

(1994) 12 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 6300 of 1994

Channamallappa M. Vijapur

APPELLANT

Vs

District Magistrate

RESPONDENT

Date of Decision : 09-12-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Cinemas (Regulation) Act, 1964 — Section 5, 9
Karnataka Cinemas (Regulation) Rules, 1971 — Rule 35, 85

Citation : (1995) ILR (Kar) 731 : (1995) 4 KarLJ 44

Hon'ble Judges : Hari Nath Tilhari, J

Bench : Single Bench

Advocate : R.U. Goulay, for the Appellant; A.R. Sharada, for B.G. Sridharan and N. Devadas, Government Advocate for R-3, for the Respondent

Final Decision : Dismissed

Judgement

Hari Nath Tilhari, J.—This Writ Petition has been listed for direction on I.A.III. In I.A.III the direction has been sought to the effect that this Hon'ble Court may be pleased to issue a direction to the respondent No. 1 not to renew the licence under Karnataka Cinema Regulation Act and Rules framed thereunder to second respondent-partnership firm which has stood dissolved on the death of the partner and if it has been issued, it is to be revoked. He further sought the direction to be issued to respondent No. 1, the licensing authority to take note of the death of licensee and to take suitable action in the matter of renewal of cinema licence in favour of second respondent in the interest of justice.

2. In the Writ Petition, the petitioner has claimed the relief of declaration of the order of Divisional Commissioner dated 7.2.1991 to be illegal and void. The petitioner has clearly claimed the relief of prohibiting the respondent No. 1, District Magistrate, Dharwad, from entertaining the application of respondent No. 2 for temporary permit u/s 85 of the Karnataka Cinema Regulation Rules, 1971 as well as to stay further proceedings in pursuance of Annexure "F" dated

7.2.1991 with the direction to respondent No. 1 not to issue temporary permit to respondent No. 2 and to pass a further order or direction declaring the order of the District Magistrate dated 15.11.1990 as per Annexure "G", in its entirety to be illegal and void. A reading of the two reliefs per se shows that in the interim relief application also the relief which has been claimed by the applicant petitioner is of the same nature and is of same scope as the one that has been claimed under the Writ Petition, except some change of the language. But the impact of granting interim relief would be the same law as amounting to granting or allowing it in the Writ Petition before its full fledged hearing and decision.

3. Taking note of the above situation, the parties' Counsel desired that the Writ Petition may be disposed of finally and argued the Writ Petition itself.

4. I have heard Sri R.U. Goulay, Counsel for the petitioner and Smt. A.R. Sharadha appearing on behalf of Sri B.G. Sridharan as a brief-holder to Sri B.G. Sridharan, Counsel for the respondent. The facts of the case are that the above reliefs in this Writ Petition have been claimed in the context of the following facts of the case.

5. According to the petitioner's case, the cinema theatre -Vanashree had been started by a partnership firm known by the name of B.B. Thegur and C.S. Hoskeri and Co., some time in the year 1960-61. Thereafter, according to the petitioner's case, one partner of the firm (which was constituted on 17.5.1950), namely, Sri Veerappa Siddalingappa Hoskeri, one of the partners of M/s. B.B. Thegur and C.S. Hoskeri & Co., died on 5.2.1978. Thereafter, the partnership was continued by taking the son of that partner Veerappa Siddalingappa Hoskeri in the firm and a fresh instrument of partnership was executed on 17.3.1978. Subsequently, Sri B.B. Thegur died on 14.2.1985 and the firm continued its business taking the sons of deceased partner B.B. Thegur as partners in place of Sri Thegur himself. The partnership firm thereafter continued its business and it appears from the annexure to the counter affidavit that on 1.4.1988, the partners of the firm entered into a new partnership agreement, but did not include the petitioner, that is excluding the petitioner, the new partnership firm, according to the petitioner, was created by all the partners among themselves excluding the present petitioner. No doubt, the new partnership firm did come into being, but it did bear the name of the old firm, namely, M/s. B.B. Thegur and C.S. Hoskeri & Co., which are mentioned as defendants 2 to 9 in Annexure R-11. That firm applied for grant of temporary permit and it was granted from time to time pending the application for transfer of licence.

6. The petitioner's case is that he preferred objections to the same, but the said objections had been dismissed by the licencing authority. Vide Annexure "C", the order dated 22.10.1990, the District Magistrate rejected the application for licence and also request for transfer thereof from the name of previous licencees to their names and directed the parties to get their civil rights as partners as adjudicated by the Civil Court. Thereafter the temporary permits continued to be granted to the second respondent by the District Magistrate and the petitioner

filed the appeal to the Divisional Commissioner from the order of Licensing authority, granting the temporary permit. The Divisional Commissioner, dismissed the appeal vide. Annexure "F" to the Writ Petition. The Divisional Commissioner considering the circumstances of the case observed as under :

"In such circumstances pending final decision in the Civil Court, giving a temporary permit to the Respondent-II under Rule 86 looks reasonable and the District Magistrate has done the same. The Appellant without getting his title clearly established in Civil Court, is trying to stall the Respondent-II also from running the Theatre. I am afraid, this stand of the Appellant looks very unreasonable to me and basing his argument on a technical point he is adopting a Dog in the Manger Policy to the detriment of the revenue of the Government also.

