

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No. 244 of 2019
&
C.M.P.Nos.3103 & 2625 of 2019

A.Chandrasekaran ...Petitioner/3rd Respondent

-vs-

1. M/s.Aascar Films (P) Ltd.,
rep by its Managing Director,
Mr.V.Ravichandran. ..Respondent 1/Petitioner
2. The Secretary and Commissioner,
Land Administration,
Chepauk, Chennai. ..Respondent 2/1st Respondent
3. The District Collector,
Collectorate, Salem. ..Respondent 3/2nd Respondent

Writ Appeal filed under Clause 15 of Letters Patent for setting aside the order dated 18.01.2019 made in W.M.P.No.1417 of 2019 in W.P.No.1262 of 2019.

W.P.No.1262 of 2019:

Issue Writ of Certiorarified Mandamus Calling for records leading to pass the impugned common order of the 1st Respondent dated 10/01/2019 in proceeding No.L1/454/2019 confirming the order of the 2nd respondent dated 07/01/2019 passed in Na.Ka.No.420/2019/C2 (Screen -1) Na.Ka.No.422/2019/C2 (Screen -2) and Na.Ka.No.423/2019/C2 (Screen -3) and set aside the same and consequently direct the 2nd respondent to renew the C form license granted to the petitioner in respect of Screen -1 Screen -2 and Screen -3 situated in Erumapalayam Village, Salem Taluk and District within the time frame fixed by this Honourable Court.

W.M.P.No.1417 of 2019:

Direct the Respondent herein to issue E Permit to the Petitioner's theatre, namely M/s. Aascar Entertainment Pvt. Ltd Screen 1 pending disposal of the W.P(in W.M.P.No.1417 of 2019)) pending disposal of the above W.P.No.1262 of 2019 respectively.

For petitioner : Mr.S.Hameed Ismail
For Respondents : Mr.V.Raghavachari

JUDGMENT

[Judgement of the Court was delivered by T.S.Sivagnanam, J.]

This Appeal has been filed by the third respondent in W.P.No.1262 of 2019 and it is against an interim order granted by the learned Writ Court directing the issuance of e-permit to the first respondent in the appeals till 04.02.2019.

2. The writ petitions were directed to be posted on 04.02.2019, it appears that the case was listed on 04.02.2019 and when the matter was taken up, the learned counsel for the appellant before us had informed the learned Writ Court that he has filed these appeals against the interim order granted for issuance of e-permit and the Hon'ble Division Bench by order dated 01.02.2019 granted ad-interim stay of the impugned interim order directing the issuance of e-permit for better appreciation. The interim order is quoted below:

"Notice through Court as well as privately to the respondents returnable on 01.03.2019.

2. The learned counsel appearing for the petitioner is also permitted to serve papers on Mr.M.Narayana Samy, learned counsel who appearing for the 1st respondent/writ petitioner.

3. In the light of Paragraph No.3(v) of the proceedings of the Appellate Authority/Joint Commissioner-III, Land Administration Department, Chepauk, Chennai - 600 005 dated 10.01.2019 in Proc.No.L1/454/2019 and the content of the order, there shall be an order of ad-interim stay of the impugned interim order dated 18.01.2019 in W.M.P.No.1417 of 2019 till 01.03.2019.

Call on 01.03.2019."

3. The first hurdle, the appellant has to cross is to convince the Court as to whether the appeals are maintainable in law or not. In a series of decisions, this Court has held as against the exparte interim orders, the appeals are not maintainable, and the aggrieved person cannot invoke Clause 15 of the Letters Patent. Very recently such a decision has taken by the Hon'ble Division Bench of this Court in which one of us is a party (VBSJ) in the case of State of Tamil Nadu Vs. Evos Design Living Private Limited (W.A.No.1024 of 2017). The

operative portion of the judgement reads as follows:

"6. In Hindu Nadar Educational Trust, represented by its Managing Trustee and others vs. Hindu Nadar Uravinmurai, Nilakottai, in W.A.(MD) No.312 of 2016 dated 22.02.2016, a Division Bench of which one of us is a party (Justice S.Manikumar), held as follows:

