



W.P.(MD)No.18606 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Orders Reserved On 27.11.2023	Orders Pronounced On 30.11.2023
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W.P.(MD)No.18606 of 2023

&

W.M.P.(MD)Nos.15439, 15441, and 15442 of 2023

S.Saravanan

... Petitioner

Vs.

- 1.The Principal Secretary to Government,
Home (Cinema) Department,
Secretariat, Chennai.
- 2.The Additional Commissioner,
Land Administration Department,
Ezhilagam, Chepauk, Chennai.
- 3.The Joint Commissioner of Land Administration,
Land Administration Department,
Ezhilagam, Chepauk, Chennai.
- 4.The District Collector,
Nagercoil, Kanyakumari District.



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5.The Commissioner,
Nagercoil Municipal Corporation,
Nagercoil, Kanyakumari District.

6.The Commissioner,
HR & CE Department,
Nungampakkam, Chennai.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order made in G.O.(D) No.692, Home (Cinema) Department, dated 19.06.2023, passed by the first respondent, confirming the impugned order made in Proc.No.C2/964632/2021, dated 31.03.2022, passed by the second respondent and impugned order made in Roc.No.C2/34817/2011, dated 21.08.2019, passed by the fourth respondent, quash the same and consequently, direct the fourth respondent to issue 'C' Form Licence in favour of the petitioner for running 'Chakravarthy and Sri Mini Chakravarthy' Theatres (Screen – 1, Screen – 2 and Screen - 3), comprised in T.S.Nos.N5/64 Part, 65, 66, 67, 68 and 69 Part, situated at Rajakkamangalam Road, Chettikulam Junction, Nagercoil, Kanyakumari District, within the time stipulated by this Court.

For Petitioner : Mr.Isaac Mohanlal
Senior Counsel
for M/s.Isaac Chambers

For R1 to R4 and R6: Mr.Veera.Kathiravan
Additional Advocate General
Assisted by
Mr.A.K.Manikkam
Special Government Pleader



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For R5 : Mr.F.Deepak
Standing Counsel

ORDER

This Writ Petition has been filed challenging the impugned proceedings of the first respondent, made in G.O.(D)No.692, Home (Cinema) Department, dated 19.06.2023, confirming the impugned proceedings of the second respondent, dated 31.03.2022, which further confirmed the impugned order passed by the fourth respondent through proceedings, dated 21.08.2019 and for a consequential direction to the fourth respondent to issue "C" Form Licence in favour of the petitioner for running Chakaravarthy and Sri Mini Chakaravarthy Theatres [Screen-1, Screen-2 and Screen-3].

2. The case of the petitioner is that there is a Mall in the name and style of Rajas Mall at Rajakkamangalam Road, Chettikulam Junction, Nagercoil, Kanyakumari District. This Mall had two Theatres. "C" Form Licence was granted for these Theatres in the year 1985-1986 and it was renewed upto 31.01.2012. In the year 2012, the two Theatres were converted into three permanent Theatres [Screen-1, Screen-2 and Screen-3].



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After this renovation, the petitioner applied for the "C" Form Licence. This was under consideration by the fourth respondent and pending the same, temporary licence was granted by the fourth respondent under Form "E". The fourth respondent refused to issue the "E" Form permit for the subsequent period and hence, the petitioner filed a Writ Petition before this Court and pursuant to the direction issued by this Court, the fourth respondent through order dated 21.08.2019, rejected the application filed by the petitioner, seeking for the "C" Form Licence. Aggrieved by the same, a Writ Petition was filed before this Court and this Court gave liberty to the petitioner to file an appeal before the appellate authority challenging the order passed by the fourth respondent and accordingly, a statutory appeal was filed before the third respondent under Section 5(7) of the Tamil Nadu Cinemas (Regulation) Act, 1955 [for brevity, hereinafter referred to as "the Act"]. An enquiry was conducted by the third respondent. The file was placed before the second respondent and the second respondent also called for an enquiry and the second respondent through proceedings, dated 31.03.2022, dismissed the appeal filed by the petitioner. The same was put to challenge by way of filing a Revision Petition under Section 9-B of the Act before the first respondent. The first respondent through the impugned



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Government Order, dated 19.06.2023, rejected the Revision Petition and thereby, confirmed the orders passed by the respondents 2 and 4. Aggrieved by the same, the present Writ Petition has been filed before this Court.

