to have been executed for ten years for the grant of license or the said document is to be impounded.

12. Needless to state that the question with regard to the validity of the lease deed dated 09.11.2012 said to have been executed for ten years can be agitated before the competent forum, if the parties viz., the petitioner on one hand and the respondents 6 and 7 on other hand have some quarrel over the period of lease. However, in so far as the issuance of FL.2 license is concerned, admittedly the license period is already over as on 31.03.2019 and that the respondents 6 and 7 are not seeking for renewal of license from 01.04.2019 onwards. Consequently, the official respondents need not take into consideration of the lease deed said to have been executed for ten years for any purpose.

13. Accordingly, both these writ petitions are disposed of as follows:

a) Since the Respondents 6 and 7 have categorically stated before this Court that they are not going to seek for renewal of license from 01.04.2019 onwards and that the license granted in favour of the sixth respondent had already expired on 31.03.2019, the official respondents are directed to see that the activities, in relation to the license already issued and got expired at the subject matter premises, are not being carried on any further.

b) In so far as the dispute with regard to the period and validity of lease is concerned, it is open to the parties viz., the petitioner on one hand, respondents 6 and 7 on the other hand, to agitate the matter before the appropriate forum in the manner known to law.

No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Government of Puducherry,
Rep. by its Secretary to Government,
Excise Department,
Chief Secretariat,
Puducherry 605 001.

2.The Deputy Commissioner,
Excise Department,
Government of Puducherry,
Puducherry.

3.Food Safety and Standard Authority of India,
Ministry of Health and Family Welfare Department,
Kotla Road, FDA, Bhavan, New Delhi 110 002.

4.The Commissioner,
Puducherry Municipality,
Kamban Kalaiararamam,
Bussy Street, Puducherry 605 001.

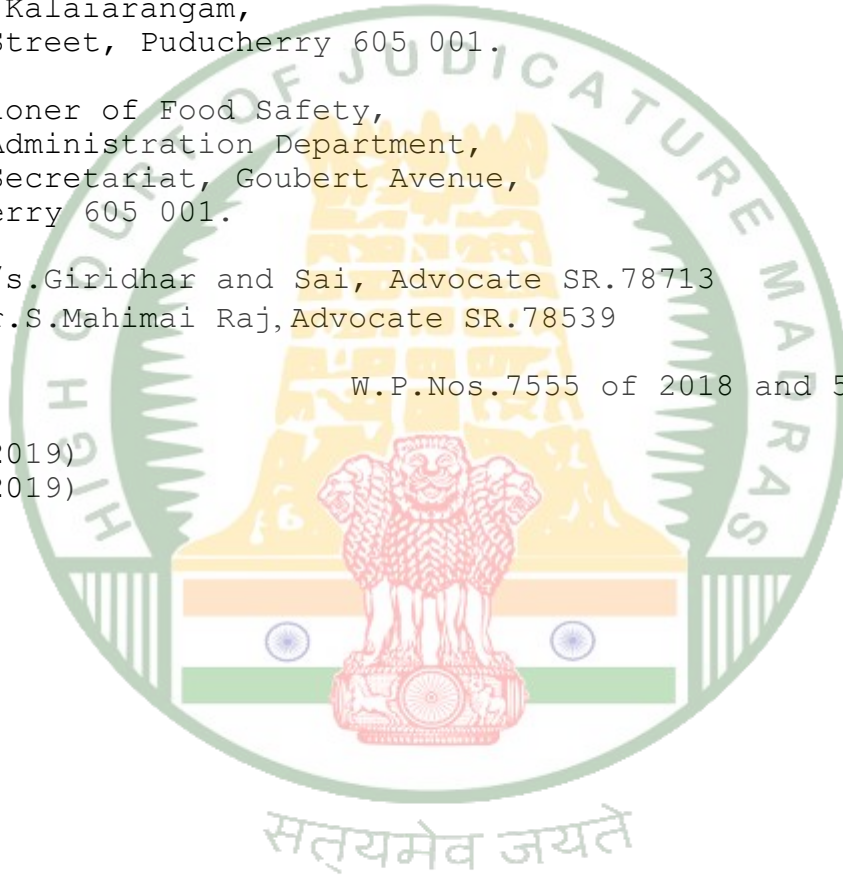
5.Commissioner of Food Safety,
Local Administration Department,
Chief Secretariat, Goubert Avenue,
Puducherry 605 001.

+1cc to M/s.Giridhar and Sai, Advocate SR.78713

+2cc to Mr.S.Mahimai Raj, Advocate SR.78539

W.P.Nos.7555 of 2018 and 5840 of 2019

SVI (CO)
CB(17/10/2019)
CB(08/11/2019)



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