

(1984) 07 AP CK 0014

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 5303, 6352 and 9614 of 1983

Ananda Rao

APPELLANT

Vs

Joint Collector, West Godavari, Eluru and Others

RESPONDENT

Date of Decision : 12-07-1984

Acts Referred:

Andhra Pradesh Cinemas (Regulation) Act, 1955 — Section 6
Andhra Pradesh Cinemas (Regulation) Rules, 1970 — Rule 9(1), 9(2)
Constitution of India, 1950 — Article 226

Citation : AIR 1985 AP 162 : (1985) 1 APLJ 295

Hon'ble Judges : Amareshwari, J

Bench : Single Bench

Advocate : K.V. Subramanya Narsu, A. Krishna Murthy and K.V. Satyanarayana, for the Appellant; Govt. Pleader, for Home and Philkhana Rama Rao, for the Respondent

Judgement

1. Ch. Ananda Rao, the petitioner in Writ Petition Nos. 5303 and 6352 of 1983 is the owner of an extent of 1 acre in R.S.No.18/2A1 of Govaravaram Village, Eluru Taluk, West Godavari Dist. He made an application to the Joint Collector, Eluru, the Licensing Authority under the A.P.Cinemas (Regulation) Act and the Rules made thereunder (hereafter called the Act the Rules) for permission to construct a cinema hall in the said land. By proceedings dt 29-4-83, the Licensing Authority accorded permission. On 3-5-83, the Principal, St. Therisa's College, Eluru the 2nd respondent made a representation that the land on which permission was granted for construction of the cinema theatre was included in the mast plan prepared under the Town Planning Act, that the area was earmarked as a residential zone where construction of cinema halls is prohibited, that there are educational institutions, a college and a Hostel for Women nearby and that it would be a perpetual nuisance if theatre comes up in that area. A further representation was made to the same effect on 29-6-1983. Thereupon, the Licensing Authority by his proceedings dt. 28-6-83 directed the petitioner to stop further construction observing that the permission granted earlier was illegal

in as much as the Director of Town Planning was not consulted as required under R.9(2) of the Rules since the land is covered by a Town Planning scheme and that he was not aware of the same when he granted the permission. He also directed the petitioner to file two sets of plan for sending the same to the Director of Town Planning for his views.

2. Challenging the said order, the petitioner filed these two writ petitions mainly contending that the Licensing Authority having granted permission has no jurisdiction or power to stop construction. Permission once granted cannot be cancelled or revoked unless there is a specific provision empowering him to do so. S. 10 which deals with revocation or suspension of licence has no application to revocation or suspension of permits as licence and permission are two different and distinct matters. Even if S. 10 is held to be applicable, the power is conditional and can be exercised only on the grounds mentioned therein, namely, where the licence has been obtained by misrepresentation or fraud or where the licensee failed to comply with any of the provisions of the Act and the Rules made thereunder, or any of the conditions or restrictions upon or subject to which the licence has been granted and the said power be exercised only after giving an opportunity to show cause why the permission should not be cancelled. The impugned proceedings directing the petitioner to stop further construction amounts to suspension of the licence and is therefore illegal and without jurisdiction.

3. Before dealing with these contentions, I would refer to Writ Petition No.9614 of 1983 which relates to the same matter. The petitioner in writ petition No.9614 of 1983 is M/s East India Commercial Company Private Limited., the Company purchased an extent of 3 acres in RS.18/2A2 in Gavaravaram village for construction of its staff quarters. This land is just opposite to the land on which permission was granted for construction of the cinema theatre to the petitioner in the other two Writ Petitions. The petitioner challenges the proceedings dt. 29-4-83 granting permission for construction of a Cinema Theatre mainly on the grounds that the land is situated on a residential zone and no permission could be given for construction of a cinema theatre, that the permission was granted contrary to the provisions of R.9(2) of the Rules, that the petitioner in the other two Writ Petitions was fully aware of the fact that the land was situated in residential zone as he himself prepared a lay out for residential plots and got approval of the Director of Town Planning in LP177/80 and in one of the plots he had also constructed a residential building.

4. Thus it is seen that in the first two writ petitions, the implied revocation of the permission is challenged, while in the third writ petition, the grant of permission itself is assailed. It is therefore appropriate to consider the validity of the permission first since if the permission itself is found to be invalid,. There is no necessity to consider the subsequent proceedings of the licencing Authority directing the petitioner to stop further construction.