3. The fourth respondent has filed a counter affidavit. The fourth respondent has taken a stand that the land belongs to a public Temple, which is under the administration and control of the sixth respondent. The challenge made by the Trustees in this regard went upto the Apex Court and it was held that the Temple in question is a public Temple and hence, the land belongs to the public Temple. Thereafter, a fresh suit was filed by the Trustees in the year 1993, to declare the Temple as a denominational Temple and for a consequential direction to the Hindu Religious and Charitable Endowments Department [hereinafter referred to as "the H.R. & C.E. Department"] not to interfere with the management of the Temple. This suit was decreed through judgment and decree, dated 15.12.2003. Aggrieved by the same, the H.R. & C.E. Department filed an appeal before the II Additional Sub Court and the appeal was allowed through judgment and decree, dated 31.03.2021. Aggrieved by the same, the Trustees filed a Second Appeal before this Court in S.A.(MD)No.320 of 2021 and the same



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is pending. In view of the same, the petitioner was directed to submit the No Objection Certificate [NOC] and since the same was not submitted, the claim made by the petitioner for "C" Form Licence was not entertained. That apart, it is stated that the petitioner has not obtained any planning approval from the competent authority under the Tamil Nadu Town and Country Planning Act, 1971, and action was also initiated against the petitioner, which has been put to challenge before this Court and the same is pending in W.P.(MD)No.11288 of 2021. That apart, the certificates of the Chief Electrical Inspector and the Executive Engineer for the Structural Soundness of the building were not in the prescribed form as per the Rules. The petitioner has also not sought for the renewal of the Form "C" Licence and hence, there is no scope for the District Collector to process the Form "E" Licence. In view of the same, it is contended that the petitioner was running a Cinema Theatre in an illegal manner in a commercial building and therefore, the request made by the petitioner for "C" Form Licence was rejected.

4. The sixth respondent has filed a counter affidavit and has taken a stand that the lands, in which the Mall and the Theatre are being run,



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belongs to the Temple and it was already held by the Apex Court that the Temple in question is a public Temple. Even thereafter, the Trustees were claiming that the Temple is a denominational Temple and on that ground, yet another suit was filed and it was decreed and the appeal filed against the same, was allowed and the Second Appeal is pending before this Court. The sixth respondent has taken a stand that the Trustees cannot permit the petitioner to run the Theatre without getting the NOC from the Department through an order passed by the Commissioner under Section 34 of the Tamil Nadu Hindu Religious and Charitable Endowments Act [hereinafter referred to as "the H.R. & C.E. Act"]. The sixth respondent has also mentioned about the earlier attempt that was made by one Joy Raja for "C" Form Licence, which was rejected and when the said Joy Raja filed a Writ Petition, it was dismissed on the ground that he is not entitled for the "C" Form Licence, without getting the NOC from the Department. A Writ Appeal was filed against this order and the said Joy Raja submitted that he will work out his remedy before the Joint Commissioner of H.R. & C.E. Department and liberty was granted to him while disposing of the Writ Appeal and the Appeal was also rejected by the Joint Commissioner. The sixth respondent has taken a stand that whatever ground was put against Joy



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Raja will equally apply to the petitioner also and therefore, the petitioner cannot be permitted to run the Theatre without getting the necessary permission from the Commissioner of H.R. & C.E. Department under Section 34 of the H.R. & C.E. Act. In view of the same, the sixth respondent has sought for the dismissal of this Writ Petition.

5. Heard the learned Senior Counsel appearing on behalf of the petitioner, the learned Additional Advocate General appearing on behalf of the respondents 1 to 4 and 6 and the learned Standing Counsel appearing on behalf of the fifth respondent.

