

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.02.2015

CORAM:

The Honourable Mr. Justice S.VAIDYANATHAN

Writ Petition Nos.27416 & 30443 of 2012

And M.P.Nos.1 and 2 of 2012

W.P.No.27416 of 2012:

V.Rajamma
.. Petitioner

Vs.

1. The District Collector,
Krishnagiri District
2. KSunderraj
3. K.Devendran ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Mandamus, to direct the District Collector, Krishnagiri to initiate appropriate action based on the representation dated 1.9.2012.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.T.N.Rajagopalan, Spl.G.P-R1
Mr.A.Chidambaram - R2
No appearance -R3

W.P.No.30443 of 2012:

Sundarraaj .. Petitioner

Vs.

1. The District Collector,
(Licensing Authority),
Office of the District Collector,
Krishnagiri District,
Krishnagiri.

2. Tmt.V.Rajamma .. Respondents

Prayer: Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Mandamus, to direct the first respondent to grant renewal of C-Form license for the theatre, Srinivasa theatre, Hosur to the petitioner.

For Petitioner : Mr. A.Chidambaram

For Respondents : Mr.T.N.Rajagopalan, Spl.G.P-R1
Mr. V.Raghavachari-R2

COMMON ORDER

The Writ Petition in W.P.No.27416 of 2012 has been filed, praying for the issuance of a writ of Mandamus, to direct the District Collector, Krishnagiri to initiate appropriate action based on the representation dated 1.9.2012.

2. The Writ Petition in W.P.No.30443 of 2012 has been filed, praying for the issuance of a writ of Mandamus, to direct the first respondent to grant renewal of C-Form license for the Theater, Srinivasa theatre, Hosur to the petitioner.

3. Since the subject matter of both the writ petitions is common, these writ petitions are taken up together for final disposal. It is appropriate to refer the brief facts of the case of the petitioner in W.P.No.30443 of 2012 at first instance, which are as follows:

4. According to the petitioner, C-Form License to run M/s.Srinivasa Theater originally stood in the name of his father, Late Krishnappa and after his demise in the year 1983, himself and his brothers, P.K.Srinivasan, P.K.Amarjothi and P.K.Devendran along with two sisters, Smt.Girija @ Padmavathi and Smt.Sampath Lakshmi had given no objection for transfer of the C-Form license in the name of the second respondent, who is none other than their mother, Mrs.Rajamma since she is the elder member of the family and accordingly, the license was transferred in her name in the year 1985. It is stated that though the license was transferred in the name of the second respondent, the petitioner and his elder brother, P.K.Srinivasan were managing the theater on behalf of the Hindu Undivided Family and after demise of his brother P.K.Srinivasan, the petitioner has been managing the theatre from 2002 onwards by renewing C Form license periodically by signing and submitting necessary application before the first respondent. While so, when the petitioner applied for renewal of C Form license of the theatre in August, 2012 and pending inspection report called for from the Sub-Collector, Hosur, the petitioner applied for E Form temporary license, which was also granted on 31.8.2012 for a period of one month from 1.9.2012 which was again extended till 1.10.2012. According to the petitioner, though he applied for E form license for the period 1.11.2012 for one month pending issue of C Form license, the first respondent has not issued the same for the untenable objections raised by the second respondent. It is also stated that at present the theatre is under his management as Kartha of the joint family and the second respondent cannot raise any valid objections for the issue of C form licence or E form license as per the judgment of this Court reported in 1999(1) MLJ 526 and 1999(3) MLJ 688. Therefore, the petitioner has come forward with the present writ petition.

5. According to the petitioner in W.P.No.27416 of 2012, who is the second respondent in W.P.No.30443 of 2012, E-form license in respect of the theatre stands in her name and she has been running the theatre all along without any interference. However, since disputes arose among the members of the family, her daughters have filed a suit for partition in O.S.No.86 of 2011 before the District Judge at Krishnagiri and her sons have filed a suit for injunction in O.S.No.35 of 2012 before the Sub Judge at Krishnagiri. In such circumstances, the petitioner addressed a letter to the District Collector, requesting him not to renew the license which was due to expire on 30.8.2012 and she also gave an application to that effect to the District Collector in person. She expressed her opinion before the Collector that she has no interest to run the theater on account of disputes among her children. The grievance of the petitioner is that despite her request, the District Collector issued e-form license to the respondents 2 and 3 in her name. She claimed that her signature was forged by the respondents 2 and 3. It is contrary to Rule 92 of Tamil Nadu Cinema Regulation Rules 1957. Hence, the petitioner has come forward with the writ petition.

