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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.7728 OF 2014

AND

M.P.NOS.2 &3 OF 2014

C.Shankar

... Petitioner

Vs

1. The Principal Secretary to Government,
Home (Cinema) Department, Secretariat,
Chennai - 600 009.
2. The Additional Commissioner (Cinema and irrigation),
Office of Commissioner of Land Administration,
Chepauk, Chennai - 600 005.
3. The District Collector,
Collectorate,
Trichy District.
4. C.Vijayan
5. V.Ramakrishnan
6. C.Vellaisamy

(R-4 to R-6 impleaded as per order dated
06/08/2014 in M.P.4 of 2014 in WP.7728/2014)

...Respondents

PRAYER :

Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, to call for the entire records relating to G.O.(3D) No.31 dated 11.07.2013 of the first respondent and quash the same as illegal and contrary to provisions of the Tamil Nadu Cinema (Regulation) Act, 1955 and Rules and consequently direct the Respondents to grant 'C' permit in the name of the petitioner for the theatre, namely, "Karpagam Theatre" in Manaparai .



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For Petitioner :Mr.N.Nithianandam
For Respondents :Mr.C.Jayaprakash
Government Advocate [For R1 to R3]
Mr.M.A.Balasubramanian
For Mr.K.S.Narayanan
[For R4 to R6]

O R D E R

The Rejection of appeal, declining the request of the petitioner for grant of licence for running a Cinema Theatre issued in G.O.(3D) No.31 dated 11.07.2013 is under challenge in the present writ petition.

2. The petitioner's father was granted with "C" Form Licence and it is contended that there were partners and the Theatre was being run by the partnership firm.

3. However, the learned counsel for the petitioner has stated that the "C" Form Licence was granted in the individual name and therefore, the question of partnership would not arise at all. It is contended that the "C" Form Licence granted in the name of the petitioner was periodically renewed without any complaint till 19.01.2010. Thereafter, the petitioner applied for renewal of "C" Form Licence and there was an objection by the respondents 4 to 6. In view of the said objection, the application submitted by the writ petitioner was rejected by the District Collector, Trichy District in proceedings dated 18.01.2010. The reason stated is that "the certified copy of the Registered deed, authorising the applicant to act as a Managing partner or Managing Trustee, in case the Cinema Theatre is run by a partnership firm or a trust as the case may be" has to be produced along with other required documents while sending application for Renewal of "C" Form Licence as per Rule 92(1) of Tamil Nadu Cinemas Rules. Based on the objections, the District Collector verified the application and found that Tvl.V.Ramakrishnan, Managing Partner of the Theatre along with two other partners Tvl.Vellaisamy and C.Vijayan have filed objection petitions for renewal of the "C" Form Licence in favour of the petitioner. Thus, the District Collector rejected the application.

4. The petitioner, who is son of the original licence holder persued the matter and the Appellate authority / Principal Secretary / Additional Commissioner conducted an enquiry, rejected the appeal, confirming the order passed by the District Collector.



5. The Appellate authority also has stated that as per the Rule 41 (5) of Tamil Nadu Cinemas (Regulation) Rule 1957, a certified copy of the Registered Deed authorising the applicant to act as a Managing Partner or Managing Trustee, in case the cinema theatre is run by a partnership firm and a trust as the case may be" has to be produced. The petitioner further preferred a Revision petition before the Government on 05.12.2011. The Government conducted an enquiry and made a finding that there was a strong objection by the partners for renewal of "C" Form Licence and without obtaining the consent from other partners in the application, the case of the petitioner cannot be considered. Accordingly, the order passed by the District Collector, rejecting the request of the petitioner is confirmed.

