



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 29.03.2016

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**THE HONOURABLE MR. JUSTICE B. RAJENDRAN**Writ Petition (MD) No. 1259 of 2016  
and WMP (MD) Nos. 1028 and 1029 of 2016

N. Balasubramanian

.. Petitioner

Versus

1. The District Collector  
Collectorate  
Trichy District
  2. District Welfare Fund Committee  
represented by Treasurer K. Govindaraju  
Son of Late. Krishnan  
having office at No.15/D, McDonalds Road  
Contonment, Trichy - 1
  3. The Superintending Engineer (PWD)  
Planning & Design (Building) Circle  
Chepauk, Chennai - 600 005
- (Respondents 2 and 3 were impleaded as  
per the order dated 23.02.2016 passed  
in WMP (MD) No. 2199 of 2016 and  
3406 of 2016)

.. Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.Ka.D1/28015/2015 dated 12.01.2016 on the file of the respondent and quash the same as illegal and consequently for a direction directing the respondent to remove the seal from the theater and renew 'C' form licence for 'Kalaiyarangam Theater' (A/C) No.15/D, McDonalds Road, Cantonment, Trichy, belonging to the District Welfare Fund Committee in Trichy City based on the application of the petitioner dated 21.11.2015 for a period of one year from 15.01.2016 to 14.01.2017 within a time stipulated .

For Petitioner : Mr. T. Lajapathi Roy

For Respondents : Mr. J. Gunasekar

Government Advocate for RR1 and 3

Mr. G.R. Swaminathan

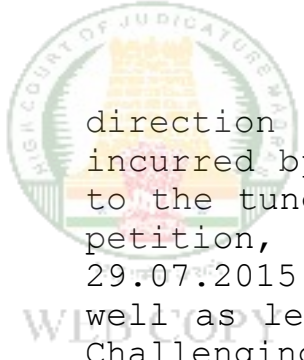
for Mr. P. Arun Jayatram for R2

The petitioner calls in question the validity of the order dated 12.01.2016 of the first respondent, in and by which, the

first respondent refused to renew the 'C' form licence issued to the petitioner to enable him to run the cinema theatre.

2. The case of the petitioner is that he has taken on lease the cinema theatre named "Kalaiarangam" belonged to the second respondent from 08.05.2012 for a period of five years ending with 07.05.2017. According to the petitioner, the possession of the theatre premises was handed over to him on 18.05.2012 and upon taking possession, he found that the building is not fit enough to screen movies. According to the petitioner, there were many repairs to be carried out to enable him to run the theatre, therefore, he demanded the second respondent to make necessary arrangement for renovation of the theatre and to make it fit for playing movies. On the basis of such request, a committee comprised of Revenue Divisional Officer, Executive Engineer (PWD), Executive Engineer (Electricals-PWD), Treasurer of the second respondent committee, an auditor and the Government Pleader concerned have inspected the theatre premises and permitted the petitioner to commence the renovation work and promised to reimburse the expenses thereof. Accordingly, the petitioner proceeded with the renovation work, incurred a sum of Rs.1,08,01,608/- and intimated it to the second respondent. In the meanwhile the "C" form licence issued to the petitioner theatre expired on 30.11.2013 and therefore, the petitioner applied for renewal. Since the "C" form licence has not been renewed, the petitioner filed WP (MD) No. 19143 of 2014 before this Court and a direction was issued by this Court on 26.11.2014 directing the respondents therein to consider the application of the petitioner for renewal. While the petitioner was anticipating to get the "C" form licence renewed, the second respondent, by a communication dated 24.03.2015 called upon the petitioner not to run the theatre without obtaining necessary renewal of "C" Form licence. Challenging the communication dated 24.03.2015, the petitioner filed WP (MD) No. 5400 of 2015 before this Court and this Court granted interim injunction on 10.04.2015 on condition the petitioner pays the entertainment tax and lease amount before 24.04.2015. In spite of such a direction, the respondents have sealed the theatre premises and therefore, the petitioner has filed Contempt Petition No. 632 of 2015 before this Court. On 28.04.2015, this Court passed an order directing the petitioner to pay 25% of the lease rental along with entertainment tax and on receipt of the same and on production of relevant material, the respondents shall issue "C" form to the petitioner. Immediately, the petitioner has submitted a demand draft for Rs.30,00,000/- representing 25% of the rental arrear as on 06.06.2015. On such payment, the respondents removed the seal of the premises and also renewed the "C" form licence issued to the petitioner on 11.06.2015.

