

(1969) 06 MAD CK 0014
In the Madras High Court

C. Bhavarlal Managing Proprietor, Sri Meliata Talkies

APPELLANT

Vs

Mallay Gounder

RESPONDENT

Date of Decision : 30-06-1969

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1969) 82 LW 694 : (1970) 1 MLJ 236

Hon'ble Judges : K. Veeraswami, J

Bench : Single Bench

Judgement

K. Veeraswami, J.—The appellant was a lessee of a permanent cinema theatre. The lease was in the first instance, for a term of 10 years, but subject to renewal for a further term of 5 years. After the expiry of 15 years, the appellant applied for renewal of the cinema licence, but without success. The Collector was not satisfied as to his lawful possession of the site on which the permanent theatre was situate. The Board of Revenue declined to interfere. Alagiriswami, J., also considered that no interference was called for and dismissed the appellant's petition under Article 226 of the Constitution.

2. Mr. Thiagarajan for the appellant attempted to take us through the material which bears on the appellant's lawful possession of the site. But we are of opinion that in a matter like this, this Court exercising writ jurisdiction will not go into the disputed question as to who is in lawful possession. The proceedings under Article 226 of the Constitution are not analogous to a suit. Apart from that, regard must be had to the language of Rule 13 of the Madras Cinematograph Rules. The material part of the rule reads : if he (applicant) is not the owner, he shall to the satisfaction of the licensing authority, produce documentary evidence to show that he is in lawful possession of the site, building and equipment. "The jurisdiction to grant or refuse" renewal of a licence is entrusted to the licensing authority which is not the Court. The nature of the jurisdiction so entrusted is clearly for the licensing authority to see whether on the documentary evidence produced, he is satisfied that the applicant was in lawful possession of the site.

In exercise of his jurisdiction the licensing authority looks into the matter prima facie and for the purpose of his being satisfied whether he, the applicant is in lawful possession. He is not called upon to decide the issue finally between the parties as in a suit. This aspect of the matter should be kept in view when it comes up in the form of a writ petition under Article 226 of the Constitution. In exercise of this power this Court will not, in that background, take upon itself to investigate as to the legality of possession of the site in the hands of the applicant. All that can be looked into by this Court, as we are inclined to think, is whether the licensing authority has applied his mind to the documentary evidence produced before him and weighed it with a view to satisfy himself as to the legality. Short of caprice, arbitrariness or mala fides the licensing authority would more than have done his duty if he had gone through that process. If this Court is satisfied about it, it will not further go into the rival position in regard to the legality of possession of the site which will not necessarily be the final pronouncement between the parties but leave the issue to be tried as between them in a suit in the appropriate civil Court.

3. As a matter of fact, we are told that a suit is pending in the Court of the Subordinate Judge at Ootacamund for recovery of possession of the site and theatre. The question, whether the plaintiff in that suit, would be entitled to get possession and whether the defendant, who is the appellant before us, can resist it on the ground that he is lawfully in possession of the site, will have to be gone into in that suit. In this respect if the pleadings require any amendment, of course, it will be for the appellant, who is said to be the defendant in the suit, to take suitable steps to have them amended. If there is an application for appointment of a Receiver and the Court of the Subordinate Judge thinks fit to accept the application, it will obviously be open to the Court to appoint a Receiver who can apply for renewal of the licence, for in that case the Receiver in possession of the site will be regarded as being in possession on behalf of that party which may ultimately be regarded as the rightful party entitled to possession.

4. Subject to the above observations, we decline to interfere. The appeal is dismissed. No costs.

5. We are told that because of the stay granted pending appeal, the appellant has been running the theatre and that if all on a sudden he is stopped from running the theatre, prejudice will ensue. Keeping this in view but without prejudice to the rights of the other party, we direct that the appellant will be permitted to run the theatre for thirty days from to date within which he may move the Court of the Subordinate Judge at Ootacamund for such relief as he may be entitled to. For the period of thirty days, during which we have permitted the appellant to run the theatre, he will maintain proper and accurate accounts of the receipts and outgoings in respect of the running of the cinema theatre every day and file the same in the Court of the Subordinate Judge once a week, preferably by Saturday of every week.