6. The learned counsel for the petitioner made a submission that all along the petitioner was holding a valid reason and there was no objection from the respondents 4 to 6. When the petitioner admittedly in possession of the Cinema theatre and was holding a valid licence, rejection is improper and mere objection based on the respondents 4 to 6 cannot be a ground for rejection of the application. In this regard, the learned counsel for the petitioner relied on the judgment of this Court in the case of R.Dhasaiyan And Another Vs. The Government of Tamil Nadu reported in (1998) 1 MLJ 399, wherein this Court made the following observations:

"13.In Krishna Kishore Firm V. The Govt. of A.P. and others, A.I.R. 1990 S.C. 2292 Their Lordships considered the question as to what is the difference between the "lawful possession" and 'legal possession'. In paragraphs 4 and 5 at pages 2294 and 2295 of the reports, Their Lordships held thus:-

"True the appellant was neither owner nor lessee. Yet was his possession forbidden in law? Was there no excuse for his possession? The error committed by High Court was to equate lawful with legal. Legal and lawful, normally, convey same sense and are usually interchangeable. What is legal is lawful, But what is lawful may be so without being formally legal. " The principal distinction between the terms 'Lawful' and 'Legal' is that former contemplates the substance of law, the latter the form of law. To any of an act that it is lawful implies that it is authorised, sanctioned or at any rate not forbidden by law. (Black's Law Dictionary) Same thought about lawful has been brought



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out by Pollock and Wright by explaining that 'Lawful possession' means in legal possession which is also rightful or at least excusable. (Pollock and Wright possession in the Common Law) thus that which is not *stricto legato* may yet be lawful. It should not be forbidden by law. In fact legal is associated with provisions in the Act, rules etc. Whereas lawful visualises all that is not illegal against law or even permissible. Lawful is wider in connotation than legal. Although provision in Specific Relief Act empowering a person or tenant to recover possession if he has been evicted forcibly by the landlord may be juridical and not lawful or a tenant holding over is not in lawful possession unless landlord agrees or acquiesces expressly or impliedly but that does not alter the legal position about possession of a person not legal yet not without interest. The provision in Specific Relief Act is founded more on public policy than on jurisprudence. But concept of lawful as opposed or in contradistinction to litigious assumes different dimension. *M.C. Chockalingam v. M. Manichavasagam*, 1974 (2) SCR 143: AIR 1974 SC 104 is of no help as it was concerned with possession which could not be said to be warranted or authorised by law. Distinction between nature of possession of a lessee after expiry of period of lease can better be explained by resorting to few illustrations. For instance a lessee may before expiry of lease acquire entire lessor's interest resulting in "drowning" or "sinking" of inferior right into superior right. That is right of one merges into another. It has been statutorily recognised by section 111 (a) of Transfer of Property Act. Similarly a tenant after expiry of period of lease may be holding over and the lessor may acquiesce in his continuance expressly or implied. That is from conduct of lessor the tenant's possession may stand converted into lawful. The other may be where lessor may not agree to renew the lease nor he may acquiesce in his continuance. Such a lessee cannot claim any right or interest. His possession is neither legal nor lawful, such was the *Chockalingam's* case, 1974 (2) SCR 143: AIR



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1974 SC 104. The Court held that continuance of lessee's possession after expiry of period of lease was not lawful for purposes of renewal of licence under Madras Cinema Regulation Act, 1955, obviously because lessee was left with no interest which could furnish any excuse or give it colour of being legal.

Yet another illustration may be, not very common where lessee requires some interest in part of the undivided property as in present case. Can it be said in such a case on ratio of Chockalingam's, AIR 1974 SC 104 authority that possession of such lessee or to be more specific of appellant was unwarranted or contrary to law: Share of V.V. in 7000 sq.yds. was half. He had agreed to sale his half interest. V.V. was joint owner with his son and grandson. He had "both single possession and a single joint right to possess" (Pollock and Wright) Whether such joint owner could transfer his share even when he was not in exclusive possession and what would be effect of such transfer need not be gone into as title suit is pending between parties but when a person having physical control acquires an interest to hold or continue by virtue of an agreement of sale it cannot be said that he had no interest and his possession was forbidden by law. The High Court lost sight of the fact that by virtue of the transaction entered between V.V. and appellant which was not challenged by him nor any cloud was cast over it by creating any subsequent interest the appellant may not have become owner but he could certainly claim that he was in lawful possession. In law he was entitled to file suit for specific performance if there was any treaty to his right or interest by V.V. Such right or interest could not be termed as litigious. It was at least not without any excuse for forbidden by law. In words and Phrases Permanent Edition Vol. 25A, and reprint 1976 a somewhat similar situation was described as not litigious:

