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MUNICIPAL CORPORATION OF DELHI

14

DY. COMMISSIONER OF POLICE (LICENCING) AND ANR.

SEPTEMBER 30, 1994

B

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Delhi Cinematograph Rules, 1981 :

Amended Rule 2—Licencing authority—Consultation with local body

C within whose jurisdiction the cinema building is situated—Parties to adduce necessary evidence before the High Court in the pending suit—Building to be pulled down if found not in conformity with the bye-laws—As undertaken equities not to be claimed—Any construction made not to bind the co-owners, as they are not consenting parties.

D A Notification under the Cinematograph Act, 1952 was published in the Gazette dated 3.5.1954, making amendments to the Act. As per amended Rules 2 of the Act, the local body in relation to licensing of any place for cinematography exhibitions would be the Municipal Corporation of Delhi (M.C.D.), Delhi Development Authority (DDA), New Delhi

E Municipal Committee, Cantonment Board as the case may be in whose jurisdiction the place for cinematograph exhibition is situated. The DDA has to be consulted by the licensing authority and not the PWD, in respect of the Cinema building in question and the High Court resolved the issue accordingly, and Municipal Corporation of Delhi preferred the present appeals. The SLP and Contempt Petitions are connected matters.

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Disposing of the matters, this Court

G HELD : 1. In view of the change in law, the MCD no longer remains to be a consulting authority. The owners of the lands, who claim that they are the co-owners, have a grievance that the respondents were proceeding with the construction without their consent, and so, they sought to be impleaded as party-defendants in the suit before the Division Bench. Since their application is pending before the Single Judge, no order was passed. Needless to mention that the application pending before the Single Judge would be disposed of as expeditiously as possible for impleading the co-owners as party-defendants to the suit. As rightly observed by the Division

Bench, any construction made by the plaintiff, does not bind the co-owners because they are not consenting parties and it will be subject to the result in the suit. [112-F-G-H, 113-A] A

2. As regards the claim of DDA that no reference was made to it for approval of the construction plan and, therefore, it is not bound by the approval granted by the PWD. It would be open to the plaintiff to take appropriate action according to law. [113-A-B] B

3. Pursuant to this Court's order of May 14, 1993, the MCD had inspected and made a statement that the construction carried on by the plaintiff was not in conformity with the bye-laws and to that effect the statement and report were placed on record. It is open to the parties in the suit to place the evidence whether the construction is in accordance with the relevant rules and, if it is not, the construction made in contravention would be pulled down without claiming any equities as undertaken by the plaintiff's counsel. [113-D-E] C

[The Contempt Petition filed by the owners, was permitted to be withdrawn with liberty to approach the appropriate authority.] [113-F] D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 6610-11 of 1994.

From the Judgment and Order dated 8.2.93 of the Delhi High Court in F.A.O. (OS) No. 233/92 & C.W.No. 697 of 1978. E

With

S.L.P. (C) No. 10137/93 & Contempt Petition No. 185 of 1994. F

Ranjit Kumar, Ms. Binu Tamta and Kailash Vasdev for the Appellant. F

K.K. Lahiri, K.R. Nagaraja, S.N. Terdal and B.K. Prasad for the Respondent No. 1. G

Arun Jaitley, Ms. Zubeda Begum, Ms. Suparna Sarna, Naveen Chawla and S.S. Jauhar for the Respondent. G

V.B. Saharya for the D.D.A.

The following Order of the Court was delivered : H

A Leave granted.

The Notification under the Cinematograph Act, 1952, issued by the Lt. Governor of the National Capital Territory of Delhi, published in the gazette, dated May 3, 1994, has been placed before us. Rule 2 mentions that :

B "2. Amendment of Rule 2 - In the Delhi Cinematograph Rules, 1981 [(hereinafter called the "Principal Rules" in Rule 2 for the existing clause (2)], the following shall be substituted :

C "Local Body in relation to the licensing of any place for cinematograph exhibitions, means Municipal Corporation of Delhi, Delhi Development authority, New Delhi Municipal Committee, Cantonment Board, as the case may be in whose jurisdiction the place for cinematograph exhibitions, situates,"

D In view of this, the controversy that was focussed on the Original Side of the High Court as to who is the competent local authority, has been resolved. In the cases at hand, it is an admitted fact that the place of cinematograph exhibition in which the cinema building is being constructed is situated within the area of the control of the Delhi Development Authority (DDA). By virtue of the aforesaid amendment, the licensing authority would, therefore, be required to consult the DDA instead of PWD as per the existing rules.

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F Shri Ranjit Kumar, learned Counsel appearing for the appellant has stated that the injunction order was issued against the appellant but in view of the change in law, the Municipal Corporation of Delhi (MCD) no longer remains to be a necessary party to the suit. We find force in the contention. In view of the change in law, the MCD no longer remains to be a consulting authority. The owners of the lands, who claim that they are the co-owners, have a grievance that the respondents were proceeding with the construction without their consent, and so, they sought to be impleaded as party-defendants in the suit before the Division Bench. Since their application is pending before the learned Single Judge, no order was passed. Needless to mention that the application pending before the learned Single Judge would be disposed of as expeditiously as possible for impleading the co-owners as party-defendants to the suit. As rightly observed by the Division Bench, any construction made by M.S. Seble, the

G plaintiff, does not bind the co-owners because they are not consenting

parties and it will be subject to the result in the suit. A

It is contended for DDA that no reference was made to it for approval of the construction plan and, therefore, the DDA is not bound by the approval granted by the PWD. We need not say anything in this behalf. It would be open to the plaintiff to take appropriate action according to law. B

By proceedings dated May, 14 1993, this Court had stated that Shri Sibal, learned senior counsel appearing for the plaintiff, had undertaken that if the construction is not in accordance with bye law, the construction may be pulled down by the authorities and the second respondent, i.e. the plaintiff, will not claim any equities in his favour. It was suggested in that order that the MCD would inspect the construction whether it is in accordance with the sanction plan given by the PWD and if it not in conformity with the bye-laws of the MCD, the plaintiff would not proceed with the construction. Pursuant thereto, the MCD had inspected and made a statement that the construction carried on by the plaintiff was not in conformity with the bye laws and to that effect the statement and report were placed on record. It is open to the parties in the suit to place the evidence whether the construction is in accordance with the relevant rules and, if it is not, the construction made in contravention would be pulled down without claiming any equities as undertaken by the learned senior counsel. C
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The appeals are accordingly disposed of. No costs.

CONTEMPT PETITION NO. 185 OF 1994

This petition, filed by the owners, is permitted to be withdrawn with liberty to approach the appropriate authority. It is accordingly dismissed as withdrawn. F

S.L.P. (C) NO. 10137/93 :

In view of the orders in SLPs No. 5380-81/93, the SLP stands disposed of. No. costs. G

G.N.

Appeals and petitions disposed of.