

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 27<sup>TH</sup> DAY OF MARCH 2024**

**BEFORE**

**THE HON'BLE MR.JUSTICE S. SUNIL DUTT YADAV**

**WRIT PETITION No.22657 OF 2023 (LB-BMP)**

**BETWEEN:**

M/S PANCHARATHNA ENTERPRISES  
(PARTNERSHIP FIRM)  
REP. BY ITS MANAGING PARTNERS  
SRI BALAJI POTHARAJ AND  
SRI SADANANDA SHETTY  
VELVETTE HOTEL  
NO.72/1, OUTER RING ROAD  
NEAR RMZ ECO SPACE  
NEXT TO ADHARSHA PLAM RETREAT  
BELLANDUR  
BENGALURU - 560 103.

... PETITIONER

(BY SRI V. SRINIVAS RAGHAVAN, SENIOR COUNSEL FOR  
SRI VISHWANATHA SETTY. V., ADVOCATE)

**AND:**

1. THE COMMISSIONER  
BRUHAT BENGALURU MAHANAGARA PALIKE  
OFFICE AT NR SQUARE  
HUDSON CIRCLE  
BENGALURU - 560 002.
2. THE HEALTH OFFICER  
BBMP OFFICE



11<sup>TH</sup> MAIN, 4<sup>TH</sup> T BLOCK, JAYANAGAR  
BENGALURU - 560 041.

9. SRI KISHAN HEGDE

10. SRI K. PAVANRAM ACHARYA,

... RESPONDENTS

(BY SRI JAGADEESWARA N.R, ADVOCATE FOR R1 & R2;  
SRI BIPIN HEGDE, ADVOCATE FOR R9 & R10;  
SRI K.N. PHANEENDRA, SENIOR COUNSEL FOR  
SMT. VAISHALI HEGDE, ADVOCATE FOR R3 TO R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF CONSTITUTION OF INDIA, PRAYING TO QUASH THE ORDER PASSED BY THE RESPONDENT NO.2 IN BBMP NO.AA.Y.MA.VA.PR./55/2023 DATED 08.08.2023 TO SEIZE THE HOTEL BUILDING OF THE PETITIONER PANCHARATHNA ENTERPRISES KNOW AS VELVETTE HOTEL, NO.72/1 OUTER RING ROAD, NEAR RMZ ECO SPACE, NEXT TO ADHARSHA PLAM RETREAT, BELLANDUR, BENGALURU - 560 103 VIDE ANNEXURE-M BY ALLOWING THE ABOVE WRIT PETITION AND ETC.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED ON 19.02.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner who is the Lessee and running a Hotel under the name and style of 'Velvette Hotel' has filed the present writ petition seeking for setting aside of the order whereby the respondent-BBMP has ordered for sealing of the premises from 08.08.2023 till further orders. The said order is also on the premise that the partners viz., Kishan Hegde and others who were the previous license holders had issued a letter objecting for renewal of licence and taking note of the same by the respondent-BBMP, it is observed that there is no provision for renewal of the licence and accordingly, order is passed for sealing of the premises.

2. The petitioner is M/s.Pancharathna Enterprises and initially trade licence was granted on 31.07.2019 upon collecting necessary licence charges and the hotel business was being run. It is submitted that the Partnership Firm was reconstituted and Sri.Balajhi

Pothraj was inducted as a Partner and appointed as Managing Director. It is made out from the facts that the petitioner had sought for renewal of licence on 06.01.2023 and for the first time on 18.01.2023 respondent no.2 had called upon the petitioner to obtain No Objection Certificate (NOC) from the Landlord.

3. On 31.01.2023, second respondent had issued final notice to the petitioner calling upon him to renew the trade licence and that they would lock the premises without further notice if renewal was not obtained.

4. On 30.05.2023, the second respondent-BBMP had passed an order for sealing of the premises which came to be challenged in W.P.No.11789/2023 and the writ petition was allowed directing respondent no.2 i.e., the BBMP to consider the representation of the petitioner in accordance with law.

