

Shaju P.D. Vs. The Licensing Authority and Assistant Drug Controller

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Court : Kerala

Decided On : Jun-04-2015

Judge : Honourable the Chief Justice Mr.Ashok Bhushan

Appellant : Shaju P.D.

Respondent : The Licensing Authority and Assistant Drug Controller

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN & THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE THURSDAY, THE 4TH DAY OF JUNE 2015 14TH JYAISHTA, 1937 WA.No. 872 of 2015 ----- AGAINST THE

JUDGMENT

IN W.P.(C).NO.2055 OF 2015 DATED 08-04-2015 -----
APPELLANT(S)/PETITIONER : ----- SHAJU P.D.,
AGED 44 YEARS, SON OF P.O.DEVASSY, PORUTHUKKARAN HOUSE,
PROPRIETOR, JAS MEDICALS, DOOR NUMBER 7528, THAREKKAD,
PALAKAD - 678 001. BY ADVS.SRI.JACOB SEBASTIAN SMT.SHAMSEERA.
C.ASHRAF SRI.T.U.SUJITH KUMAR SMT.ANU JACOB
RESPONDENT(S)/RESPONDENTS : ----- 1.
THE LICENSING AUTHORITY AND ASSISTANT DRUG CONTROLLER, DRUGS
CONTROL DEPARTMENT, THRISSUR - 680 020.

2. THE DRUGS INSPECTOR, ZONE ONE, OFFICE OF THE DRUGS INSPECTOR, PALAKKAD - 678 001.

3. SREE SIMHANADHA BHAGAVATHI DEVASWOM, THAREKKAD PALAKKAD - 678 001, REPRESENTED BY ITS PRESIDENT, MANAGING COMMITTEE. R1 & R2 BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS R3 BY SRI.S.ANANTHAKRISHNAN THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04/06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Msd. ASHOK BHUSHAN, CJ & A.M.SHAFFIQUE, J.

* * * * * W.A.No.872 of 2015 ----- Dated this the 4th day of June 2015

JUDGMENT

Shaffique, J Petitioner has filed this appeal challenging the judgment dated 08/04/2015 in W.P.C.No.2055/2015.

2. The issue involved in the writ petition is with regard to issuance of drug licence in the name of the petitioner. The petitioner contended that he is the proprietor of a medical shop, run in the name and style Jas Medicals. The medical shop is being conducted in a rented premises. The landlord had filed a suit as O.S.No.313/2012 for evicting the petitioner from the said shop. Earlier the medical shop was being run by a partnership firm and it had valid licence in the name of the firm. Partners have already retired and now it is a proprietary concern. Petitioner submitted an application to transfer the licence to his name. By Ext.P8, the Drugs Inspector had communicated to the W.A.No.872/2015 2 petitioner that in view of a pending suit between the petitioner and the landlord regarding the tenancy rights and no records had been submitted to prove the lease, licence cannot be issued in his name. It is, impugning the aforesaid communication dated 23/12/2014 that the petitioner had filed this writ petition and has sought for a direction to respondents 1 and 2 to issue drug licence in his favour. The landlord of the building opposed the above application inter alia contending that in so far as the petitioner is not in legal possession of the premises and since the tenancy has been terminated, he is not entitled for renewal of the drug licence as well. It is also pointed out that the

landlord had filed a suit which is pending consideration. The learned Single Judge, after evaluating the issues involved in the matter, having relied upon the judgment of the Supreme Court in *M.C.Chokkalingam and Ors. v. V.Manickavasagam and Ors* [AIR 1974 SC104 and *Ram Bharosey Lal Gupta (D) Lrs. and Ors. v. M/s.Hindustan Petroleum Corporation Ltd and another* [2013(9) SCC174 formed an opinion that W.A.No.872/2015 3 in so far as there is no valid lease in favour of the petitioner and he is not in lawful possession of the premises, he is not entitled to seek issuance of the drug licence. Hence, respondents 1 and 2 cannot be directed to transfer Ext.P2 drug licence in the name of the petitioner.

