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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2021

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9917 of 2020

and

W.M.P.Nos.12055, 12057 & 12059 of 2020

(Through Video Conferencing)

1.K.Gandhimathi @ Mala
2.K.Santhi
3.K.Raju

...Petitioners

Vs

1.The Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Rep by its Managing Director,
'Thalamuthu Natarajan Maaligai'
Gandhi - Irwin Road,
Egmore, Chennai - 600 008.

2.The Tamil Nadu Marketing Corporation
Ltd., (TASMAC),
Rep by its Senior Regional Manager,
'L.L.A.Buildings',
No.735 Anna Salai,
Chennai - 600 002.

3.The Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
Rep by its District Manager,
Chennai (South) District,
No.B-4, Ambattur Industrial Estate,
Ambattur, Chennai - 600 053.

4.K.Ganesh

5.R.Panneerselvam

...Respondents



Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Order of the 3rd respondent dated 16.09.2009 in Na.Ka.No.A5/34/3432/2018 and quash the same and consequently direct the respondents 1 to 3 to close down the Bar premises attached to the TASMAC wine shop No.714, at Door No.1/1, Anna Garden, Velachery Main Road, Chennai - 600 042.

For Petitioner : Mr.K.Selvaraj

For Respondents: Mr.Arumugaraja
Standing Counsel for R1 to R3

Mr.P.Singaram for R5

No appearance for R4

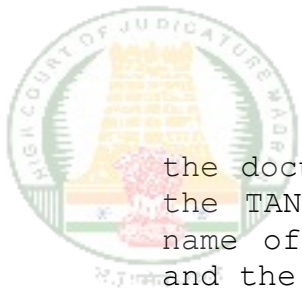
ORDER

This writ petition has been filed by the petitioner to quash the impugned order dated 16.09.2019 passed by the 3rd respondent. By the impugned order the respondents have refused to accept the request of the petitioners particularly the 3rd respondent on the ground that there is a civil dispute pending between the petitioners and the 5th respondent.

2.The facts of the case is that the petitioners are the legal heirs of late Karuppiyah who was the owner of a shop premises which was leased to the 5th respondent for running a TASMAC shop. The petitioners and the 4th respondent herein are the children/siblings of late C.Karuppiyah.

3.It is the case of the petitioner that the 4th respondent herein had given no objection for running a TASMAC Shop in the property without the consent of the petitioners, though the petitioners are having equal rights over the property. It is submitted that shop in question was rented out to licensee right from 2009 onwards and that the 5th respondent had leased the property in the year 2018 and that the said lease came to an end on 31.10.2018 and thereafter the lease was not renewed.

4.The learned counsel for the petitioner submits that by exercising fraud on the petitioners, the 4th respondent allegedly gave no objection to the 5th respondent to continue with the lease for ending alcoholic beverage/liquor in the said shop. It is submitted that the 4th respondent had also forged



the documents to transfer the EB connection in his name and that the TANGEDCO had later also cancelled the transfer made in the name of the 4th respondent back to the name of the petitioners' and the 4th respondent's father late C.Karupaiah.

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5.The learned counsel for the petitioner submits that the tender conditions mention that licensee should obtain a no objection from the owners and only if no objection is obtained from the owners, the licensee can be granted licence for running a TASMACH shop. It is submitted that in absence of no objection from the petitioners herein for the period after 30.10.2018, the question of giving licence to 5th respondent for running the TASMACH shop beyond the aforesaid date cannot be countenanced. Under these circumstances, it is submitted that the impugned communication of the 3rd respondent dated 16.09.2019 is liable to be quashed. He has also drawn attention to the decision of this Court rendered on 29.07.2019 in W.P.No.21733 of 2019 and in W.P.Nos.4996 & 7400 of 2018 vide order dated 11.04.2018 which was filed by the petitioners wherein they had sought for a larger relief.

6.It is submitted that the impugned order has been passed contrary to the law settled by this Court. The learned counsel for the petitioner has also drawn attention to the decision of the Hon'ble Division Bench of this Court in S.Ganesan Vs. Assistant Commissioner Excise, Collectorate, Chennai and another 2000 (I) CTC 193. In this connection, a reference was made to para 20,21,22 which reads as under:

20.A 'statutory tenant' by definition is one who has ceased to be a contractual tenant and whose right to retain possession is dependent upon several uncertain factors. A statutory tenant has no way of knowing as to when his landlord will seek to initiate eviction proceedings against him. It is open to landlord to do so, if he is otherwise entitled to claim possession under the Rent Control Act, to initiate proceedings at a time of his choosing. The statutory tenant has no way of knowing as to whether a landlord who initiates such proceedings would ultimately succeed, and also as to the time at which a decree for eviction may be passed, nor can such a tenant foresee with certainty as to when an order for eviction, which may be obtained by a landlord may be executed against him. A statutory tenant may himself by his



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own acts of omission expose himself to being evicted by committing defaults, such as failing to pay the rent for a period longer than the one permissible under the provisions of the Rent Control Act. A contractual tenant, on the other hand, knows for certain the period for which he may remain in occupation of the premises. Such tenant is entitled to protect his possession, even against the landlord for the duration of the lease. The landlord has no right of entry into the premises so long as the lease continues, except to the extent permitted by the terms of the lease. The status of a contractual tenant, therefore, cannot be equated to that of a statutory tenant on the sole ground that both contractual tenants and statutory tenants are entitled to retain possession of the premises. While in the case of contractual tenants, there is certainty regarding the period, and the extent provided by the provisions of the applicable Rent control law, and the circumstances governing the landlord as also the tenant.

