



W.P(MD)Nos.25316 & 26469 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 22.04.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.25316 & 26469 of 2023

and

W.M.P.(MD)Nos.21509, 22761, 22762 & 22763 of 2023

In WP(MD)No.25316 of 2023 : -

R.Kasipandian

... Petitioner in both cases

Vs.

1.The District Collector,
Kokkorakulam Road,
Near Science Centre,
Kokkirakulam, Tirunelveli,
Tamil Nadu – 627 009.

2.The Joint Director,
O/o.the Town and Country Planning,
Xavier Colony, South Bypass Road,
Tirunelveli – 627 005.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the 1st respondent to grant a Form-C License in accordance with the Tamil Nadu Cinemas (Regulation) Rules, 1957, taking into account the Circular of the Tamil Nadu Commissioner of Land Administration



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C.No.L1/8056/2019, dated 29.05.2019 for the newly established Screen-3 and Screen-4 within the petitioner's Theatre premises.

For Petitioner : Mr.Sricharan Rangarajan, Senior Counsel
for Mr.H.Mohamed Ashick

For R1 : Mr.R.Baskaran,
Additional Advocate General assisted by
Mr.Prakash, Additional Government Pleader

For R2 : Mr.K.Balasubramanian,
Special Government Pleader for R2

In WP(MD)No.26469 of 2023 : -

R.Kasipandian ... Petitioner in both cases

Vs.

1.The District Collector,
Kokkorakulam Road,
Near Science Centre,
Kokkirakulam, Tirunelveli,
Tamil Nadu – 627 009.

2.The Joint Director,
O/o.the Town and Country Planning,
Xavier Colony, South Bypass Road,
Tirunelveli – 627 005.

3.The Director,
Town and Country Planning,
Coimbedu, Chennai.

... Respondents

(R3 suo motu impleaded vide order dated 07.11.2023)



W.P(MD)Nos.25316 & 26469 of 2023

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the Impugned Condition No.1 imposed by the 1st Respondent vide order No. Ni.Mu.(Si 1) /137/2022 dated 19.06.2023 and consequential Impugned Order passed by the 1st Respondent vide order C1-7516-2023 dated 16.10.2023 and quash the same as illegal and consequently direct the 1st Respondent to grant Form - C License in accordance with the Tamilnadu Cinemas (Regulation) Rules, 1957, taking into account the Circular of the Tamilnadu Commissioner of Land Administration C.No.L1/8056/2019, dated 29.05.2019 for the newly established Screen – 3 and Screen – 4.

For Petitioner : Mr.Sricharan Rangarajan, Senior Counsel
in both cases for Mr.H.Mohamed Ashick

For R1 : Mr.R.Baskaran,
in both cases Additional Advocate General assisted by
Mr.Prakash, Additional Government Pleader

For R2 : Mr.K.Balasubramanian,
in both cases Special Government Pleader

&

For R3
in WP(MD)No.26469 of 2023

COMMON ORDER

The writ petitioner is the owner of the petition mentioned building. It comprises five floors. The petitioner has obtained C Form license for running a multiplex comprising two screens (Ram and Muthuram). They are operational for more than twenty five years. The licenses have been periodically renewed. They are valid till 21.03.2026. The petitioner



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proposes to establish two additional screens. He submitted applications in that regard. The District Collector issued NOC on 19.06.2023 by stipulating a condition that permission must be obtained from the local planning authority. Contending that such a condition was unwarranted, the petitioner filed WP(MD)No.25316 of 2023 for directing the District Collector, Tirunelveli to grant Form C licenses for the additional two screens. During the pendency of the writ petition, memorandum dated 16.10.2023 was issued informing the petitioner that his request was not feasible of compliance. Challenging both the orders, WP(MD)No.26469 of 2023 was filed.

2.On 07.11.2023, the following order was passed by me :

“3.Heard the learned Senior Counsel for the petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader for the respondents.

4.The prime contention of the learned Senior Counsel for the petitioner is that approval of DTCP is not required for converting a single screen theater into a multi screen theater. He relies on not only the orders passed by the various authorities in the State of Tamil Nadu but also on quite a few orders passed by this Court.



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5.Before considering the said contention, I am of the view that to give a quietus to the whole issue, it would be better if the petitioner is directed to apply to the DTCP for getting approval for alterations done by him. This is without prejudice to the contention of the petitioner in the main writ petition. The petitioner shall submit the necessary application through online mode before the second respondent in a day or two. The second respondent is directed to undertake an inspection immediately. The petitioner's application shall be forwarded to the third respondent within one week. The third respondent shall process the application and pass appropriate order within a period of two weeks thereafter. On 01.12.2023, the learned Additional Advocate General shall produce a copy of the order passed by the third respondent on the petitioner's application seeking approval for the conversion of the single screen theater into multi screen theater.”