<https://hcservices.courts.gov.in/hcservices/> meanwhile, the petitioner has filed WP (MD) No. 6949 of 2015 before this Court challenging the order dated 24.04.2015 of the first respondent herein and for a consequential



direction to the first respondent to reimburse the expenses incurred by the petitioner for renovation of the theatre premises to the tune of Rs.1,08,01,608/-. During the pendency of the writ petition, the second respondent herein, by a communication dated 29.07.2015 directed the petitioner to pay entertainment tax as well as lease rentals along with 18% fine amount within 15 days. Challenging the order dated 29.07.2015, the petitioner filed WP No. 14463 of 2015 and it was dismissed by this Court directing the petitioner to work out his remedy before the Civil Form. Accordingly, the petitioner filed O.S. No. 1324 of 2015 before the Sub Court, Trichy and obtained an order of injunction restraining the second respondent herein from interfering with the petitioner's right to run the theatre in his capacity as a lessee.

4. According to the petitioner, the "C" Form licence issued to him is having it's validity only till 14.01.2016. Therefore, on 21.11.2015, he has submitted an application seeking renewal, but the respondents did not consider the renewal application. Therefore, the petitioner once again filed WP No. 576 of 2016 before this Court. By order dated 11.01.2016, this Court disposed of the writ petition with a direction to the first respondent to consider the application for renewal. Pursuant to such direction, the first respondent has passed the impugned order dated 12.01.2016 refusing to renew the "C" form licence in favour of the petitioner. Challenging the same, the present writ petition has been filed.

5. The learned counsel appearing for the petitioner would contend that the reasons assigned in the impugned order dated 12.01.2016 are untenable. The first respondent did not consider the fact that the petitioner has paid a sum of Rs.61,81,000/- as advance lease amount and it is retained by the second respondent. Therefore, according to the learned counsel for the petitioner, the question of arrears of rent payable by the petitioner will not arise. It is further submitted by the learned counsel for the petitioner that the petitioner has submitted the application seeking for renewal of "C" form licence. The petitioner has made all infrastructural amenities by carrying out the renovation work and that the theatre premises is fit for screening the movies. While so, the respondents, with a malafide intention, refused to renew the "C" form license in favour of the petitioner. According to the learned counsel for the petitioner, as per Rule 42 (1) of Tamil Nadu Cinemas (Regulation) Rules, 1957, "C" form licence shall be renewed based on the validity of Electrical Inspector's certificate and structural stability certificate alone. When the petitioner has renovated the premises and obtained necessary certificates in his favour, the refusal of the first respondent to renew "C" form licence is contrary to the provisions of Rule 42 (1) of the Tamil Nadu Cinemas (Regulation) Rules, 1957. The learned counsel for the petitioner also submits



that pursuant to the interim order passed by this Court, the petitioner has remitted a sum of Rs.33,44,957/- representing 25% of the rental arrear and entertainment tax. Above all, the petitioner has spent a sum of Rs.1,08,01,608/- towards renewal of the theatre premises after obtaining consent from the second respondent. While so, the petitioner has to be refunded the amount by the respondents. Above all, the petitioner has filed a suit in O.S. No. 1324 of 2015 before the Sub Court, Trichy and obtained an interim injunction. Therefore, it is submitted that the impugned order passed by the first respondent is contrary to the order passed by this Court besides being unreasonable. Therefore, the learned counsel for the petitioner prayed for allowing the writ petition.