6. The first respondent has rejected the Revision filed by the petitioner under Section 9-B of the Act, for the following reasons:-

"a. The ownership of the land in which the theatre of the revision petitioner is located, is in legal limbo, in CMP (MD) No. 4343 of 2021 in SA (MD) No.320 of 2021 filed by the lessor i.e. Trustees, Kottar Chetti Nainar Desika Vinayagar Devasthanam Trust, with an interim stay ordered on 2.6.2021. Therefore, the revision petitioner, cannot be said to be in lawful possession of the land, as no finality has been attained in the above said case



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between Hindu Religious and Charitable Endowments Department and the Kottar Chetti Nainar Desika Vinayagar Devasthanam Trust.

b. The present buildings of the "RAJAS MALL" in which these three screens (two theatres converted into three screens) are now established do not have plan approval from the competent authorities under the Tamil Nadu Town and Country Planning Act, 1971 and the rules made thereunder and action taken under the said Act/Rules by the competent authorities, is also in legal limbo and since there is an interim stay.

C. Renewal of valid Form "C" licence of the applicant is not pending before the Licensing Authority i.e. District Collector, Kanniyakumari. Form "E" temporary permit can be processed, only if the renewal of the Form "C" licence is pending before the Licensing Authority and the same is granted only if Form "C" Licence could not be issued or rejected or returned to the licencees within the time and the fact is that there is no such renewal application is pending.

d. Certificates of the Chief Electrical Inspector and the Executive Engineer for the Structural Soundness of the building are not in the form prescribed in the rules (i.e. Forms D, N and O respectively)



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e. No Tax Due Certificate from the Commercial Tax Authorities have not been produced under the Tamil Nadu Entertainment Tax Act, 1939 and the Tamil Nadu Local Authorities Finance Act, 1961."

7. There is a serious dispute with regard to the ownership of the lands, in which the Mall and the Theatre are functioning. It is brought to the notice of this Court that the Mall is functioning in an extent of 71,320 sq.ft. and the Theatre with three screens is occupying nearly 7,565 sq.ft. Admittedly, the petitioner is only a lessee under the Trustees and originally, the Form "C" Licence was also granted in favour of the petitioner in the year 1984, which was renewed from time to time till 2012. The Trustees namely, Kottar Chetti Nainar Desika Vinayagar Devasthanam Trust were claiming that the Temple in question is a private Temple. The Deputy Commissioner of H.R. & C.E. Department, through proceedings, dated 31.10.1967, in O.A.No.46 of 1963, declared that the Temple in question is a public Temple. As against this order, the Trustees filed an Appeal in A.P.No.24 of 1968 before the Commissioner of H.R & C.E. Department and the same was dismissed on 07.05.1970. Challenging the same, a statutory suit was filed



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in O.S.No.6 of 1971 before the Subordinate Judge, Nagercoil and the same was also dismissed, by judgment and decree, dated 30.04.1974. This was further confirmed in A.S.No.606 of 1974, through judgment and decree, dated 12.02.1979. This was further confirmed by the Apex Court while dismissing Civil Appeal No.1511 of 1979, by order dated 08.09.1993. Thus, one full round of litigation ended in declaring the Temple in question as a public Temple.

8. The Trustees thereafter started yet another litigation to declare the Temple as a denominational Temple. This issue is now pending before this Court in S.A.(MD)No.320 of 2021. As on today, the Temple in question continues to retain its character as a public Temple and therefore, the H.R. & C.E. Department has the power to control its administration. The land belongs to the Temple and therefore, if any lease or licence is granted, it will require the permission of the Commissioner of H.R. & C.E. Department. The interim injunction order passed by this Court pending the Second Appeal, confines itself to restraining the Department from interfering with the Trustees in managing the Temple. The order of interim injunction merely safeguards the possession and enjoyment of the Trustees



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and it does not create any new rights in favour of the Trustees and the petitioner, who is claiming his right under them as a lessee. That is the reason why, this Court passed a clarificatory order on 03.03.2023 to the effect that the order of interim injunction will not entitle the Trustees from creating any encumbrance or alienation of the property or make any addition or alteration to the property, without the permission of the Court.

