



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) Nos. 17954 & 17961 of 2016 and

W.M.P. (MD) Nos. 12950, 12960 & 12961 of 2016 and

W.M.P. (MD) No. 3968 of 2017

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P.S.D. Narayanan,
S/o. P.S. Dharmalinga Nadar,
Rep. by his Power Agent,
N. Velavendan

... Petitioner
in both petitions

Vs.

1. The District Collector,
Tuticorin.

2. P.S.A. Rajaguru

3. R. Jeyachandra

... Respondents
in both petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the impugned orders of the first respondent in Na.Ka.No.C1/21623/13 dated 09.06.2016 and C1/6563/16 dated 30.05.2016 respectively and quash the same.

(in both W.Ps.)

For Petitioner : Mr. H. Arumugam

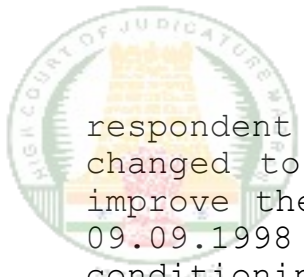
For R-1 : Mr. M. Karuppasamy,
Government Advocate.

For R-2 & R-3 : Mr. D. Sivaraman

C O M M O N O R D E R

Heard the learned counsel on either side.

2. The land in Survey No. 295/1C, T.No. 19 and 20, Kovilpatti belonged to one Sadayandi Nadar. He kept 1.30 Acres for himself and his wife. He later released the said 1.30 Acres in old Survey No. 295/1C, T.No. 19 and 20, by way of a registered document in favour of his six sons. Six sons of the said Sadayandi Nadar started a Cinema Theatre in the name and style of "Narayanasamy Talkies" under a partnership arrangement. The partners had availed financial assistance from one Rajaguru, the second respondent herein. Since the loan liability was not cleared, the second respondent herein filed O.S. No. 89 of 1981 before the Sub Court, Tuticorin against the said "Narayanasamy" Theatre and its partners. The suit was decreed on 14.07.1986. He filed E.P. No. 72 of 1990 for enforcing the decree. The Theatre in question was brought to auction. In the said auction, the third respondent who is the wife of the second respondent purchased the Theatre on 26.04.1995. Sale Certificate was issued on 05.09.1995. Ever since it is the third



respondent who is running the theatre. The name was subsequently changed to "Sathiya Bama" Theatre. The third respondent wanted to improve the said theatre. She therefore submitted an application on 09.09.1998 for locating a permanent mini theatre with air-conditioning facility. On 22.11.1999, the District Collector, Tuticorin, who is also the licencing authority under the Tamil Nadu Cinemas Regulation Act granted No Objection Certificate in favour of the third respondent herein. It is relevant to note here that the brother of the petitioner herein lodged his objections.

3. It is not in dispute that the said order dated 22.11.1999 whereby No Objection Certificate was granted was not challenged. The third respondent herein was not able to make use of No Objection Certificate issued by the licencing authorities.

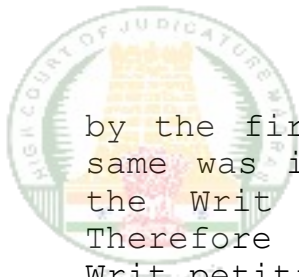
4. While so, the third respondent submitted a fresh application on 03.06.2013 for converting the theatre for bifurcating the existing theatre into two theatres. The Writ petitioner lodged his objections. Overruling the objections made by the Writ petitioner, the licencing authority granted both No Objection Certificate and also issued necessary 'C' Form licence. The No Objection Certificate was granted on 30.05.2016. On 09.06.2016, 'C' Form licence was issued in favour of the third respondent. These orders are under challenge in these Writ petitions.

5. The learned counsel appearing for the Writ petitioner submitted that the third respondent is none other than the wife of the decree holder. He also pointed out that the civil litigation is pending between the parties and that therefore the first respondent erred in issuing the impugned orders in favour of the third respondent.

6. I heard the rival contentions.

7. Section 5 of the Tamil Nadu Cinemas Regulation Act 1955 states that the licencing authority in deciding whether to grant or refuse a licence, will have to take note of certain matters. Likewise Rule 13(1) of the Tamil Nadu Cinemas Regulation Rules 1957 states that the applicant will have to show that he is in lawful possession of the site, building and equipment. In the present case, the third respondent herein has taken the theatre in question in a Court auction sale. Merely because, the Judgment debtors have taken out certain proceedings impeaching the same, the possession of the third respondent will not become litigious possession. It is very much a lawful possession. A person who has taken a property under a Court auction sale will have to be construed as in lawful possession. Of course, the No Objection Certificate as well as 'C' Form licence issued in favour of the third respondent will have to be ultimately abide by the civil proceedings initiated against her.

8. The first respondent has taken note of all the relevant factors. This Court will have to necessarily take note of the fact that as early as on 22.11.1999, No Objection Certificate was issued



by the first respondent in favour of the third respondent and the same was issued overruling the objection lodged by the brother of the Writ petitioner. The said proceedings have become final. Therefore taking note of these facts, the orders impugned in these Writ petitions stand sustained.

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9. The Writ petitions stand dismissed, accordingly. No costs.

10. At this juncture, the learned counsel appearing for the third respondent states that pursuant to the impugned orders, the third respondent has given an application on 17.06.2016 to the first respondent. The first respondent shall consider the same and pass orders in accordance with law within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(cs-I)

/True Copy/

Sub Assistant Registrar

To

The District Collector,
Tuticorin.

+2cc to Mr.D.Sivaraman, Advocate, SR.No.51861,51865
+2cc to Mr.H.Arumugam ,Advocate, SR.No.51721,51729
+1cc to Special Government Pleader, SR.No.51639,51640

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SP/13.03.2019 / 3P/7C