

(2001) 11 PAT CK 0044
In the Patna High Court
Case No : LPA No. 664 of 2001

Baban Sharma

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 26-11-2001

Acts Referred:

Bihar Cinemas (Regulation) Act, 1954 — Section 5
Bihar Cinemas (Regulation) Rules, 1974 — Rule 9

Citation : AIR 2002 Patna 94 : (2002) 50 BLJR 1610 : (2002) 2 PLJR 94

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kumar Singh, J

Bench : Division Bench

Advocate : Rai Shivaji Nath and Indrajeet Singh, for the Appellant; Ashok Kumar Singh, SC III for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

Ravi S. Dhavan, C.J.—The most redeeming feature of the present case is that on behalf of the State it's counsel Mr. A. K. Singh, S. C. III made a candid statement that he cannot support the impugned order dated 17 May 2001 (Annexure 1 to the writ petition). Followed by this was a statement that regard being had to the legalities of the matter the proposition cannot be defended that the Minister could have interfered in this matter.

2. The facts are these : The petitioner appellant purchased the property, land and a building and a running business of a cinema. The property at which the business of cinema is being carried out is, known as Prabhat Talkies. It is khata No. 196, plot No. 16 area 0.4 decimals, khata No. 198, plot No. 17. area 0.7 decimal, plot No. 18, area 0.9 decimal situated at Jehanabad. The petitioner appellant along with others purchased the entire interest in the land and the building by a sale-deed executed in his favour. The sale was questioned in title suit No. 104 of 1991 in the Court of Subordinate Judge. Jehanabad by one Pramila Sinha and Mathura Prasad, respondents No. 9 and 10 in the writ petition. An alternate relief was also sought in the plaint to the effect, that the petitioner

be directed to execute a lease in their favour with regard to the premises in question for a period of 25 years. Impliedly this relief had been sought to continue the business of running the cinema. The suit failed and was dismissed by the Sub-Judge, Jehanabad by order dated 13 July 1993. Any extension of lease which had been granted in terms of a decree passed in title suit No. 78 of 1998 also expired on 31 December 1991. This, then left the contesting respondents Messers Pramila Sinha and Mathura Prasad without any title as also without any lease. Consequently, the business of cinema was virtually being run without a valid licence and none has been granted under the Bihar Cinema (Regulation) Act, 1954 and the rules framed under this. Act.

3. An appeal has been filed against the Judgment of the trial Court (First Appeal No. 608/93) and this appeal is pending. But, this aspect is not relevant.

4. When Messers Pramila Sinha and Mathura Prasad as the management of Prabhat Talkies applied for the grant of a licence u/s 5 of the Bihar Cinema (Regulation) Act, 1954, the petitioner objected and contended that a licence to a person who had no valid title to the property cannot be granted under the law. This objection was taken u/s 5 of the Act read with Rule 9 of the Bihar Cinema (Regulation) Rules, 1974, referred to hereinafter as the Rules. The District Magistrate, as the Licensing Authority, gave cogent reasons in his order dated 12 March 2001 as to why he was not continuing the licence nor granting it in effect, the District Magistrate recorded reasons that the persons seeking the licence to run the cinema had no title to the property. This should have been the end of the matter but the observation of the District Magistrate to the department concerned to take appropriate action in accordance with law was taken too lightly by the office of the District Magistrate with the result that no action was taken.

5. Clearly, the cinema was running without a licence. This in itself is a disturbing feature that once the District Magistrate has not granted the licence the follow up action has not been taken by the local officer to ensure that the business of running the cinema is closed forthwith. It appears that somehow the contesting respondents managed the situation and continued the business of running the cinema, illegally, without a license and against the law.