3. At the time of admission of the appeal, this Court had issued an interim order dated 21/04/2015 directing respondents 1 and 2 to consider the application for renewal of licence submitted by the appellant without insisting on production of a letter of consent or concurrence or a no objection certificate from the landlord and to issue licence, if he satisfies other requirements. Pursuant to the said interim order, licence had been issued by the competent authority on 28/05/015 which is valid from 17/10/2014 to 16/10/2019 in the name of the appellant. Learned counsel appearing for the appellant submits that he has taken a valid contention in the suit that he is a statutory tenant and unless it is found that lease has been terminated in accordance with law and his possession is found to be unlawful, it was wrong on the W.A.No.872/2015 4 part of the learned Single Judge to have concluded that his possession is unlawful. Learned counsel submitted that the judgment in *Ram Bharosey Lal Gupta (supra)* has no application to the factual circumstances involved in the matter.

4. On the other hand, learned counsel appearing on behalf of the 3rd respondent would submit that the judgments relied upon by the learned Single Judge clearly indicates that a tenant holding over is not entitled for any benefit for renewal of licence and the factual circumstances involved in the case of *M.C.Chokkalingam (supra)* and *Ram Bharosey Lal Gupta (supra)* clearly apply to the facts of the case. Rule 65A of the Drugs and Cosmetics Rules, 1945 reads as under: "65A. Additional information to be furnished by an applicant for licence or a licensee to the licensing authority.- The applicant for the grant of a licence or any person granted a licence under this Part shall, on demand, furnish to the licensing

authority, before the grant of the licence or W.A.No.872/2015 5 during the period the licence is in force, as the case may be, documentary evidence in respect of the ownership or occupation on rental or other basis of the premises, specified in the application for licence or in the licence granted, constitution of the firm, or any other relevant matter which may be required for the purpose of verifying the correctness of the statements made by the applicant or the licensee while applying for or after obtaining the licence, as the case may be." The aforesaid rule indicates that for the purpose of grant of licence under the said statutory provision, the applicant has to furnish to the licensing authority before the grant of licence or even during the period of licence, documentary evidence in respect of the ownership or occupation on rental or other basis of the premises specified in the application for licence or in the licence granted, constitution of the firm or any other relevant matter which may be required for the purpose of verifying the correctness of the statements made by the applicant or the licensee while applying for or after obtaining the licence.

6. It is apparent from the aforesaid statutory provision that the requirement indicated in Rule 65A is for W.A.No.872/2015 6 the authority to verify in what manner the applicant is in occupation. The question to be verified is whether statement in the application is genuine or not and 'or other basis of the premises' in Rule 65A apparently includes a statutory tenant as well. Though the petitioner in the writ petition has stated that he is holding over as a tenant, he has a case in the suit that he is a statutory tenant and cannot be evicted other than by invoking the provisions of the Kerala (Building Lease and Rent Control) Act, 1965. It is therefore clear that a lis is pending between the landlord and tenant in regard to the question of termination of lease and this fact has been clearly indicated by the petitioner in the application submitted by him. Under such circumstances, we do not think that the learned Single Judge was justified in dismissing the writ petition on the ground that his possession is not lawful especially when there are several disputes between the landlord and the tenant. This is a case where the petitioner was occupying the premises and was having valid licence in the name of the firm in W.A.No.872/2015 7 which he was a partner for the last more than ten years. Therefore, the equity ought to have tilted in favour of the petitioner and hence we are of the view that the petitioner was entitled for the direction, as prayed for.

7. As already stated, petitioner is already granted licence by virtue of an interim order passed by this Court. If the 3rd respondent intends to challenge the grant of licence on other grounds, it is always open for him to do so. In the result, the writ appeal is allowed setting aside the judgment of the learned Single Judge. (sd/-) (ASHOK BHUSHAN, CHIEF JUSTICE) (sd/-) (A.M.SHAFIQUE, JUDGE) jsr W.A.No.872/2015 8 W.A.No.872/2015 9

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