

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.11365 OF 2003

and

WPMP.NO.14258 OF 2003

Arun Kumar,
S/o. Muniappa
Parnter Sri Munjunatha Talkis,
Bye-pass Road, Hozur. .. Petitioner

-Vs-

1. District Collector,
Dharmapuri.

2. Special Commissioner and
Commissioner of Town and
Country Planning, Anna Salai,
Chennai 600 002.

3. Deputy Secretary to Govt.
Home/Cinema Department,
Fort St. George,
Chennai 600 009. .. Respondents

Petition filed under Article 226 of the Constitution of India for the
issuance of Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.T.R. Rajagopalan
Senior Counsel for
Mr.R. Subramanian

For Respondents : Mrs. Thenmozhi Shivaperumal
Addl. Govt. Pleader

:J U D G M E N T

The substantive prayer in the writ petition is to issue writ of
certiorarified mandamus for quashing the proceedings Rco.3/02/c2 dated

27.3.2003 and directing the first respondent to issue [C] Form licence to the petitioner under the Tamil Nadu Cinemas (Regulation) Act, 1955, read with Tamil Nadu Cinema (Regulation) Rules, 1957.

2. Petitioner is the Managing Partner of Sri Manjunatha Talkies. An application has been filed on behalf of the petitioner before the first respondent for location of permanent cinema theatre. Initially, the first respondent issued No Objection Certificate for a period of three years for a semi-permanent theatre. However, subsequently NOC was granted for permanent theatre and the building plan had been accordingly approved. The petitioner, however, had not completed the building within the stipulated period. Subsequently on 4.1.1995, the petitioner filed a representation before the Collector indicating that substantial portion of the building has been constructed and a fresh NOC may be issued. However, at that stage, the Collector refused to grant NOC on the footing that the petitioner should have sought for extension of period as per the previous NOC. The matter was taken to the appellate authority, who by order dated 13.2.1997 observed that NOC must be deemed to have been issued as no order had been passed by the Collector within the stipulated period of six months. Accordingly, the order of the Collector was set aside and the Collector was directed to reconsider the matter. Thereafter the Collector issued NOC and approved the plan by order dated 29.4.1999. Thereafter on the basis of fresh plan, a fresh application has been filed and the Collector by proceedings dated 15.5.2001 approved the plan and instructed the petitioner to complete the construction by 28.4.2002. The petitioner after completion of the construction, intimated the Collector by letter dated 2.1.2002 regarding such completion and sought for issuance of [C] Form licence. Along with the application, the petitioner had enclosed other certificates as required. At that stage, by letter dated 29.4.2002, the Collector directed the petitioner to obtain approval from the Town and Country Planning authorities. In course of time the Member Secretary of the Town and Country Planning intimated that no permission can be granted as the building had already been completed without obtaining the required permission. There was further correspondence between the Collector and the Member Secretary of the Town and Country planning regarding requirement of such permission and ultimately the Collector had written to the Joint Commissioner as well as to the Government recommending that since construction of the building had been initiated long back and building had been completed, exemption may be granted. The Collector received the communication from the Government refusing to accede to the request of the Collector. Thereafter the Collector communicated to the petitioner that no permission can be given, giving rise to the filing of the present writ petition.

3. The contention of the petitioner is to the effect that at the time when the petitioner had initially applied for grant of permission, the provisions of the Town and Country Planning Act were not attracted and only because of the subsequent amendment, the provisions of the Town and Country Planning Act were attracted to the application for grant of permission for the construction of the building for the purpose of exhibiting cinema. It is further contended that the Member Secretary of the Town and Country Planning has refused to give permission merely on the basis that the building had already been completed. However, no substantial objection has been raised to

the construction of the building or to the plan, which had been duly approved by the Collector.

4. A counter affidavit has been filed on behalf of the first respondent indicating various developments from time to time. It has been further indicated that in view of the correspondence between the Collector and the Government and other authorities, no permission could be granted.

