

J A M A I C A

R.M. MISCELLANEOUS APPEAL No. 4 of 1972

IN THE COURT OF APPEAL

BEFORE: The Hon. Mr. Justice Fox, J.A.
The Hon. Mr. Justice Graham-Perkins, J.A.
The Hon. Mr. Justice Robinson, J.A. (Ag.)

Re: GRANT OF SPIRIT LICENCE TO CLUB MINERVA

Dr. Lloyd Barnett and Dr. Adolph Edwards for appellants.

14th and 31st July, 1972

FOX, J.A.:

This is an appeal from a decision of the Licensing Authority for the parish of Manchester granting a club licence to Mrs. Patricia Abiola in respect of premises at 35A Caledonia Road, Mandeville. The appellants are householders in Mandeville who objected to the licence and who appeared before the Licensing Authority for that purpose. They are, therefore, persons "aggrieved" by the decision of the Authority and entitled to "appeal on a question of law from such decision to the Court of Appeal." (Section 71 (1) of the Spirit Licence Law, Cap. 364). There was no appearance by or on behalf of the Superintendent of police for the parish or the applicant.

Dr. Barnett's submissions before us can be divided into three parts:

- (a) That there was no sufficient evidence that
the notice required by section 17 (1) of

the Law to be "fixed" and "to be conspicuously and continuously exhibited" on the premises for the space of twenty-one days before the Session of the Authority on 23rd day of March, 1972 had in fact been so fixed and exhibited. Consequently a necessary condition precedent for the hearing of the application had not been fulfilled, with the result that, in law, a hearing of the application at the session at which it was heard was not competent, and should have been refused on the ground specified in section 20 (6) of the law.

- (b) All the evidence supported the objection that the premises were likely to be a nuisance to the neighbourhood. There was no evidence to the contrary, and as a matter of law there was no alternative to a refusal of the licence on the ground specified in section 20 (5) of the law.
- (c) That on the uncontradicted evidence,
 - (i) the application required by law to be submitted to the Parish Council for approval of the erection of a club at 35A Caledonia Road had not been so submitted;
 - (ii) there is no official record of premises known as 35A Caledonia Road;
 - (iii) no application for the erection of a club on 35 or 35A Caledonia Road was granted by the Parish Council, and no permission was given by the Council for the construction of a building on those

premises;

- (iv) a notice to cease building operations of the club on premises recorded as 35 Caledonia Road was properly served on the applicant on 27th October, 1971 and disregarded.

- (v) The Town Planner had refused to approve an application for the erection of the Club.

In the "interest of the good order and welfare of the community", the Authority should have considered these circumstances overwhelmingly sufficient for the exercise of its discretion to refuse the application on the ground as stipulated in the omnibus provision which conclude section 20 of the law.

The sufficiency or the capability of evidence is a question of law. In re Iona Bonner (1936) 3 J.L.R. 32. The Court, therefore, has jurisdiction to entertain and allow the appeal on anyone or all three of these grounds. Nevertheless, however meritorious may be the submissions in (a) and (b), it is not really necessary to pronounce on them in view of our decision as to (c). The contention in (c) is unanswerable. This Court is not provided with the reasons of the Authority for granting the licence. It gave none. Unlike the situation where, if the Authority rejects an application, "the clerk shall, on demand in writing made at any time not less than three days after such rejection, furnish to the applicant whose application has been rejected, a certificate in writing of such rejection and the reasons for the same", (vide section 26), no statutory provisions enable an objector to obtain the reasons of the Authority for the grant of a licence. This is not satisfactory. In this appeal this Court has no way of knowing:

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- (a) whether the authority failed altogether to exercise its discretion, or
- (b) whether, if it did exercise its discretion, what were the considerations which led it to refrain from refusing the application.

Nevertheless, however, it did proceed, the Authority cannot escape condemnation in the discharge of its discretionary function. For in granting the licence the Authority has condoned a flagrant defiance of orderly procedures, and as a result has failed to act in the interests of the good order and welfare of the community. It has been wrong in the exercise of its discretion. An erroneous exercise of the discretion is a question of law which is within the juridical competence of this Court. On this ground also, the Court has jurisdiction to set the matter right on appeal.

The Court has "complete and absolute authority in and over the matter of the appeal," S. 71 (3). In the exercise of that power we allow the appeal. We set aside the grant of the licence and the order for the payment of costs by the objectors. We refuse the application.