"In the abovesaid circumstances, we would only clarify that the interim order, granted in W.M.P (MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016 dated 05.01.2016, would be an interim order, till the miscellaneous petitions are finally heard and decided, along with the vacate stay petition. It shall not be an interim order, as prayed for, in the miscellaneous petitions, till the disposal of the writ petition. It could only be an interim order, till the parties to the lis, are put on notice, in the interim applications and heard. With the above clarification, we only request the Writ Court, to take up the injunction petitions in W.M.P(MD)Nos.23 and 24 of 2016 in W.P(MD)No.23 of 2016, along with the vacate stay petition, and pass orders, as expeditiously as possible. Registry is directed to place the matter before the learned single Judge.

Accordingly, the writ appeal is disposed of. No costs. Consequently, C.M.P(MD)No.1856 of 2016 is closed."

7. In Special Tahsildar No.III, Land Acquisition, Lignite Project, Neyveli, vs. V.Rangasamy Reddiar, reported in AIR 1988 Madras 162, this Court, has held as follows:-

"2.We are very much concerned to note a disturbing tendency that is fast developing now-a-days. In the recent past, we have come across several matters in which appeals are filed against ad interim ex parte orders without resorting to the normal course of approaching the court which passed such orders and seeking appropriate further orders in spite of the law having been clearly laid down by a Division Bench of this Court in Abdul Shukoor v. Umachander AIR 1976 Mad 350. No doubt, that case arose out of an order emanating from a Subordinate Court. The ratio of the decision will apply with more force to an order passed by a learned single Judge of this Court. Moreover the ad interim orders are not judgments within the meaning of clause 15 of the Letters Patent.

3.What concerns us most is that the Government and statutory Corporations very often indulge in by-passing the only lawful course and adopting a course expressly disapproved by this court. We hold that the appeals ought not to have been filed in this case. The only course open to the Government was to approach the court in charge of civil miscellaneous petitions and pray for the passing of appropriate final orders in the civil miscellaneous petition. We hope that there will be no recurrence of similar instances in future. We make it clear that if we come across any such appeals in future, we will be constrained not only to dismiss such appeals, but also penalise the parties concerned with orders of heavy costs.'" The above said decision has been followed in Syed Zehera Jabeen vs. S.Padmanabhan, reported in 1988 II MLJ 423 = 1989 (1) L.W 112, and Telecom Regulatory Authority of India vs. Bharti Airtel Ltd., reported in 2013 (5) CTC 264.

In view of the above decisions and discussion, the present writ appeal filed against an interim order is not maintainable. Accordingly, the same is dismissed. However, this judgment will not prevent the appellants to approach the writ court for vacating the interim stay, if so advised and all the contentions are left open. No costs. Consequently, connected civil miscellaneous petition is closed."

4. In the light of the above decision, the writ appeal has to be dismissed as not maintainable. One more development which has taken place in the interregnum is that the e-permit granted to the respondent expired on 04.02.2019. This is so because the Writ Court has restricted the duration of the e-permit to 04.02.2019. Therefore, question of staying the order at this juncture would not arise as the order has worked itself out and the e-permit has lost its validity beyond 04.02.2019.

5. For the above reasons, while rejecting the appeal, as not maintainable, we grant liberty to the appellant to move the Writ Court and place their contentions by filing the counter affidavit. It is submitted by Mr.V.Raghavachari, learned counsel appearing for the first respondent that the learned Writ Court has granted liberty to mention for listing the writ petitions after the disposal of this appeal.

6. As we have dismissed the appeal for the above mentioned reasons, we grant liberty to both the learned counsels for the appellants and first respondent to move the Writ Court for early listing of the writ petition. No costs. Accordingly, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Secretary and Commissioner,
Land Administration,
Chepauk, Chennai.
2. The District Collector,
Collectorate, Salem.

+1 CC to M/s. Hameed Ismail, Advocate sr 10536.
+2 Ccs to Mr.M.Narayanaswamy, Advocate sr 10312.

W.A.No.244 of 2018

SAI(CO)
SP(08/02/2019)