6. A counter affidavit has been filed in W.P.No.27416 of 2012 by the first respondent/District Collector, wherein, it is stated that after obtaining due consent from the legal heirs of original licensee who expired in the year 1983, C Form license was transferred in the name of the petitioner, V.Rajamma and since its validity expired on 31.8.2012, a renewal application in the name of the petitioner has been received along with original C form license, electrical certificate, structural soundness certificate, challan for Rs.2500/- towards renewal fee, etc. Consequently, a report from the Sub Collector, Hosur was called for after making an inspection of the theater. In the meanwhile, a petition in the name of the petitioner dated 25.8.2012 was received, requesting for issuance of E form license and it was considered and granted up to 30.9.2012. Likewise, application for renewal of E-form license pending issue of C form license was again received in the name of the petitioner and it was granted upto 31.10.2012. As the validity of the E form license expires on 31.10.2012, second respondent has applied for extension for a further period of one month, claiming himself as the manager/proprietor of the theatre. However, in view of the petition already submitted by the licensee, the petitioner herein objecting for renewal of C form until further request from her, the request for extension of E form licence along with renewal of C form was not entertained. Therefore, it is stated that since the application for grant of E form license in the name of the original C form license holder was received, the first respondent has also in the name of the original license holder, the same were entertained till the receipt of objections made by the petitioner.

7. For the sake of convenience, the parties will be referred to as per their nomenclature mentioned in W.P.No.27516 of 2012,

viz., the original C' form license holder, Tmt.Rajamma as the petitioner, the authority, i.e. the District Collector, Krishnagiri District as the first respondent and the petitioner in W.P.No.30443 of 2012 who seeks for renewal of C form licence, as the second respondent.

8. Mr.A.Chidambaram, learned counsel appearing for the second respondent would contend that the second respondent being a co-owner, is having right to enjoy the property and make use of the same without detriment to the other co-owners and since he has been managing the affairs of the theater, he has applied for grant of renewal C-form licence and the first respondent cannot reject the same based on the objections raised by the petitioner, which were not relevant for consideration. He pointed out that if the theater is closed, it is a loss to the entire family including himself. Therefore, he contended that as long as his share is involved in the property of the joint family, he is having every right to manage the same, however subject to his user should not amount to ouster of other co-owners and he would be liable for accounts. The learned counsel also submitted that already civil suits were filed over the property in question and till the final adjudication of the dispute, the second respondent can be permitted to run the theater by granting renewal of license and to maintain accounts in respect of the income derived from it for disbursement among the co-owners. In support of his contentions, the learned counsel relied upon a decision of this Court reported in "The Licensee, Sri Lala Talkies, Madurai versus The District Collector, Madurai" reported in (1999) 1 MLJ 526, wherein, the learned single Judge of this Court, granted the relief by directing the authority to grant C form licence to the petitioner therein, who is a co-owner, holding that the petitioner therein, being a co-owner of the property (i.e. theater), is entitled to make use of the same without detriment to the other co-owners. This matter was taken up in appeal and while dealing with the same, a Division Bench of this Court, by its decision reported in "P.Subba Naidu versus The Licensee, Sri Lala Talkies and others" reported in (1999) 3 MLJ 688, while affirming the order of the learned single Judge, has held that the licence, if granted, will not take away the right of the parties as co-owners over the property.

9. On the other hand, Mr.V.Raghavachari, learned counsel appearing for the second respondent would contend that the petitioner, who is the original C-form licensee holder, has specifically raised objections and intimated in person to the first respondent not to grant renewal of E form licence in favour of the petitioner since no consent was given by her or any other co-owners and despite of the same, renewal of E form license was granted till 31.10.2012 and it is not open to the first respondent to issue E form license under Section 97 of the Rules unless it has been made by the original licensee. He pointed out that the application for license for running a cinema theater has to be signed by all the persons who are having right and title over the said property and if any one of them raised objections, the same have to be considered and cannot be lightly brushed aside. In support of his contentions, the learned counsel relied upon a decision reported

"AVM Theatre, rep. by its Licensees and others versus The State of Tamil Nadu, rep. by Secretary to Government and others, reported in 1997(1) MLJ 116.

10. It is not in dispute that after demise of the original licensee, Krishnappa, C form license was transferred in the name of the petitioner, after the application duly signed by all the members of the family who are having share in the property and gave the consent. It was subsequently renewed periodically up to 31.8.2012. Thereafter, the licensee, the petitioner herein, has not applied for renewal of the licence. However, the second respondent has contended that being a co-owner of the property, he is entitled to grant of renewal of licence in his name. In support of his contentions, he relied upon the decisions in "Sri Lala Talkies" and "P.Subba Naidu" (cited supra).

11. It is relevant to extract Rule 13 (1) of the Tamil Nadu Cinemas Regulation Rules 1957 (in short, the Rules), which reads as under:

"13(1). If the applicant for the licence is the owner of the site, building and equipment, he shall produce to the licensing authority the necessary records relating to his ownership and possession thereof. If he is not the owner, he shall to the satisfaction of the licensing authority, produce documentary evidence to show that he is in lawful possession of the site, building and equipment."