9. It will also be relevant to take note of the earlier order passed by this Court in W.P.(MD)No.9863 of 2012, dated 04.09.2012. That was a Writ Petition filed by one Joy Raja, who was also claiming for the "C" Form Licence without insisting for No Objection Certificate from the Department. It may be true that there was some *inter se* dispute between the said Joy Raja and the other partners and hence, he was claiming for the "C" Form Licence. That issue becomes irrelevant, since the purport of the Writ Petition was a claim made for "C" Form Licence to run the Theatre and for which, the No Objection Certificate was insisted upon. This Court in categorical terms held that the No Objection Certificate must be granted by the Commissioner of H.R. & C.E. Department and only thereafter, the Theatre can be run. Even in the appeal, this issue was not contested and



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W.A.(MD)No.710 of 2012 was disposed of on 28.03.2013, by giving liberty

to Joy Raja to work out his appeal remedy before the Joint Commissioner.

The appeal before the Joint Commissioner was also dismissed through proceedings, dated 13.05.2013 and the Writ Petition filed challenging the same was withdrawn on 05.02.2015.

10. In view of the above, the first reason that was assigned by the respondents to the effect that the ownership of the land is in legal limbo, cannot be faulted and the petitioner has to necessarily await for the final disposal of S.A.(MD)No.320 of 2021, which was filed by the Trustees. The petitioner is only a lessee under the Trustees and if the very right and title of the Trustees is in question, the petitioner cannot be allowed to take advantage of the order of interim injunction passed by this Court to claim for the "C" Form Licence.

11. The next reason that has been assigned is that the building does not have the approval from the competent authorities under the Tamil Nadu Town and Country Planning Act, 1971. Proceedings in this regard has already been initiated by the Nagercoil Municipal Corporation to lock and



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seal the premises and the same has been put to challenge before this Court in W.P.(MD)No.11288 of 2021 and the same is pending. The interim order passed by this Court to the effect that the status quo prevailing as on 08.07.2021 should be maintained, does not entitle the petitioner to seek for "C" Form Licence. The very structure that has been put up in the lands is found to be illegal, since no permission has been granted by the authorities and hence, the nature of possession cannot be said to be lawful and the parties are continuing to be in possession of the property only by virtue of the interim orders granted by this Court. Under such circumstances, the second reason that has been assigned by the respondents does not suffer from any illegality.

12. The petitioner has relied upon the Certificates issued by the Chief Electrical Inspector and also the Executive Engineer for the Structural Soundness of the building and it can be seen that they are not in the form prescribed [Forms "D", "N" and "O"] in the Rules. Hence, this reason assigned also does not warrant the interference of this Court.



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13. It is not necessary for this Court to go into the other two reasons assigned in the order, rejecting the claim made by the petitioner for "C" Form Licence.

14. This Court must bear in mind that while issuing a Writ of Certiorari, this Court is not exercising its appellate jurisdiction and this Court cannot substitute its view for the view taken by the authorities. Unless this Court finds an error of law on the face of the record, a Writ of Certiorari cannot be issued. This Court does not find any patent error on the face of the order passed by the respondents and the respondents have assigned proper reasons for not granting "C" Form Licence sought for by the petitioner. The law on this issue was discussed by the Apex Court in a recent judgment in **Central Council for Research in Ayurvedic Sciences and others vs. Bikartan Das and others** reported in **2023 (5) MLJ 289**.

15. In the light of the above discussion, this Court does not find any ground to interfere with the orders passed by the respondents and



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accordingly, this Writ Petition stands dismissed. No costs. Consequently,

connected Miscellaneous Petitions are closed.

Index : Yes/No
NCC : Yes/No
Speaking order / Non-Speaking order
SMN2

30.11.2023

To

- 1.The Principal Secretary to Government,
Home (Cinema) Department,
Secretariat, Chennai.
- 2.The Additional Commissioner,
Land Administration Department,
Ezhilagam, Chepauk, Chennai.
- 3.The Joint Commissioner of Land Administration,
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N.ANAND VENKATESH, J.

SMN2

Pre-delivery order made in

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&

W.M.P.(MD)Nos.15439, 15441, and 15442 of 2023

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