

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

THURSDAY, THE 7TH DAY OF APRIL 2022 / 17TH CHAITHRA, 1944

WP(C) NO. 24347 OF 2021

PETITIONER:

K.KRISHNAKUMAR,
AGED 43 YEARS, S/O. V.V. BALAN NAMBIAR,
ANAND NIVAS, URUVACHAL P.O.,
KANNUR DISTRICT 670 702.

BY ADV CIBI THOMAS

RESPONDENTS:

1 MATTANUR MUNICIPALITY,
REPRESENTED BY ITS SECRETARY,
MATTANNUR P.O., KANNUR DISTRICT 670 702.

2 THE SECRETARY,
MATTANUR MUNICIPALITY,
MATTANNUR P.O. KANNUR DISTRICT 670 702.

3 C.K. HAMEED HAJI,
S/O. MAMMED, BUSHARA MANZIL,
KOLARI AMSOM, KALLUR DESOM,
MATTANNUR P.O. KANNUR DISTRICT 670 702.

4 ADDL. R4. IS IMPEADED

SHARAFUDHEEN,
AGED 54 YEARS, S/O. HAMEED HAJI, BUSHARA MANZIL,
MATTANNUR P.O., KANNUR DISTRICT-670702.

ADDITIONAL R4 IS IMPEADED AS PER THE ORDER DATED
04.03.2022 IN I.A.1/2022 IN WP(C) 24347/2021.

BY ADVS.
K.S.MADHUSOODANAN
M.M.VINOD KUMAR
P.K.RAKESH KUMAR
K.S.MIZVER
M.J.KIRANKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07.04.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

T.R. RAVI, J.

W. P. (C). No. 24347 of 2021

Dated this the 7th day of April, 2022

JUDGMENT

The writ petition has been filed challenging Ext.P6, whereby the 1st respondent has rejected the application submitted by the petitioner for licence on the ground that the petitioner has not submitted the consent from the landlord. The petitioner was doing business in room No.VII-356 taken on rent from the 3rd respondent with a licence from 1st respondent Municipality. Ext.P4 licence expired on 31.03.2021. The petitioner has submitted Ext.P5 application for licence on 22.09.2021. The said application has been rejected on the ground that he has not submitted the consent of the landlord. Reliance is placed on the judgment of the Hon'ble Supreme Court in **Sudhakaran V. Corporation of Trivandrum and Another** reported in **2016 (3) KHC 803**, wherein the Hon'ble Supreme Court has in paragraph 8 stated so.

"8. After due consideration of the issues involved, we find merit in the submission made on behalf of the applicant. The statutory provision already quoted above shows that the requirement of consent of

landlord is applicable only when a person intends to obtain a licence for the first time. Renewal or subsequent application for obtaining licence on expiry of the period of the existing licence, during the currency of the tenancy, is not applicable for obtaining licence. Even in the case of application for obtaining licence for the first time, the tenant cannot be deprived of running lawful business merely because the landlord withheld the consent. Valid tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant."

It can be seen from the judgment that the Hon'ble Supreme Court has categorically held that requirement of a consent of landlord is applicable only when a person intends to obtain a licence for the first time. It is further stated that renewal or subsequent application for obtaining licence on the expiry of the period of the existing licence, during the currency of the tenancy, will not require a fresh consent from the landlord. In view of the categoric statement of the Hon'ble Supreme Court and in view of the admitted fact that the tenancy still continues though under the 4th respondent (since the 3rd respondent has transferred his rights to the 4th respondent), Ext.P6 cannot be sustained.

In the result, this writ petition is allowed. Ext.P6 is set aside. The 1st respondent is directed to reconsider Ext.P5 application in

accordance with law and pass fresh orders within one month from the date of receipt of a copy of this judgment. The absence of consent of the landlord shall not be a reason for rejection of the application. The right of the 4th respondent has to be worked out in appropriate proceedings for eviction.

Sd/-

**T.R. RAVI
JUDGE**

Pn

APPENDIX OF WP(C) 24347/2021

PETITIONERS' EXHIBITS

Exhibit P1	TRUE COPY OF THE KACHIT DATED 12.06.2009.
Exhibit P2	TRUE COPY OF THE RENT RECEIPT FOR THE PERIOD FROM SEPTEMBER 2020 TO AUGUST 2021.
Exhibit P3	TRUE COPY OF THE CONSENT LETTER DATED 12.06.2009 ISSUED THE PETITIONER BY THE 3RD RESPONDENT.
Exhibit P4	TRUE COPY OF THE LICENCE ISSUED FROM THE 1ST RESPONDENT MUNICIPALITY TO THE PETITIONER.
Exhibit P5	TRUE COPY OF THE APPLICATION FOR LICENCE SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT MUNICIPALITY U/S 447 OF THE KERALA MUNICIPALITY ACT.
Exhibit P6	TRUE COPY OF THE COMMUNICATION DATED 18.10.2021 ISSUED BY THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS

EXHIBIT R3(A)	PHOTOCOPY OF THE DEED BEARING NO.1919/2019 DATED 19.8.2019
EXHIBIT R3(B)	PHOTOCOPY OF THE DEED BEARING NO.428/2020 DATED 19.2.2020