The second respondent has filed status report stating that the petition mentioned building is a multi-storied building and that it must conform to TNCDBR, 2019 and that the petitioner has made alterations regarding exit and put up partition walls and that planning permission has not been obtained. The first respondent has also filed detailed counter affidavit and has asserted that without obtaining NOC from the Tirunelveli Local Planning Authority as per the 2019 Rules, Form C license cannot be issued. The learned Additional Advocate General took me through the entire counter affidavit. The specific stand of the respondents is that on



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account of the putting up of two new screens, there is an increasing seating capacity and this is not a mere internal alternation but a major reconstruction of building. The respondents seek dismissal of the writ petitions.

3.The learned Senior Counsel appearing for the petitioner apart from reiterating the contentions set out in the affidavit filed in support of these writ petitions relied on the order dated 30.11.2023 made in WP(MD)No.11288 of 2021 and the order dated 21.06.2011 made in WP Nos.8017 and 9770 of 2011. He also took me through the statutory scheme underlying the various enactments. He pressed for granting relief as prayed for.

4.I carefully considered the rival contentions and went through the materials on record.

5.The Tamil Nadu Cinemas (Regulation) Act, 1955 provides for regulation of exhibitions by means of cinematographs in the State of Tamil Nadu. Section 5A is material for our present purposes. It reads as follows :



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“5A. Licensing authority to permit construction and re-construction of buildings, installation of machinery, etc. for cinematograph exhibitions. - (1) Any person who intends-

- (a) to use any place for the exhibition of cinematograph films, or
- (b) to use any site for constructing a building thereon for the exhibition of cinematograph films, or
- (c) to construct or re-construct any building for such exhibition, or
- (d) to install any machinery in any place where cinematograph exhibitions are proposed to be given,

shall make an application in writing to the licensing authority for permission thereof together with such particulars as may-be prescribed, and any provision contained in the enactments specified below or in the rules made under any of them [or in any other law governing municipal or local bodies in the State or in the rules made under any such enactment or other law] in so far as it relates to any of the matters specified above shall not apply to any application made under this section:-

- (i) The Tamil Nadu Places of Public Resort Act, 1888 ([Tamil Nadu] Act II of 1888);
- (ii) The [Chennai] City Police Act, 1888 ([Tamil Nadu] Act III of 1888);
- (iii) The [Chennai] City Municipal Corporation Act, 1919 (Tamil Nadu Act IV of 1919);



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- (iv) The Tamil Nadu District Municipalities Act, 1920 (Tamil Nadu Act V of 1920);
- [(v) The Tamil Nadu Panchayat Act, 1958 (Tamil Nadu Act XXXV of 1958); and]
- (vi) The Madurai City Municipal Corporation Act, 1971, (Tamil Nadu Act 15 of 1971) [* * *]
- (vii) [* * *]

Section 5A(1)(d)(vii) originally included the Tamil Nadu Town and Country Planning Act, 1971. Vide T.N Act No.11 of 1994, the exemption was removed. Doubt arose regarding the expression “construct or reconstruct” occurring in Section 5A(1)(c) of the Act and also the expression “alteration of buildings” in the circulars issued by the Commissioner of Land Administration. Question arose if even existing theatres having C Form licenses must obtain NOC from Town and Country Planning Department in cases that do not involve additional constructions/reconstructions. Clarificatory circular dated 29.05.2019 was issued and it clarified that NOC from Town and Country Planning Department would be required only in the case of construction/reconstruction and additional construction of buildings for cinematograph exhibitions and not for internal



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alterations/additions/improvements to the amenities of the existing theatre.

6.It is beyond dispute that the petitioner was issued with Form C licenses for two screens on 13.04.1999. The petition mentioned building is an existing theatre. Admittedly, no additional construction has been put up. Only the existing building has been utilised for putting up two additional screens. It is true that as a result, the seating capacity would be enhanced by 230. Inspection was carried out by Tamil Nadu Fire and Rescue Services and they have granted NOC for the additions. The petitioner has also obtained electricity licence, sanitary certificate and also structural stability certificate.

7.My attention has been drawn to the proceedings dated 26.05.2023 issued by the District Collector, Coimbatore in favour of an existing theatre, by name, Karuna Theatre for putting up an additional screen. In that case, there was no insistence on DTCP approval.



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8.In this case, there is one building involved. It is an existing theatre enjoying subsisting C Form licenses for two screens. Two additional screens are to come up only within the existing building without involving additional construction/reconstruction. Admittedly, there is no increase in floor space. Only the unused space is being converted.

9.My attention has been drawn to the decision of the Madras High Court made in A.Ramasamy and ors v. The Commissioner of Police (MANU/TN/2419/2011). It was held therein as follows :

“8.Application in both these cases has been made in terms of Section 5-A of the Act. The section specifically makes it clear that the six other Acts, viz., (i) to (vi) referred to above in that section does not apply to Section 5-A of the Act. When the Section 5-A of the Act does not provide for approval of the plan by Chennai Metropolitan Development Authority, the Licensing Authority is not justified in asking the Petitioner to obtain the approval of the plan by the Chennai Metropolitan Development Authority. When there is no such requirement under Law, the Government Letter dated 19.12.2005 cannot be relied upon by the Respondent authority. While considering the application under Section 5-



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A of the Act, it is specifically mentioned that any provision contained in the enactment specified in Section 5-A of the Act or any other law governing municipal or legal bodies in the State shall not apply. When Section 5-A of the Act is very clear and categorical in omission of other Acts, in their letter the Government cannot override the section and impose a condition that is not contemplated.