6. Aggrieved by the order of the District Magistrate the contesting respondents filed an appeal under the Rules. Upon the licensing authority refusing a licence the order is appealable under Rule 9. Rule 9 prescribes that an appeal should lie before the State Government or any other authority appointed by the State Government for this purpose. The proviso to Sub-rule (2) of Rule 9 clearly states that an appeal against an order of the licensing authority refusing to grant or renew a permanent licence shall lie before the Divisional Commissioner "having local jurisdiction." The entire text may be seen better in Rule 9 reproduce :

"9. Power of licensing authority to refuse licence.-- (i) Nothing in these rules shall affect the discretion of the licensing authority to refuse a licence to any applicant if, for reasons, to be recorded in writing, the licensing authority considers it

necessary so to do in the public interest.

(11) Any order of a licensing authority refusing licence shall be appealable. The appeal shall lie before the State Government or any other authority appointed by the State Government for purpose :

[Provided that the appeal against the orders of licensing authority refusing grant of renewal of permanent licence shall lie before the Divisional Commissioner having local jurisdiction.]"

7. The appeal having been filed the petitioner found himself a little surprised when he received a communication dated 17 May 2001 (Annexure 1 to the writ petition) that the matter has been put up before the Hon"ble Minister, Urban Development Department and the order of the District Magistrate has been stayed by the Hon"ble Minister. It is at this stage that the petitioner filed the present writ petition, in effect, seeking a writ of certiorari that the State Government or the Hon"ble Minister have exceeded their authority. Normally, the appeal was maintainable before the Divisional Com-missioner having local jurisdiction and there was no occasion for the matter to be heard by the Hon"ble Minister as the law does not make such a provision and the rule of law has been violated.

8. The writ petition was dismissed at the admission stage. The learned Judge in his order on the writ petition was of the opinion that if the State Government had the power to delegate and designate an authority which was a prevailing power there was nothing wrong in the Minister hearing an appeal as the source of the power was the State Government itself.

9. Thus, the petitioner has filed the present letters patent appeal. Apart from placing the facts and circumstances the appellant has placed reliance on sufficient case law, to press his submission that if a Minister were to interfere in matters when the statute designates an authority, not only the rule of law is violated but it will lead to anarchic situations. Arguments in behalf of the petitioner were addressed by Mr. Rai Shivaji Nath, Sr. Advocate. He referred to a Supreme Court case which arose out of Bihar in a matter relating to sugar-cane reservation and assignment of such areas to sugar factories. This is the matter re. Purtabpur Company Limited v. Cane Commissioner of Bihar AIR 1970 SC 1696 simply learned counsel contended that if power has been designated to a named authority it cannot be arrogated by an authority not specified. In the case cited the Supreme Court held that these powers could not be arrogated by the Chief Minister. In the present case the Hon"ble Urban Development Minister could not arrogate to himself the power to hear an appeal nor pass a stay order on it as the law clearly provided that the jurisdiction would be of "the Divisional Commissioner having local jurisdiction".

10. Several other cases were cited by the Senior Counsel on behalf of the petitioner. But after the citing of the decision in re, Pratapbur Company Ltd. (supra) learned counsel appearing on behalf of the State, S.C. III fairly stated

that the order dated 17 May 2001 passed by the Hon''ble Minister (Annexure 1 to the writ petition) cannot be defended by him. This, then, ends the matter.

11. Thus, the Court hereby certifies that the appeal, which had been filed by the contesting respondents will be an appeal which will be considered by the Divisional Commissioner having local jurisdiction i.e. to say Divisional commissioner, Magadh Division. Gaya. The record thus, shall stand transferred to the Divisional Commissioner aforesaid. Any ad interim order which had been granted on the appeal, referred to in the communication No. 1399 dated 17 May 2001, of the Additional Secretary, and any other like communication, in effect, granting or putting a stay on appeal proceedings shall stand quashed upon a writ of certiorari. The action of the Minister is in excess of delegation by law.

12. The record shall revert to the appropriate authority i.e. the Divisional Commissioner. A writ of mandamus accordingly issues. Hereinafter, the appeal be heard by this authority upon a notice afresh to the parties and the matter determined within four months.

13. The order on the writ petition dated 5 July 2001 is set aside.

14. This Letters Patent Appeal is allowed with costs throughout on the writ petition and the present Letters Patent Appeal also.