5. The main question for consideration is whether the permission accorded by the

Licensing Authority on 29-4-83 for construction of a Cinema theatre in RS.18/2A1 is in accordance with the Act and the Rules. Permission for construction of cinema theatres and licenses for exhibiting film is governed by A.P.Cinema (Regulation) Act, 1955 and the Rules made thereunder. Under S. 4 of the Act, the Licensing Authority is the Dist. Collector. Sec.6 provides that an application for permission for construction of a building to exhibit cinemas shall be made to the Licensing Authority. Under sub-sec. (2) of S. 6, subject to the Rules made under the Act, the Licensing Authority may grant or refuse to grant permission. Rule 9 prescribes the procedure to be followed by the Licensing Authority before granting or refusing permission under S. 6 Rule 9(1)(a) provides for return of the application within a period of 5 days from the receipt of the same, if it is not in accordance with the Rules. Rule 9(1)(b) which is relevant for our purpose is as follows;_

"9.(1) the licensing authority shall

(a) xx xxx xx

(b) If the application is in order forward a copy each of the application together with its enclosures to the Executive Engineer, Road and Buildings, the Chief Executive Officer of the local authority, the Director of Town Planning in the case of localities covered by Town Planning Schemes, the Health Officer and the Police authorities asking for their reports within 60 days from the date of receipt of the copy of the application and obtain their acknowledgment.

9.(2) On receipt of the reports referred to in Cl.(b) of sub-rule (1), if the licensing authority is satisfied that the other requirements of these rules are fulfilled and that the applicant is in lawful possession of the site, he shall within 25 days from the date of receipt of the said reports, grant the permission applied for, either absolutely or subject to such conditions as it thinks fit to impose.

Provided that if the licensing authority is satisfied that the provisions of these rules have not been fulfilled, he may refuse to grant the permission applied for and communicate to the applicant the reasons for such refusal."

6. Thus it is manifest from R.9(1)(b) that the Licensing Authority is under an obligation to obtain a report of the Director of Town Planning in case of localities covered by a Town Planning Scheme and it is only after the consideration of the said report permission can be granted or refused. The expression "shall" in S. 9(1) makes it obligatory. In G.O.Ms. No.312, Municipal Administration (B-2) dt. 25-7-1975, the entire land in the village of Gavaravaram was included in the town -planning scheme of Eluru. The land in which the cinema theatre was proposed to be constructed is situate in RS.18/1A1 of Gavaravaram village and as such the Licensing Authority was bound to consult the Director of Town Planning and grant permission only after considering the report. The fact that the Director of Town Planning was not consulted cannot be disputed as the licensing authority himself stated in his order dt., 29-6-83 that he did not consult the Director of Town Planning as he was not aware of the fact that the land was

included in the Town Planning Scheme and the moment this fact was brought to his notice, he directed the owner of the plot to stop construction and submit the plans for sending the same to the Director of Town Planning for his report. Therefore the permission granted under S. 6 read with R.9(2) is clearly illegal as the said permission was contrary to R.9(1)(b) i.e., without taking the relevant material into consideration.

7. It is then submitted by the learned counsel for the petitioner that R.9(1)(b) is only directory and not mandatory and the failure on the part of the Licensing Authority to obtain the views of the Director of Town Planning does not automatically vitiate the permission and more so in a case where it causes a great hardship to the owner who incurs a lot of expenditure on account of constitution. The question of hardship is no criteria for judging whether the Rule is mandatory or directory. This rule is designed to ensure construction in accordance with the master plans in case of localities covered by town planning schemes where land is divided into commercial, industrial and residential zone etc. The Director of Town planning will be in the know of things so far as the town planning schemes. He will be the proper authority to advise and recommend whether permission can be granted for construction of theatres. The Licensing Authority under the Cinematographs Act is therefore required to obtain the report, as otherwise, permissions granted under this Act may come in conflict with the zonal uses prescribed under the Town Planning Act. This case itself illustrates this position. According to the petitioner herein, the land is situated in a residential zone where construction of theatres is prohibited and the Licensing Authority under the Cinematograph Act granted permission without knowing that this locality is included in the Town Planning Scheme and the land is situated in a residential zone. It is precisely for this purpose R.9(1)(b) requires that in all such cases the report of the Director of Town Planning should be obtained before granting permission under the Cinematographs Act. It is therefore essential for the Licensing Authority to comply with this requirement. Hence I hold that this Rule is mandatory and failure to comply with the rule renders the proceedings invalid. Further, in this case, the petitioner was fully aware of the fact that the land is covered by a town planning scheme as he himself got the approval of the Director of Town Planning for the layout plans and constructed a building in the same area. The allegation made to this effect in the affidavit in the Writ Petition is not denied. Since the mandatory requirements of R.9(1)(b) are not complied with the permission granted in proceedings dt. 29-4-83 is opposed to law.