12. A reading of the above provision, it is clear that if the applicant either for the grant of licence or renewal, if he claims he is the owner of the property, he has to produce before the licensing authority the necessary records not only relating to his ownership but also regarding his possession. In this case, it is the claim of the petitioner that as he is the co-owner of the property, he is entitled to grant of renewal licence in his name.

13. The decisions relied upon by the petitioner, in my opinion, have no relevance for the present case. The above said decisions were rendered by this Court granting the relief to the petitioner therein, who was a co-owner, specifically taking note of the admitted fact that he was in lawful possession. But in this case, it is relevant to note that the petitioner has not produced any documentary evidence before the authority to establish that he has been in possession. Admittedly, there were disputes among the members of the joint family and civil suits were also filed, wherein, interim order of status quo was also ordered. However, it is settled law that the civil dispute does not stand in the way of incorporating Rule 13(1) of the Rules (Refer: R.Dhasaiyan and another versus Govt.of Tamil Nadu, 1998 MLJ (1) P.399).

14. It is settled law that when originally the licence was issued in the name of a person, the renewal of the same could be applied for and obtained only by the same person whose name found in the original licence (refer 1972 T.N.L.J.440). In the present

case, it is not in dispute that the C-form licence was originally in the name of the petitioner which was obtained having received consent from all the co-owners. However, subsequently, the petitioner was not interested in renewing the license and she has specifically raised objections even for grant of temporary permit. In this regard, it is worthwhile to refer a decision of this Court reported in "A.V.M.Threatre (cited supra), wherein, it has been held as under:

"... When originally the licence was issued in the names of two persons jointly, the renewal of the Hence would be applied for and obtained only in the names of those persons on the application of those two persons. Whether the persons who applied for renewal of 'C' form licence are in majority has no relevance. All the persons in whose names the original licence stands should sign the application for the renewal of 'C' form licence. In this context, the contention of the petitioner for the renewal of 'C' form licence. In this context, the contention of the petitioner that three licenses out of four have signed the application for the renewal of the 'C' form licence and hence the authority should have ignored the objection of the fourth respondent has no relevance having regard to the fact that in a case of this nature, the character and nature of the licence involve the performance of duties and the obligations exposing the licensees to the risk of prosecution and penalties for violation of the conditions or any of the provisions governing the issue of licence and the objection of one of the licensees has to be given due weight and consideration and it cannot be lightly brushed aside. In this connection, it will be better to refer to Ganapathy Swamy's case reported in (1995) 1 L.W. 622, wherein this Court in paragraph 10 observed as follows:

At the instance of repetition it may be pointed out that in the latest decision of the Division Bench the licence stood only in the name of one person, unlike the present case. The plea based on the capacity of any one partner applying for renewal against the wishes of other partners and purporting to represent the other partners who do not wish to continue the business by taking shelter under the general law has no relevance and such claims can have no application also to claims arising under the special legislation in question which, as pointed out earlier, carries with the licence issued thereunder onerous responsibilities and Obligations exposing the licensee to the risk of prosecutions and penalties for any violation in addition to the mere right of running the theatre alone."

15. Applying the ratio laid down in the above decision, it can be held that the application for renewal of C form licence should be applied only by the person in whose name the original licence stands and if the property stands in joint members of the family, all of them should sign the application for renewal of the licence by filing an affidavit individually stating that they continue to be in possession of the property jointly and that they have not entered into any transaction affecting the possession of their rights. A co-owner or a person who has a share in the property, can apply for renewal of the license, however, subject to establishment of his lawful possession over the property and he can make use of the same without detriment to the interest of other co-owners and that the authority cannot renew the licence in favour of a co-owner if any or all other co-owners objected to it.

16. In view of the above discussion, I am of the view that the prayer sought for by the second respondent in W.P.No.30443 of 2012 cannot be granted.

In the result, the Writ Petition in W.P.No.30443 of 2012 is dismissed and consequently, the Writ Petition in W.P.No.27416 of 2012 is allowed and the first respondent/District Collector is directed to consider the representation of the petitioner dated 1.9.2012 and pass orders in accordance with law, after affording an opportunity to all the concerned. It is needless to mention that the first respondent is always at liberty to apply for renewal of C-form license, after getting consent from all the co-owners including the petitioner herein. No costs. Consequently, connected MPs if any, are closed.

Sd/-
Deputy Registrar (Judicial)

/true copy/

Sub Asst. Registrar

Suk

To

The District Collector
Licensing Authority
Krishnagiri District

2 cc to M/s.V. Raghavachari, Advocate, Sr. 9890, 9891
2 cc to M/s.A. Chidambaram, Advocate, sr. 9732
1 cc to Government Pleader, sr. 9984

W.P.NO.27416 & 30443 OF 2012

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