

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.16312 of 2012 and M.P.No.1 of 2012

A.Subramani

.. Petitioner

Versus

1. The Principal Secretary to Government,
Home (Cinemas) Department,
Fort. St. George,
Chennai-600 009.

2. The Additional Commissioner of Land
Administration (Cinemas)
Ezhilagam, Chepauk,
Chennai-600 005.

3. The District Collector,
The Nilgiris District,
Ooty.

.. Respondents

Prayer: Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records of the proceedings of the first respondent dated 25.11.2011 made in G.O(D) No.1154, Home (Cinemas) Department confirming the orders of the second respondent dated 22.02.2011 made in L3/CA11/2009 and the orders of the first respondent dated 27.04.2010 made in C3/15859/2010 and quash the same consequently direct the third respondent to issue "C" Form Licence to the petitioner so as to enable the petitioner to run the existing theatre "Kalaimahal Theatre" at Aruvankadu, The Nilgris District.

For Petitioner : Mr.S.Thirumavalavan

For Respondents : Mr.Akhil Akbar Ali
Government Advocate

O R D E R

The petitioner has come forward with above writ petition praying to issue a writ of Certiorarified Mandamus, calling for the records of the proceedings of the first respondent dated 25.11.2011 made in G.O(D) No.1154, Home (Cinemas) Department, confirming the orders of the second respondent dated 22.02.2011 made in L3/CA11/2009 and the orders of the first respondent dated 27.04.2010 made in

C3/15859/2010 and quash the same and consequently direct the third respondent to issue "C" Form Licence to the petitioner so as to enable the petitioner to run the existing theatre "Kalaimahal Theatre" at Aruvankadu, The Nilgris District.

2. It is the case of the petitioner, "C" Form Licence was issued for running Kalaimahal Theatre at Aruvankadu during the year 1994 and it was renewed upto 2000 and thereafter, the third respondent issued "E" Permit under Rule 97(1) of the Tamil Nadu Cinemas (Regulation) Rules, 1957 for the period from 05.08.2003 to 03.09.2003, and between 09.04.2004 and 31.07.2004. It is further stated by the petitioner that after the expiry of three years, he submitted an application renewal of expired "C" Form Licence along with necessary documents. The petitioner has also produced G.O.Ms. No.403, Home Cinemas-II Department, dated 29.04.2005, wherein the first respondent extended the benefits of G.O.Ms.No.42, Home Department, dated 13.01.2003 to one Sundaram Thirai Arangam, Theni District. Unfortunately, the third respondent has rejected the application dated 27.04.2010, and directed the petitioner to submit an application under Rule 35(1) for new Cinema theatre and according to the petitioner, the said order is illegal. It is the grievance of the petitioner that there cannot be different yardstick for one theatre and another theatre and that G.O.Ms.No.42, (Home Cinemas-I Department), dated 13.01.2003 makes it clear that there can be penalty for renewal of licence after the period of licence either treated as renewal or fresh sanction in addition to licence fee, which has been mentioned in Sl.No.N of para 5 of the said G.O.Ms.No.42 and that rejecting the request of the petitioner and asking them to apply under Rule 35(1) of the said Rules, as if it is a new Cinema Theatre, may not be correct, and hence, the order impugned is liable to be interfered with and that there is no necessity for obtaining "No Objection Certificate" (NOC) for the area covered under the earlier NOC and that the theatre is situated in hill area and no hard and fast rule can be applied for renewal of licence, which has already expired.

3. Per contra, learned Government Advocate appearing for the respondents, by means of counter affidavit, submitted that the petitioner ought to have applied for renewal of licence within one month prior to the expiry of the existing licence and if such an application is made, the same will be scrutinised and a decision taken. The petitioner has not applied "C" Form licence before the expiry date on 31.12.2000 and after expiry of two years and eight months, he applied for "E" form licence, which was periodically granted and the petitioner did not even apply for temporary licence thereafter. The petitioner sought for renewal of "C" Form licence after the expiry of "E" form licence, namely three years mentioned supra, and that more than seven years have expired from the date of issuance of the original "C" Form licence and hence, the petitioner would not be entitled to

the relief sought for. That apart, as pointed out by the petitioner, in terms Sl.No.N in the said G.O.Ms.No.42, the petitioner will have to not only pay the amount, but also take steps to make a fresh application and the same would be considered in accordance with law and it cannot be, by any stretch of imagination, be treated as renewal, more particularly, in the light of the fact that the more than seven years have expired from the date of expiry of C- Form licence and three years expired from the date of E'-permit licence.

4. The third respondent/Collector has filed counter dated 16.07.2012 contending that even though the Tamil Nadu Cinemas (Regulation) Rules does not prescribe any time limit for submitting an application for renewal of licence, the petitioner cannot submit an application with a delay of more than 34 months and insist for considering the same with late fee.

5. The petitioner has filed additional affidavit reiterating the very same facts that are mentioned in the main affidavit, but however submitted that there was a lease agreement and that the Theatre was built in 37 cents.

6. Heard both sides and perused the materials available on record.

7. It is relevant to quote paragraph 5(N) of the said G.O.Ms.No.42, which reads as follows:

"5.
Service for which fee is collected Existing
Increased

(N). Penalty for renewal of licence after the period of licence either treated as renewal or fresh sanction in addition to licence fee (new provisions):

- 1) Permanent and semi-permanent theatres Nil Rs.1,500/-
- 2) Touring theatres Nil Rs.1,000/-"

8. It is also worthwhile to quote Rule 92 of the said Rules, which reads as follows:

"Rule 92: (1) Every applicaiton for the renewal of the licence shall be made one month before the Expiry. Such of the Existing licence. Such application shall be accompanied by:

(i) Declaration referred to in item (2) in Rule 41 in Part-II.

....."

9. In the G.O.Ms.No.1311, Home, dated 09.09.1996, it has been made clear that every application for renewal of licence shall be made within one month before the expiry of

such existing licence.

10. Even though the counter of the Collector states that there is no prescription of any time limit for submitting the application for renewal of licence, admittedly, there is a provision in the said Rules, which was introduced in 1996, as stated supra, in Rule 92. The said Government Order in G.O.Ms.No.42 referred to by the petitioner, is only with regard to the revision/enhancement and deals with penalty for renewal of licence after the period of licence either treated as renewal or fresh sanction in addition to licence fee.

11. Any Government Order issued in contravention of the Rules/Act, cannot stand in the eye of law. Admittedly, the said G.O.Ms.No.42 in para 5(N), deals with penalty for renewal of licence. The renewal of licence mentioned in para 5(N) of the said G.O. extracted supra, would mean that there shall be a licence fee if the application is not made within 30 days, but after the expiry of the existing licence. The said G.O.Ms.No.42 nowhere states that the application made after the expiry of 30 days has got to be favourably considered and the relief has got to be granted to the petitioner.

12. For the reasons stated supra, I find no merits in the Writ Petition, which is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition stands closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

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Fort. St. George,
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Ezhilagam, Chepauk,
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3. The District Collector,
The Nilgiris District,
Ooty.

+1 Cc to Mr.S. Thirumavalavan, advocate sr 64794.

+1 CC to Govt. Pleader sr 65659.

W.P.No.16312 of 2012

SK(CO)

SP(10/10/2017)