For the foregoing reasons, I am unable to accept the argument of the learned Counsel for the Applicant and dismiss the appeal."

It is this order of the appellate authority as well as the order of the licensing authority that has been challenged in the present Writ Petition.

7. The petitioner's learned Counsel made good long submission before me. The learned Counsel for the petitioner submitted that the licence should not have been issued in the name of the second respondent and the objection of the petitioner should have been allowed. His contention has been that he has been a partner and he has been illegally removed from the partnership business. Therefore, the second respondent had no right to utilise the property of the partnership firm in which he had also been entitled. The learned Counsel further submitted that there could not be regrant of the licence and regrant either of temporary or permanent licence has been against the provisions of law and as such the orders impugned should be quashed.

8. The contentions of the learned Counsel for the petitioner have been hotly contested by Smt. A.R. Sharada, the brief-holder on behalf of Sri B.G. Sridharan, learned Counsel for the respondents. She submitted that even according to the petitioner's case as mentioned in paragraph 1, the original partnership had been entered into in 1950, that is on 17.5.1950 and on the death of Sri Veerappa Siddalingappa in the year 1978, the new partnership agreement had been entered into on 17.3.1978 and thereafter Sri B.B. Thegur died on 14.2.1985. The business of the firm was continued by the remaining partners including the sons and heirs of the deceased B.B. Thegur. She submitted that in the interim relief application, it has been averred by the applicant-petitioner himself that "the second respondent-firm which has stood dissolved" when the petitioner himself admits as contained in the relief clause in I.A. for direction that the earlier partnership firm in which he was a partner stood dissolved by the death of the partner and the new partnership agreement had been entered into by the other partner and heirs also entered into partnership business vide the new agreement and the new partnership did come into being, as admitted by the respondent, in

his interim relief application, there are no legs for the petitioner to oppose the grant of fresh licence in the name of the second respondent, the new partnership firm for bearing the name of the old firm, namely M/s. B.B. Thegur and C.S. Hoskeri & Co. She submitted that licence is personal to the person and if the temporary permit has been granted, as this new firm bearing the old name as it had been entitled to the grant thereof as temporary as well as final permit. If petitioner has any claim with respect to the share in the asset or property and the profits of the old firm, even prior to the date of death or coming into force of the new partnership firm or for some damages for alleged use of the old profits or assets, if any, of the new firm, though the respondent do not admit the same at present, the petitioner has got a civil remedy by way of suit, and the present writ petition is misconceived. She further submitted that the petitioner has already filed a suit. Copy of the plaint has been annexed as Annexure No. R-11 to the additional statement of objections and the recourse to the remedy of suit has been taken by the petitioner and this position being admitted by the petitioner that old firm stood dissolved as appears from the perusal of the interim application, the present Writ Petition deserves to be dismissed.

9. I have applied my mind to the contentions made by the learned Counsel for the parties respectively and perused the record of the case. Running of cinema business is controlled and governed by the provisions of the Karnataka Cinema (Regulation) Act, 1964 (hereinafter described as "the Act No. 23 of 1964") and the Rules framed thereunder known as Karnataka Cinema (Regulation) Rules, 1971 as amended from time to time. Section 4 of the Act provides and reads as under:

"4. Cinematograph exhibitions to be Licensed:- Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act or otherwise than in compliance with any conditions and restrictions imposed by such licence."

Section 5 of the Act makes provisions for granting of licence. It reads as under:

"5. Licence for exhibition of cinematograph films:-

(1) Any person who intends to give exhibition by means of a cinematograph in a place shall make an application in writing to the licensing authority for a licence therefore together with such particulars as may be prescribed.

(2) The licensing authority may, thereupon, after consulting such authority or officer as may be prescribed and subject to the provisions of this Act, and the rules thereunder, grant the licence to such person and on such terms and conditions and subject to such restrictions as it may determine.

(3) Where the licencing authority refused to grant the licence, it shall do so by an order communicated to the applicant giving reasons for such refusal."

Section 6 of the Act provides for the matters to be considered by the licensing authority while granting or refusing to grant the licence. Section 7 of the Act

confers power on the licensing authority to limit the number of the places that can be licensed in an area and Section 8 of the Act imposes certain restrictions in the matter of grant of licence and provides that unless the authority is satisfied about the matter referred in Clauses (a) (b) and (c) of Section 8, the licensing authority shall not grant a licence. Section 9 is the material section for the purpose of this case. Section 9 provides that the licence is to be personal to the grantee and shall not be transferable except with the permission of the licensing authority. It reads as under.

"9. Licence personal to the grantee and not transferable except with the permission of the licensing authority.- Every licence under this Act shall be personal to the person to whom it is granted and no transfer or assignment thereof whether absolute or by way of security or otherwise shall be valid unless such transfer or assignment is made with the approval in writing of the licensing authority."