8. It is next submitted by Mr. Panduranga Rao the learned counsel for the 2nd respondent that the Writ Petition should be dismissed on the ground of laches. I am, unable to accept this contention. Permission to construct the Cinema hall was granted on 29-4-83. Immediately thereafter, two representations were filed by the Principal of St. Theresa's College, which was situated in the vicinity one on 3-5-83 and the other on 27-6-83. The Joint Collector himself directed the construction of the theatre to be stopped on 28-6-83. Therefore, there was no necessity for filing any Writ Petition as further construction was stopped. Though

the owner filed two Writ Petitions, W.P.Nos. 5303 and 6352 of 1983, one in June and the other in July, 1983, it was only on 2-9-83 he was permitted to proceed with the construction, by an order of stay by the High Court. Immediately petitions were filed to vacate the stay order and an order of Status quo was passed on 22-10-83 and stay was vacated on 11-11-83 and this Writ Petition was filed on 2-11-83. Thus the permission granted on 29-4-83 was rendered ineffective on 28-6-83 on representations filed immediately by some one or other. Soon after the High Court suspended the order of the Joint Collector restraining the construction, the Principal of the St. Therisa's College took steps for vacating that order and the same was vacated on 11-11-83 and the present Writ Petition was filed even before this date. In the circumstances, there was no laches at all on the part of the petitioner.

9. It is next submitted that the Writ Petitioner has no locus standi as he cannot be said to be an aggrieved party. This contentions is wholly misconceived. The petitioner is the owner of the land situate just opposite to the plot for which permission was granted for construction of a cinema theatre. The petitioner company proposes to construct residential quarters for its staff. According to him, it is a residential zone as per the master plan and no permission can be granted for cinema theatres. He is the owner of the neighbouring land and if theatre is allowed to come up, it would cause great nuisance. He is not a mere interloper or a busy body. He is a person who is directly affected being the owner of an opposite plot. He is therefore entitled to complain that permission was being granted contrary to the Rules. He is a person aggrieved. He cannot be "told off at the gates", to use the words of Justice Krishna Iyer, in one of his classic judgments. The concept of locus standi has assumed wider dimensions in the day to day expanding horizons of socio-economic justice and welfare of the State (sec. S.P. Gupta Vs. President of India and Others, ; People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, ; Fertilizer Corporation Kamgar Union (Regd) Sindri v. Union of India AIR 1981 SC 344; Attorney General v. Independent Broadcasting Authority (1973)1 All ER 689 Reg. V. Greater London Council ex parte Blackburn (1976)3 All ER 184, , and Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others,).

10. The petitioner is a person who is directly affected and he has sufficient interest in the matter.

11. For the reasons stated above, Writ Petition No.9614 of 1983 is allowed and the impugned order dt. 29-4-83 is quashed. The Joint Collector, the Licensing Authority is directed to follow the procedure under R.9(1)(b) of the Rules and pass appropriate orders thereafter as expeditiously as possible. No costs.

12. In view of my decision in Writ Petition No.9614 of 1983 holding that the permission granted was illegal, it is unnecessary to consider the contentions raised in these two Writ petitions i.e., Writ Petition Nos. 5303 and 6352 of 1983

relating to the order of the Licensing Authority rendering the permission ineffective. Whether the Licensing Authority has such a power or not is now immaterial, since the order granting permission itself, is quashed. Further, since the proceeding dated 29-4-83 was contrary to law as it was made without following the procedure under R.9(1)(b), even if the subsequent order of the Joint Collector dt 28-6-1983 rendering the said permission ineffective is invalid. I would not interfere with the latter order for the reason that if the latter order is quashed, the earlier illegal order will get restored. Even in this view, the subsequent order is not liable to be interfered with. However, as I said since the permission itself is quashed, it is unnecessary to pass any orders in these two Writ Petitions.

13. In the result Writ Petition No.9614 of 1983 is allowed and writ petition Nos. 5305 and 6352 of 1983 are dismissed. No costs. Advocates fee Rs.150/-.

14. Orders accordingly.