9. The Tamil Nadu Cinemas Regulation Act, 1955 is very clear and specific, in that the Licensing Authority alone is competent to consider the application.

10. Similar issue was considered by this Court (K.VENKATARAMAN,J.) in W.P. No. 18909 of 2008 by order dated 9.12.2009 and W.P. No. 15705 of 2009 by order dated 25.11.2009. In one of the above two cases, the Government has directed the authority to implement the order of the Court. I am in respectful agreement with the reasonings given in the earlier orders and the same will also apply to the facts of the present case as well.

11. In paragraph 14 of the counter-affidavit filed in W.P. No. 8017 of 2011 and paragraph 11 of the counter-affidavit filed in W.P. No. 9770 of 2011, it has been admitted that based on the orders of this Court, the Licensing Authority has granted



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approval to other theatres without insisting the approval by the CMDA. Since orders have been passed in respect of those theatres only, the Petitioners cannot claim the same relief. This stand of the Respondent is totally untenable, as the law will apply uniformly to all similarly placed persons.

12. In the result, the impugned proceedings in both the cases are set aside and the Licensing Authority is directed to grant the approval if the applications are otherwise in order. Both the Writ Petitions are allowed as above.”

10.What clinches the issue in favour of the petitioner is the order of the Hon'ble Division Bench made in WP(MD)No.11288 of 2021 dated 30.11.2023 (S.A.Joyraja v. State of Tamil Nadu). Paragraph 17 to 19 of the said order read as follows :

“17.We can usefully refer to Section 2 (13) of the T & CP Act. Under the said provision, the word 'development' has been defined as follows: “(13) ‘development” means the carrying out of all or any of the works contemplated in a regional plan, master plan, detailed development plan or a new town development plan prepared under this Act, and shall include the carrying out of building, engineering, mining or other operations in, or over or under land, or the



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making of any material change in the use of any building or land.” As per this definition, making any material change in the house or any building or land would come within the scope of development. Section 47 of the Act prevents any person from developing any property without permission of the local body. The fact that there was only a construction to the extent of 10,700 sq.ft. as cinema theater is not denied. The further fact that as on today, there is a building for about 71,324 sq.ft. is also not denied. The perusal of the construction details from the tabular column supra would show that mall consists of the following: 1)basement floor together with three floors 2)Mezzaine Floor 18.Apart from that when the theater was completed in the year 1984, 100% usage was towards the theater alone. As on 2012, which the position that exists as on today, this 100% usage has been changed to 11.39% as usage as theaters and the remaining 88.61% is being used as commercial property. This implies that there has been fundamental change in the usage of the building, which necessarily would require permission under the Act.

19.Apart from that exemption that had been granted to cinema theaters under the Act had been repealed by virtue of the Tamil Nadu Act 11 of 1994. If the petitioner did not demolish the theater, he would have been benefited under the repealed Act. However, the petitioner demolished the



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entire construction that was put up when he obtained license on 30.06.1984 and ventured to put up a fresh construction in 2012 without even building plan. The effect of such construction is that on the date when the construction had been put in 2012, there was no exemption for cinema theaters by virtue of 1955 Act since the Tamil Nadu Act 11 of 1994 had come into force."

The writ petition was dismissed because the petitioner therein had demolished an existing theatre, put up a new building comprising a mall plus multiplex and increased the floor capacity by seven times. On the other hand, in the present case, as pointed out by the learned Senior Counsel, the old building remains and there is no increase of floor space and there is no additional construction. Only internal alterations have been made and there has been an improvement of amenities. For this, NOC from Town and Country Planning Act is not required. The petitioner informs the court that apart from Karuna Theatre, one Sathyabama theatre functioning at Kovilpatti was permitted to put a new screen without insisting on DTCP approval. The first respondent should also apply the clarificatory circular dated 29.05.2019 on the same lines.



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So long as there is no additional construction or change of land use, in respect of an existing theatre governed by a special enactment, it is doubtful that 2019 TNCDB Rules can be applied. Taking into account the fact that the petitioner has obtained clearance from the other departments and in view of the foregoing reasons, clause I of the certificate dated 19.06.2023 is set aside. The consequential memorandum dated 16.10.2023 is also set aside. The first respondent is directed to grant Form C licenses for the additional two screens. This shall be done as expeditiously as possible. If there is any other formality and requirement to be fulfilled, the first respondent shall intimate the petitioner accordingly and the petitioner would be required to comply with the same.

11.The writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

22.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:-

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G.R.SWAMINATHAN, J.

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