6. Per contra, the learned Government Advocate, appearing for the respondents 1 and 3, would contend that the petitioner has taken on lease the theatre premises from the second respondent Committee namely The District Welfare Fund Committee, Tiruchirapalli which is a charitable institution established under the Tamil Nadu Societies Registration Act, 1975. As per the bye laws of the Committee, the first respondent is the President and the District Revenue Officer is the Vice-President of the Committee along with the Personal Assistant to Collector (General) as the Secretary and Revenue Divisional Officer as the Deputy Secretary. According to the first respondent, the lease in respect of the theatre premises was given to the petitioner from 08.05.2012 to 07.05.2017 and the C form licence stood transferred in his name till 30.11.2014. On expiry of the C form licence, the petitioner submitted an application for renewal. Before renewing the licence, an inspection was carried out by the first respondent during which it was noted that the petitioner did not obtain Safety Certificate from the Electrical Inspector as contemplated under the Tamil Nadu Cinema (Regulation) Rules, 1957. Therefore, on 24.03.2015, the petitioner was directed to obtain such certificate and to submit it before the first respondent-licensing authority. However, the petitioner did not submit such certificate. Therefore, orders were issued in public interest and safety prohibiting the petitioner to run the theater. According to the first respondent, as per the order passed by this Court in WP (MD) No. 5400 of 2015 dated 28.04.2015, the petitioner paid a sum of Rs.33,44,957/- being the lease amount and also submitted the Safety Certificate, as required, on 08.05.2015. Therefore, the C form licence was renewed from 11.06.2015 to 14.01.2016 vide proceedings dated 11.06.2015 of the first respondent. Again, the petitioner submitted application dated 23.11.2015 seeking renewal of the licence from 15.01.2016 to 14.01.2017. On the basis of such application, an inspection was conducted on 06.01.2016 and it was noted that there were several short comings in the theatre. According to the first respondent, the petitioner did not produce the Structural Soundness Certificate from the Public Works



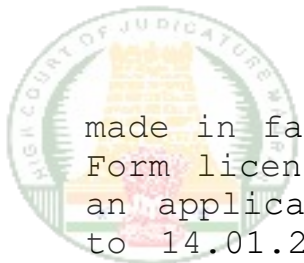
Department, the ceiling at left and right verandah is in a damaged condition which would likely to endanger the visiting public to the cinema hall. This was also confirmed by the Treasurer of the second respondent committed by a communication dated 12.01.2016 that the theatre is in damaged condition and the petitioner is in arrears of Rs.2,78,86,650/-. Therefore, the second respondent raised objection for grant of renewal in favour of the petitioner. According to the first respondent, the Executive Engineer of the Public Works Department also submitted a report dated 06.01.2016 stating that the theatre premises is in a dilapidated condition and there were several damages in the roof of the building due to recent rain. It is therefore submitted by the learned Government Advocate appearing for the respondents 1 and 3 that the owner of the building, namely the second respondent opposed the grant of licence in favour of the petitioner since the petitioner is due to pay arrears of lease amount. On the other hand, the premises in question is in a dilapidated condition and it is not desirable to screen movies where public gather in large number. It is mainly contended by the learned Government Advocate that as per Rule 97 (1) of the Tamil Nadu Cinemas (Regulation) Rules, 1957, structural soundness certificate from the public works department is necessary for renewal of the C form licence. According to the learned Government Advocate, unless the theatre premises is repaired and shown to be fit enough for public gathering, "C" Form licence or "E" Form licence cannot be given and the non-issuance of the licence is in accordance with the Rules. The learned Government Advocate would further submit that the rent and service tax is pending from December 2015 to the tune of Rs.2.78 crores. The claim of the petitioner as though the second respondent has to repay Rs.1,08,01,608/- towards the repairs or renovation carried out by him is false and incorrect. In any event, as on date, the "C" Form licence has not been renewed in favour of the petitioner and therefore he could not screen movies in the theatre. Above all it is submitted by the learned Government Advocate that the first respondent has passed a detail order justifying the rejection of the application for renewal submitted by the petitioner and it does not call for any interference by this Court.