5. On 05.07.2023 once again respondent no.2 has issued a communication to the petitioner directing him to obtain NOC from the Landlord. On 13.07.2023, petitioner had once again sought for renewal while asserting that NOC from the Landlord was not required as proceedings were pending before the court and before the Arbitrator.

6. It is to be noted that the grant of trade licence is under Section 305 of the BBMP Act, 2020 and the relevant provisions of section 305 is as follows:

*"305. Granting of Licence. - (1) The Zonal Commissioner shall have the power to grant licence in matters pertaining to the following subjects:*

*xxx*

*d) Establishment and operation of the Restaurants;*

*(2) the manner of procuring licence for matter pertaining to subjects specified under*

*sub-section (1) shall be provided for under the Rules or Bylaws.*

7. The respondent BBMP has by communication of 18.01.2023 at Annexure-G, called upon the petitioner to obtain NOC from the landlord.

8. The petitioner has taken specific stand that the lease deed has been entered into between the petitioner and respondent Nos. 3 to 7 for a period of twenty-five years. The said lease deed dated 05.04.2017 secures occupation rights as a Lessee for twenty-five years. It is also to be noticed that on the basis of such lease deed, in terms of Annexure A1, trade licence was issued to M/s. Pancharathna Enterprises bearing No.MA251507461547 49221 dated 31.07.2019.

9. Subsequently, disputes have arisen between the landlords and tenants viz., M/s.Pancharathna Enterprises and on the basis of the notice of the

advocate for the landlord, the respondent BBMP noticing that licence was not renewed, has called upon the petitioner to renew the same. On the other hand there were disputes amongst the partners of the petitioner firm who had also made complaints to the respondent BBMP objecting continuance of business activity of the petitioner. Taking note of the stand of the landlord as well as of the partners, the premises has been sealed by the respondent-BBMP.

10. Initially, the order dated 30.05.2023 to seal the premises at Annexure-H1 was set aside by a coordinate bench of this court in W.P.No.11789/2023 and remanded for fresh consideration of application for renewal. Eventually, impugned order at Annexure-M has been passed directing closure of the business.

11. At the outset it must be noticed that the dispute between the landlords and petitioner firm is



pending consideration in arbitration pursuant to the order in CMP No.136/2023. In such proceedings the firm is represent by Balajhi Pothraju. The lease deed referred to in the order appointing arbitrator is the lease deed of 05.04.2017.

12. It is noticed that the landlords themselves sought for arbitration on the basis of Clause 15 of Lease Deed dated 05.04.2017. Till such adjudication is completed regarding the dispute, the petitioner continues to be in possession of the property demised in the lease deed.

13. The observation in the case of ***Sudhakaran v. Corporation of Trivandrum and Another***<sup>1</sup> that '*valid tenancy itself have implied authority of the landlord for legitimate use of the premises by the tenant*' though

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<sup>1</sup> AIR 2016 SC 3180

rendered in a different factual context, can be relied upon in support of the observation made above.

14. During such time and in light of the dispute raised, if petitioner is called upon to produce an NOC by the respondent BBMP, the said condition cannot be complied within the context of the litigation between the Landlord and the tenants.

15. However, insofar as insistence on such NOC, the Division Bench of this court in W.A.No.2570/2009 c/w 9574/2010<sup>2</sup> has observed that requirement of NOC being only a procedural requirement cannot be insisted upon in all circumstances. In a similar factual matrix the court has upheld the order of the Single Judge dispensing with insisting on obtaining of NOC from the landlord. The Observation at paras 7 and 8 are as follows:

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<sup>2</sup> Smt.Prema, W/o Krishnamurthy v. The State of Karnataka and Others

