



WP (MD) No.12222 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 04.07.2022

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Writ Petition (MD) No.12222 of 2022
and
W.M.P.(MD)Nos.8695 and 8697 of 2022

M.Nanthakumar

.. Petitioner

Versus

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

2.The District Collector,
Office of the District Collector,
Thanjavur District.

3.The Assistant Commissioner,
Excise Department,
Thanjavur District.

4.The Regional Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Thanjavur Region,
Thanjavur.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order impugned order issued by the third respondent in Na.Ka.No.12653/2022/X2, dated 02.06.2022, quash the same and consequently, direct the respondents 1 to 3 to renew the licence of the petitioner.



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For Petitioner : Mr.S.Ramsundarvijayraj
For R1 to R3 : Mr.C.Satheesh
Government Advocate
For R4 : Mr.H.Arumugam

ORDER

The petitioner, who is the Managing Partner of Pandiyar Residency Hotel, Thanjavur District, has filed this Writ Petition seeking to quash the impugned order of the third respondent in Na.Ka.No.12653/2022/X2, dated 02.06.2022 and to direct the respondents 1 to 3 to renew the licence of the petitioner.

2.The contention of the petitioner is that in the year 1993, by a deed of Partnership, the Pandiyar Residency Hotel was established, in which, the petitioner's father viz., S.Mani was Managing Director and the petitioner's brothers viz., M.Jeyabalan and M.Sekar and the petitioner were the Managing Partners. The Pandiyar Residency is a Hotel with a restaurant and based on the application made in the year 1994, the respondents have issued FL3 Bar licence to the petitioner with Licence No.22/1994/1995.

3.Further, the petitioner had obtained necessary clearance and No Objection Certificates like, 'D' Form, Fire and Rescue Certificates, Liquor



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Retail Certificates and other necessary certificates from the concerned Department for running of FL3 Bar in the Pandiyar Residency. FL3 Bar is in the name of the Pandiyar Residency for the past 28 years without any adverse remarks from the respondents. While so, the petitioner's father S.Mani died in the year 2014. After his demise, the petitioner requested the respondents for transfer of ownership with the consent of other Managing Partners. Pending request of transfer of ownership, the petitioner has been running FL3 Bar in the Pandiyar Residency from the year 2014 and periodically renewing the licence under the Tamil Nadu (Licence and Permit) Rules, 1981 before the respondents 1 to 3. While so, one of the partners and brother of the petitioner viz., M.Sekar died on 03.07.2018 and legal heirs of the petitioner's brother also gave no objection to the petitioner to carry on FL3 licence in the name of the Pandiyar Residency. Pending the petitioner's application for transfer of name, the respondents periodically renewed the FL3 licence under the Tamil Nadu Liquor (Licence and Permit) Rules, 1981. The petitioner has submitted an application for renewal of FL3 licence for the year 2022-2023, dated 04.04.2022, along with necessary fee of Rs.5,38,750/-. The renewal of licence was routine. On the contrary, the third respondent had sent a communication to the petitioner, rejecting his renewal application, for the reason that Patta and document of the Pandiyar Residency must be in the individual name.



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4.The order of the third respondent is highly arbitrary and illegal and without any notice or opportunity of being heard, the impugned order has been passed. Further, the property is a joint family property and the Hotel Pandiyar Residency is a partnership firm and the petitioner's family members have been running the Residency for the past 28 years. Now, the respondents are insisting an individual Patta and document for the undivided family property, which is not proper.

5.The petitioner had produced a copy of the representations sent to the first respondent, dated 12.11.2021 and 04.04.2022, wherein it is seen that the petitioner had given the family particulars and also the licence particulars, and also the application sent along with necessary documents, including a photocopy of the Will, No Objection Certificate of the other partners, Death Certificate of his father and Legal Heirship Certificate of his father. In the representation, dated 04.04.2022, the petitioner had given the particulars of privilege fee, licence fee, application fee, draught beer fee and late fee, amounting to Rs.5,38,750/- paid by him. The original licence has already been submitted to the first respondent along with licence renewal application for the year 2022-2023 and sought renewal of FL3 licence. The petitioner had also produced a copy of Will of his Late father Mani, wherein at Page No.10, he had given the details of the property, viz., Hotel Pandiyar Residency, Lodge,



and the Bar, which devolves on the petitioner. Further, the other legal heirs of the petitioner's father have given no objection in favour of the petitioner. Hence, the first respondent may be directed to issue FL3 licence in the name of the petitioner.

6.The third respondent filed counter affidavit stating that FL3 licence was issued in the name of Partnership Concern. In the year 2014, the father of the petitioner *viz.*, Mani died and thereafter, in the year 2018, the brother of the petitioner *viz.*, Sekar died. Without informing about the death of the petitioner's father/Managing Director and his brother, the petitioner sought renewal of FL3 licence. A licence cannot be allowed to stand in the name of a dead person. On the other hand, using the old licence, the petitioner and his brothers are getting stocks and carrying on business, which is not proper. Earlier, the petitioner's brother Sekar was carrying on the business. After his demise, the petitioner is continuing the business, but, failed to disclose the ground reality before the authorities. Now, when the Department had objected for transfer of FL3 licence, the petitioner has approached this Court. The petitioner has not approached this Court with clean hands and prayed for dismissal of this Writ Petition. However, the learned Government Advocate for the respondents 1 to 3 fairly submits that earlier, the Pandiyar Residency Hotel was given FL3 licence and they have been holding the licence from the year 1994 and they had not come to any adverse notice of the Department.



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7.Considering the rival submissions and on perusal of the materials on record, it is seen that earlier, the petitioner's father Mani as a Managing Director along with his sons was running the Hotel Pandiyar Residency, for which, FL3 licence was granted. During his life time, the petitioner's father bequeathed a Will, devolving upon 'D' Schedule properties to the petitioner, including the Hotel Pandiyar Residency, Lodge, and the Bar. Now, after the demise of this father and brother, the petitioner has become the exclusive owner of the Hotel Pandiyar Residency. The exclusive right of the Bar has been devolved on the petitioner. The petitioner had already filed an application for renewal and transfer of FL3 licence to his name along with requisite documents and fee. In view of the same, this Court finds that there is no reason to deny the petitioner's request for renewal and transfer of FL3 licence. Hence, the first respondent is directed to consider the application of the petitioner and grant FL3 licence to him, if he is otherwise eligible, without any further delay, preferably, within a period of three weeks from the date of receipt of a copy of this order.

8.With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes/No

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M.NIRMAL KUMAR, J.

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