"Where client conveyed undivided half interest in land to attorney in consideration of attorney's rendering services and paying court costs, giving irrevocable power of attorney to sue, settle, or compromise, attorney received good title as third person purchasing upon faith of public records, precluding reformation as against attorney, on the strength of an instrument recorded after deed to attorney and client claimed title, as against contention that attorney required a "litigious right".



In that judgment, their Lordships said that if a person is in lawful possession, he is entitled to get a licence for exhibiting films, even if he is not the owner or a tenant. If he is in lawful possession, the authorities are bound to consider his claim for granting licence."

7. As far as the above judgment relied by the petitioner is concerned, this Court of an opinion that the ground raised in the said writ petition is that after the death of father, the 4th respondent cannot be said to be a person in lawful possession and therefore, he is not entitled to get a licence. In the said case, this Court considered the lawful possession of the person, who filed an application was considered. However, in the present case, the respondents 4 to 6 claiming as partners filed an objection petition for grant of "C" Form Licence to run the cinema theatre. Thus, the facts are not comparable and therefore, the said judgment is of no avail to the writ petitioner.

8. This Court of the considered opinion that when the respondents 4 to 6 claim as partners and further, raised an objection by stating that the Cinema theatre was being run by the partnership firm, which is registered and the petitioner was authorized to function only as a Managing Partner, there is not reason to grant licence in individual capacity and under those circumstances, the District Collector rejected the application, which was confirmed by the Appellate authority as well as by the Revisional authority.

9. Once an objection is raised on the ground that the Cinema theatre was being administered by a partnership firm, which is registered and there is a dispute between the partners, then those issues are to be resolved and thereafter, an application is to be made or an application is to be made with the consent of the partners as per the Rules. Even the order passed by District Collector states that the petitioner has to comply with the rules by submitting a consent letter from other partners by producing the partnership deed. Under those circumstances, the petitioner ought to have certified these aspects. Contrarily, the petitioner was proceeding on the footing that all along the licence was granted in his name and he is in possession of the Theatre and therefore, the licence is to be granted in his name. However, the dispute regarding the partnership firm and the other objections are not repudiated nor an adjudication was done.

10. Therefore, this Court of the opinion that the petitioner has to resolve the issues between the partners and therefore, submit an application for grant of licence in accordance with



the Act and Rules. With reference to the dispute between the partners, this Court cannot conduct an enquiry as the partners have filed an objection letter, which was considered by the competent authorities and the application submitted by the petitioner was rejected in the year 2013 and theatre is non functional for the past about 18 years.

11. This being the factum, the petitioner is at liberty to adjudicate the issues with reference to the partnership dispute and after resolving the same, he may submit an application before the competent authority for the purpose of considering the said application for grant of licence. In respect of the order impugned is concerned, the petitioner has not challenged the original order as well as the appellate order. But, he has challenged only the Revisional order. That itself is an infirmity and further, reasons stated in the impugned order is in consonance with the provisions of the Act and Rules and therefore, this Court is of an opinion that the petitioner is not entitled for any relief. Consequently, the writ petition stands dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To

1. The Principal Secretary to Government,
Home (Cinema) Department, Secretariat,
Chennai - 600 009.
2. The Additional Commissioner (Cinema and irrigation),
Office of Commissioner of Land Administration,
Chepauk, Chennai - 600 005.
3. The District Collector,
Collectorate,
Trichy District.

+1cc to Mr.N.Nithianandam, Advocate, S.R.No.63047
+1cc to the Government Pleader, S.R.No.63014

W.P.No. 7728 of 2014

NMI (CO)
PM/13/12/2021