5. Section 4 of the Tamil Nadu Cinemas (Regulation) Act, 1955 provides that the District Collector is the Licensing authority to grant licence under the Act. Section 5 provides that licensing authority while considering the question as to whether licence should be granted or not, should have regard to various factors indicated in Section 5 (1) clauses (a) to (f). Section 5(1)(c) relates to the suitability of the place where the cinematograph exhibition is proposed to be given. Section 5(2) provides that the licensing authority shall not grant licence unless it is satisfied that the Rules made under the Act have been substantially complied with. Section 5-A empowers the licensing authority to permit construction and reconstruction of buildings, installation of machinery, etc. for cinematograph exhibitions and sub-Section (1) provides that any person who intends to use any site for constructing a building for exhibition of cinematograph film, or to use any site for constructing a building for exhibition of such film or to construct or reconstruct any building or to install any machinery at any such place, is required to make an application to the licensing authority for permission together with various particulars as may be prescribed. Such sub-Section specifically provides that any provision contained in the various enactments specified shall not apply to any application made under Section 5-A. As per clause (vii), as it stood originally, the Town and Country Planning Act is one such excluded provision which apparently had no applicability to any application for grant of permission under Section 5-A. Such provision had continued to remain in force. However, by Tamil Nadu Act 11 of 1994, clause (vii) of Section 5-A(1) of the Tamil Nadu Cinemas (Regulation) Act, 1955 stood deleted. In other words, after such deletion, the provisions of Town and Country Planning Act would be applicable even in respect of application under Section 5 of the Tamil Nadu Cinemas (Regulation) Act, 1955.

6. In the present case, however, the application had been initially filed in the year 1979 and permission had been granted in the year 1982 and the building plan had been approved in the year 1983. Subsequently, after completion of substantial portion of the building, fresh application had been filed, but the Collector had rejected such application on the ground that extension of time should have been sought for. Thereafter on the basis of the direction of the appellate authority, the Collector issued No Objection Certificate. Keeping in view the manner in which the matter had been dealt with from time to time, in the peculiar facts and circumstances, it must be taken that in fact the grant of subsequent NOC by the Collector and approval of the plan were in continuation of the earlier sanction. The earlier sanction had been given at a stage when the Town and Country Planning Act was not applicable. The subsequent Act must have been taken to be revalidation of the approved plan and in continuation of the earlier application which had been filed much prior to the deletion of Clause (vii) of Section 5-A(1). In other words, even though after Tamil Nadu Act 11 of 1994 a fresh application

under the Act may attract the applicability of Town and Country Planning Act, so far as pending applications were concerned, such Act, namely the Town and Country Planning Act would not be applicable.

7. Judging the matter in the aforesaid context, it is obvious that no approval was required from the Town and Country Planning authorities and the Collector committed illegality in refusing to consider the question of grant of [C] Form licence on the footing that permission has not been obtained under the Town and Country Planning Act.

8. Alternative contention of the petitioner to the effect that even assuming that the Town and Country Planning Act is applicable, the authorities under the said Act had refused to grant permission on mechanical grounds appears to be justified. It is apparent from the materials on record that the authorities under the Town and Country Planning had refused to accord permission merely on the footing that the building had been completed. The building had been completed on the basis of the plan approved by the Collector from time to time. The authorities under the Town and Country Planning did not point out any substantial objection to the suitability of the site or any other relevant aspect. Merely because the building had been completed should not have been a ground to refuse such permission. As a matter of fact, the Collector had recommended to all the authorities that compliance with the Town and Country Planning Act may not be insisted upon and necessary exemption may be granted.

9. In the present case, since I have held that the Town and Country Planning Act had no application to the facts and circumstances of the case, it is however unnecessary to delve further on this aspect.

10. For the aforesaid reasons, the order passed by the Collector dated 27.3.2003 is quashed and the Collector is directed to reconsider the matter regarding issuance of [C] Form licence. The matter should be considered afresh, after giving opportunity of hearing to the petitioner, within a period of two months from the date of receipt of the order. The Collector may also consider the question of issuance of temporary licence in [E] Form.

11. The writ petition is accordingly allowed, subject to the directions indicated above. Consequently, WPMP.No.14258 of 2003 is closed.

Index : Yes

Internet: Yes

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To

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