*"7. Therefore, in our opinion, the facts in the instant case cannot be considered to be analogous to the situation in the cited cases. Though it is contended that in the instant case also the lease has been terminated and therefore, the possession is unlawful, the fact that ejectment could be made only after resorting to due process of law cannot be in dispute. The question therefore, is as to whether the sixth respondent who is admittedly in possession can be prevented from putting the premises to use. Obviously it cannot be prevented since at best, the appellant may be entitled to seek for mesne profits, if a case in accordance with law is made out. In such circumstance, if the use of the property can be made only by obtaining a trade licence from the BBMP, under the provisions of the Karnataka Municipal Corporations Act, the same would have to be obtained. In fact, the conduct of the appellant also would disclose that even though the premises was let out in 1999 and*

*the business was being carried on, it is only in 2009 a grievance was made about there being no valid licence and had approached this court in the earlier W.P.No.11133/2009. Even earlier to the same, the contesting parties herein have been litigating before the Civil court, more particularly in O.S.No.7446/2008 to protect the possession.*

*8. In the above context, if it is considered, there is no specific provision pointed out wherein the consent of the landlord is mandatory in all circumstance. What is pointed out is that for the licence to be granted under the "Suvarna Arogya Paravanige", it requires that consent letter from the property owner should be enclosed as indicated in Annexure-G to the scheme. A perusal of the said Annexure-G would disclose that it is appended to indicate the procedural requirement. When it shown only as a procedural requirement under the scheme, it cannot be insisted in all circumstances. Further, Section 353 of the Karnataka*

*Municipal Corporations Act, 1977 referred by the appellant in fact vide sub-section (3) refers to the owner or occupier and not the nature of tenancy and the other sub-sections indicate that the discretion is with the Commissioner even with regard to specifying the restrictions and conditions. In the peculiar facts herein, we have already noticed that nature of disputes and therefore as rightly observed by the learned Single Judge, the sixth respondent herein will not succeed in obtaining the consent letter. In that circumstance, the competent authority after referring to all these aspects of the matter has ordered the issue of trade licence and the same has been granted. In any event, it has also been made subject to the result of the decision of the civil dispute pending between them. We therefore see no reason to interfere either with the order the learned Single Judge or the order of the competent authority."*

Though the said order was passed in the context of the Karnataka Municipal Corporation Act, 1976, the logic could be extended as regards the present case also.

16. In fact, under the 2020 Act though licence is granted under the Section 305 Clause (d), the procedural requirement that was contemplated to be provided for under the rules or bylaws are absent.

17. If that were to be so, the imposition of condition such as obtaining of NOC from landlord could at best be construed to be a procedural requirement that cannot be mandatorily insisted upon in the absence of any statutory backing either under the Act or in the rules which are in the nature of delegated legislation. In the absence of such backing in law, restriction on the fundamental right conferred under Article 19(1)(g) of Constitution of India cannot be permitted except on the grounds envisaged under article 19(6) *viz.*, in the

interest of general public. *Prima facie* the insistence on NOC from landlord would not fall into the category of permissible restriction envisaged under article 19(6). Accordingly, the insisting on obtaining of NOC cannot be construed to be a mandatory requirement.

18. Insofar as the *inter se* disputes between the partners, it is stated that the matter is a subject matter of resolution in arbitration proceedings in A.C.No.517/2023 and the said dispute is an extraneous factor vis-a-vis the claim of the petitioner firm for issuance of trade licence made to respondent BBMP.

19. Needless to state the outcome of the arbitration proceedings between the landlord and the petitioner and the partners *inter se* may have a bearing on the right of the petitioner to carry on business and such contingency would arise only when the proceedings referred to above reach a legal finality.

20. Accordingly, while this court does not intend to interfere with the conclusion of the order at Annexure-M, however, in light of the discussion made above, the premise in the order at annexure M is set aside. Request for renewal or a fresh licence as the case may be, may be considered without reference to the NOC from the landlord.

21. In light of discussion made above, once the request for renewal/issuance of fresh licence is considered in the affirmative, the sealing of establishment at Annexure-M would stand set aside.

22. Accordingly, the petition is ***disposed off***.

**Sd/-  
JUDGE**

Np/-