Section 10 provides for appeals against the decision of the licensing authority u/s 5 or Section 9 of the Act. The other Sections for the present may not be very relevant and so they are not being referred to.

10. In exercise of the power u/s 19 read with Section 22 of the Act, the State Government framed the Rules in regard to the matters to be provided by the Rules in Karnataka Cinema (Regulation) Rules, 1971, are the Rules that have been framed under the Act. Rules contained in Chapter VI of the Rules deal with the approval of the building construction and issue of licence. Rule 35 of the Cinema Rules provides for grant of licence to run the cinema and thereunder an application is to be made for the grant of licence to run the cinema and what are the documents to accompany that application have been mentioned therein. Rule 36 makes provision for grant or refusal of the cinema licence and Rule 37 provides that all licences granted under Rule 36 shall be valid for a period of three years from the date of issue. The Proviso to Rule 37 further provides that licensing authority may for reasons to be recorded in writing grant a licence for a period shorter than three years. The consideration of provisions of the Act, particularly Rules contained in Chapter V of the Rules and in particular the provisions of Section 5 and Section 9 reveals that the licence is personal to the person to whom or in whose name it is granted. It confers the personal right to the person to carry on a particular business, that is business of exhibiting the cinemas. According to the provisions of Section 9, it is ordinarily not capable of being transferred or being assigned in any manner whether it is an absolute transfer or a transfer by way of security or otherwise. This Section declares that the transfer of cinema licence by the person in whose name the licence has been granted shall not be valid. Only with the permission in writing or approval in writing granted by the licensing authority the licensee can make a transfer of his licence. That is then, in that case, the transferer or the transferee and the licensing authority the three have to come into picture. Unless that is the position, there cannot be any transfer of licence. The transfer or assignment is an

act of conveying the property or rights in property by the holder of the property or interest in licence i.e., by some living/juristic person to some other living person or it might have included transfer of property by a juristic person to another juristic person, but the person making transfer is expected to be in existence either naturally or in the eye of law and the transferee is also expected to be living person or living in the eye of law. It means there cannot be any transfer of licence by a dead person in favour of another person living or dead. The application which is made for a grant of licence by a person even after the death cannot be termed to be an application for transfer and need not be taken as an application for transfer. It is really in the nature of an application for grant of a licence. But it will always be a fresh application for grant of the licence afresh. The claim u/s 5 of the Act in the circumstances mentioned therein and Section 6 of the Act is one for grant of licence. For the convenience sake, that grant of licence again to a licensee has been described as a regrant, but it is actually grant as a perusal of Rules 35 and 85 will show, and so, an application for the grant or regrant is an application for grant of a fresh licence and same or almost similar considerations govern it which are to be taken in view as are to be taken at the time the authority proceeds to grant a licence. But if what the provisions of the Act and the Rules made thereunder require to be considered before granting or refusing to grant licence, is ignored by the authority, then that may be a case of illegal exercise of the jurisdiction by the authority in matter of granting or refusing to grant licence. It appears to be an admitted fact and the interim relief application per se shows that according to the petitioner, there has been a dissolution of the firm, as has been pointed out by the Counsel for the respondent Smt. Sharada. Smt. Sharadha contended that the petitioner himself has admitted the dissolution of the old firm on the death of a partner of firm, in the application for interim relief while claiming the interim relief, against the respondent No. 2, alleging that there could not be renewal of licence in favour of a dead person or partnership firm, consisting of a dead person. The position boils out to be that the present firm is a new firm which has applied for grant of licence for running a theatre and if temporary permit has been granted in the name of new firm, i.e., respondent No. 2, which according to respondent No. 1 has satisfied the needed requirements in the opinion of licencing authority, the petitioner cannot have any objection to the grant of licence and claim in the Petition is unsustainable as the authorities did not commit any mistake error of law or jurisdiction in granting temporary permit in favour of respondent No. 2 in view of the fact that the old partnership had dissolved. In my opinion, there is much force in this contention of the learned Counsel for the respondent. The further contention to the effect that remedy for the petitioner in such a case is to claim mesne profit or damages for use of the old partnership property, etc., If any, by the new partnership firm provided the petitioner proves that old partnership property is being used for the purpose of new firm and then he may get the relief from the Civil Court. The learned Counsel for the respondent has very clearly stated that she does not intend to concede nor does she concede that whether petitioner has got a right to claim mesne profit or damages for use

of mesne profit or damages for use of the old partnership property but if any, is the particular claim of petitioner then it is beyond doubt the petitioner's proper remedy is the suit. The respondent has already filed the suit for dissolution of partnership and accounting vide plaint i.e., Annexure R-11 to the counter statement. I am of the opinion that the present Writ Petition is misconceived as the questions involved in the suit may be decided by the trial Court without being affected by any observations made in this Petition.

11. With these observations, I am of the opinion that there is no case made out for interference either with the order of the Commissioner or of the District Magistrate or for granting any other relief to the petitioner in exercise of jurisdiction under Article 226 of the Constitution of India. Thus, considered in my opinion, the Writ Petition is devoid of facts and hereby dismissed.

The above observations are confined to the matter of the present Petition.