7. The learned counsel for the second respondent, relying on the counter affidavit, would vehemently oppose the writ petition. According to the learned counsel for the second respondent, as on February 2016, the petitioner is liable to pay rent, interest thereon and service tax to the tune of Rs.3,01,00,000/-. As regards the claim of the petitioner that he had carried out repair and renovation to the tune of Rs.1,08,01,608/-, the learned counsel would contend that such a claim is not based on any records besides it is false. The petitioner did not seek any prior permission from the second respondent before carrying out the alleged



repairs and consequently the second respondent is not liable to pay to the petitioner the amount spent by him towards alleged renovation of the theatre premises. Even as per the terms and conditions of the lease, if the petitioner wants to make any alteration or renovation, he can do so at his own cost after putting on notice the second respondent. At any rate, the alleged renovation carried on by the petitioner is false and baseless. Further, at the time of handing over the possession, the writ petitioner, knowing fully well the structural stability of the theatre premises, has taken the premises on lease. Further, at the time of handing over possession, the premises was in a good condition. In fact, the petitioner sent letters dated 18.05.2012 and 27.06.2012 to carry out some repairs for which the second respondent has not given any consent or promised to reimburse the costs, as alleged. Even at the time of handing over possession, the second respondent sent a letter dated 08.05.2012 calling upon the petitioner to execute a lease agreement, but the same was not executed by the petitioner. Therefore, as on date, there is no jural relationship of lessor and lessee between the petitioner and the second respondent and the possession of the petitioner in the theatre premises can be construed as a trespass and illegal. After the petitioner taken over possession, the condition of the building became worse since the ceiling of the theatre is broken heavily. The stability of the theatre is not safe and it would endanger public safety. As regards the filing of the suit in O.S. No. 1324 of 2015 is concerned, it is submitted by the learned counsel for the second respondent that the trial Court granted interim injunction on 12.01.2016 in I.A. No. 1259 of 2015 as against the same, the second respondent has filed Civil Miscellaneous Appeal and it is pending. At any rate, the filing of the suit and the order of interim injunction granted thereon have nothing to do with the renewal of "C" Form licence in favour of the petitioner. It is submitted that the petitioner is in arrears of Rs.3,01,00,000/- and unless the amount is paid, the second respondent will not be in a position to carry out the repair works to the theatre premises which was left in a worst condition by the petitioner. The learned counsel for the second respondent therefore prayed for dismissal of the writ petition.

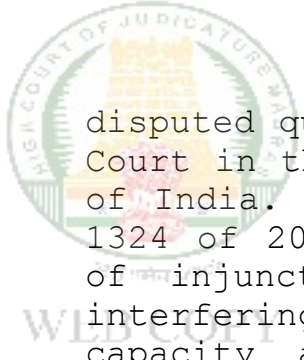
8. I heard the learned counsel on either side and perused the materials on record. Admittedly, the "C" Form licence in favour of the petitioner was renewed till 11.06.2015 to 14.01.2016 vide proceedings dated 11.06.2015 of the first respondent. Even before this renewal, several writ petitions were filed by the petitioner and at the intervention of this Court, by passing an order in WP (MD) No. 5400 of 2015, the renewal was made in favour of the petitioner subject to condition <https://hcdirects.net/signin/overseas> pays a sum of Rs.30,30,000/- representing 25% of the lease rental and entertainment tax. The petitioner has paid the amount as directed by this Court and therefore, renewal was



made in favour of the petitioner. Again, for renewal of the "C" Form licence for the subsequent period, the petitioner submitted an application dated 23.11.2015 seeking renewal from 15.01.2016 to 14.01.2017. Before considering his claim for renewal, the officials of the respondents 1 and 3 have conducted an inspection on 06.01.2016 and during such inspection, it was noticed that the stability of the building is not sound and therefore the petitioner was called upon to produce the structural stability certificate from the competent authority. Admittedly, the petitioner did not produce the structural stability certificate as a condition precedent for considering his claim for renewal of the licence.