21. The lease agreement referred to in Rule 13(1), which necessarily implies the subsistence of a contractual tenancy, clearly contemplates lawful possession of the premises. Here juridical possession will not satisfy the requirement of the Rule. The Supreme Court, in the case of R.V. Bhupal Prasad Vs. State of A.P and others, 1995 (5) SCC 698, while considering the meaning of the term lawful possession in Rule 11(B)(2) of the A.P. Cinema (Regulation) Rules, held that the possession of the premises by a tenant at sufferance is neither legal nor lawful, but was only a litigious possession. The Court observed with regard to the tenant/appellant before it that,

''The appellant may remain in possession until his ejectment in due course in execution of the decree in the suit filed by the respondent. But his possession cannot be considered to be settled possession. He was akin to a trespasser, though initially he had



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lawful entry...A tenant at sufferance is one who comes into possession of land by lawful title, but who holds it by wrong after the termination of the term or expiry of the lease by efflux of time. The tenant at sufferance is, therefore, one who wrongfully continues in possession after the extinction of lawful title. There is little difference between him and a trespasser. A tenancy at sufferance does not create the relationship of landlord and tenant.'

Though a statutory tenant is indeed a tenant entitled to retain possession, that right to retain possession is not a right, which is derived from the consent of the landlord, but is one conferred by the statute upon a person whose contractual tenancy has come to an end but, who is nevertheless allowed to retain possession subject to the provisions of the Act. A statutory tenant no doubt cannot be characterised as a trespasser. Nevertheless his status is not the same as that of a contractual tenant, as the essential requirement of the continued consent of the landlord is absent, and the statutory tenant is liable to be evicted at any point of time, if the landlord is in a position to do so in accordance with the provisions of the applicable Rent Control Act.

22. The exclusion of statutory tenants from the purview of Rule 13(1) of the Rules, thereby disentitling them from becoming licensees does not in any way affect the validity of the Rule, as already observed by us. The express language found in Rule 13(1) clearly discloses the legislative intent to exclude statutory tenants, and to confine the grant of license for the retail vend of Indian Made Foreign liquor only to those who have subsisting lease agreement with the landlords under which they are entitled to carry on business in liquor in that premises. The provisions of the Rent Control Act, which protect the possession of statutory tenants subject to the provisions of the Act do not anywhere confer on such statutory tenants the



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right to carry on any business of their choice in the premises they happen to be in possession of No statutory tenant can assert a right to carry on business in liquor unless the landlord had agreed to such business being carried on, or had refrained from prohibiting the carrying on of such business in that premises. There is no fundamental right in a statutory tenant to carry on business in liquor in the premises in which he is the statutory tenant, or to claim a right to receive a licence for carrying on such business in such premises.''

7. Appearing on behalf of the respondents, the learned counsel for the respondents submits that the petitioners and the 4th respondent are siblings and the children of late C. Karupiah. The petitioner has invested huge amount in setting up the TASMACH shop and therefore he could not be caught in the cross-fire in the fights between the petitioners and the 4th respondent. It is submitted that the dispute between petitioners and 4th respondent was an (internal) fight between them. After, no objection was given pursuant license was granted to the 5th respondent and therefore the 5th respondent cannot be put to loss as the shop was developed by the 5th respondent since 2018 after investing huge amounts. It is further submitted that there is a civil suit pending before the XVIII Asst. City Civil Court, Chennai in O.S.No.1363 of 2019 and therefore the petitioners cannot ask for decreeing the suit in this writ petition by quashing the 3rd respondent's order to withdraw the license granted to the 5th respondent. He therefore submits that 5th respondent could not be burdened.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the order referred by the learned counsel for the petitioner and the impugned communication dated 16.09.2019 of the 3rd respondent.

9. The tender conditions pursuant to which the license was granted to the 5th respondent reads as under:

மதுக்கூட கட்டிட உரிமைதாரரிடமிருந்து தடையில்லா சான்று (No Objection Certificate) பெற்று சமர்ப்பித்த பின்னரே மதுக்கூட அனுமதி வழங்கப்படும்.

10. It was for the 5th respondent to have obtained no objection certificate from all the legal heirs of late C. Karupiah who died on 16.07.2004 while seeking a fresh renewal



of the licence to run the TASMAC shop in the leased premises. In this case, the 5th respondent has acted on the alleged 'no objection certificate' given by the 4th respondent who claims that the property has been settled by their mother namely G.Suganthi. This which would require a detailed consideration and cannot be decided in this writ petition.

11.Considering the fact that the 5th respondent did not obtain a no objection certificate from all the legal heirs of late C.Karuppiyah, this Court is inclined to allow this writ petition filed by the petitioner in terms of the decision of this Court rendered in W.P.No.4996 & 7400 of 2018 vide order dated 11.04.2018. However, liberty is given to the 5th respondent to recover any amount for loss, which the 5th respondent may be sustained on account of the alleged fraud committed by the 4th respondent.

12.Accordingly, this writ petition stands allowed with the above observations. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1. The Managing Director,
The Tamil Nadu State Marketing Corporation
Ltd., (TASMAC),
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The Tamil Nadu State Marketing Corporation
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Chennai (South) District,
No.B-4, Ambattur Industrial Estate,
Ambattur, Chennai - 600 053.

+1 CC to Mr.K.Selvaraj, Advocate sr 60515
+1 CC to Mr.P.Singaram, Advocate sr 60980

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KSM(CO)
SP(13/12/2021)