9. As regards the stability of the building, the second respondent, who is the owner of the building in question, has reported that the theatre is in a damaged condition warranting repairs to be carried out. Further, the Executive Engineer of the Public Works Department also submitted a report dated 06.01.2016 stating that the theatre premises is in a dilapidated condition and there were several damages in the roof of the building due to recent rain. Therefore, it is evident that the apprehension of the first respondent that the safety of the public will be endangered due to the dilapidated condition of the building is justified. Consequently, the first respondent refused to renew the licence in favour of the petitioner on the ground that the petitioner did not produce the Structural Stability Certificate from the competent authority. As rightly pointed out by the learned Government Advocate appearing for the respondents 1 and 3, as per Rule 97 (1) of the Tamil Nadu Cinemas (Regulation) Rules, 1957, structural soundness certificate from the public works department is necessary for renewal of the C form licence. When such a mandatory formality has not been complied with by the petitioner, the first respondent cannot be expected to renew the "C" Form licence in favour of the petitioner.

10. As regards the dispute between the petitioner and the second respondent relating to payment of amount, the petitioner claims that he had incurred a sum of Rs.1,08,01,608/- towards renovation of the theatre premises and the second respondent also assured to reimburse such amount. Such a statement made by the petitioner has been denied by the second respondent in the counter. According to the second respondent, even as per the terms of the lease, it is for the petitioner to carry out the repairs and renewal at his own cost and the second respondent is not liable to reimburse the amount. Further, the second respondent would contend that the petitioner is liable to pay a sum of Rs.3,01,00,000/- out of which the petitioner has paid Rs.75,25,000/- only representing 25% of the lease rental and entertainment tax pursuant to the interim direction issued by this Court. The above disputes, in my considered opinion, are



disputed questions of fact and they could not be resolved by this Court in this writ petition under Article 226 of The Constitution of India. In fact, the petitioner has filed a suit in O.S. No. 1324 of 2015 before the Sub Court, Trichy and obtained an order of injunction restraining the second respondent herein from interfering with the petitioner's right to run the theatre in his capacity as a lessee. Aggrieved by the same, the second respondent said to have filed a Civil Miscellaneous Appeal before the appellate Court and it is pending. While so, it is for the petitioner and the second respondent to work out their remedy in an appropriate forum with regard to the dispute relating to payment of money and this Court cannot, in this writ petition, issue any direction in this regard.

11. It is seen from the impugned order of the first respondent that for not renewing the "C" Form Licence, the first respondent has given several reasons. The first respondent has taken into account the report of the Executive Engineer of Public Works Department dated 06.01.2016 relating to the structural soundness of the building in question. It is also stated by the first respondent that the false ceiling of the theatre premises have broken and they were patched up temporarily. Further, the first respondent has considered the objection of the second respondent that the petitioner is liable to pay a sum of Rs.2,78,86,650/- as on 08.01.2016 and therefore, I am of the view that the first respondent is fully justified in refusing to renew the "C" Form licence in favour of the petitioner. I do not find any reason to interfere with such a well considered order passed by the first respondent.

12. In the result, the writ petition is dismissed. No costs. Consequently, WMP (MD) Nos. 1028 and 1029 of 2016 are closed.

Sd/-

Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

1. The District Collector, Collectorate, Trichy District
2. District Welfare Fund Committee  
represented by Treasurer K. Govindaraju  
Son of Late. Krishnan  
having office at No.15/D, McDonalds Road  
Contonment, Trichy - 1
3. The Superintending Engineer (PWD)  
Planning & Design (Building) Circle  
Chepauk, Chennai - 600 005

+One cc to Mr.P.Arun Jayatram, Advocate, SR.No.17711

+One cc to The Special Government Pleader, SR.No.17578

gsr/rsb