
(2000) 02 BOM CK 0026

In the Bombay High Court

Case No : Writ Petition No. 3388 of 1989

Harishchandra Maheshwar Karandikar

APPELLANT

Vs

Shantaram Ghila Patil and Others

RESPONDENT

Date of Decision : 28-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 BomCR 1

Hon'ble Judges : V.K. Barde, J;A.S. Bagga, J

Bench : Division Bench

Advocate : V.J. Dixit, for the Appellant; S.B. Talekar and S.K. Tambe, A.G.P. for respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Barde, J.—The petitioner has filed this writ petition claiming it to be a public interest litigation. The main contention of the petitioner is that the respondent No. 1 is running theatre by name Rajas Chitra Mandir on the house property No. 1202 in Bhadgaon, District Jalgaon without having proper licence to run the theatre. It is also contended that the building of the theatre is not in good condition and as per the norms prescribed for a theatre. The further contention is that running of the theatre in that place is causing nuisance to the neighbourhood because of the heavy traffic jam on the narrow lane and presence of unwanted social elements. The most important allegation of the petitioner is that respondent No. 1 has not paid entertainment duty and the authorities are avoiding to recover the entertainment duty from respondent No. 1 and, therefore, it is prayed that the authorities be directed by issuing writ of mandamus to recover entertainment duty from the petitioner by seizing his movable as well as immovable property and also be directed not to issue or renew licence to respondent No. 1 to run theatre on that premises.

2. At the outset, we would like to make it clear that though the petitioner has contended that it is public interest litigation, it is not at all so. Petitioner is the

husband of the landlady of property on which theatre premises is there. There are various disputes between the respondent No. 1 and the landlady of the property. Even she had filed a proceeding for possession of the lease property against respondent No. 1 and it appears that in R.C.S. No. 504 of 1976 filed by her, which had reached upto the High Court by way of Second Appeal No. 687 of 1978 happened to be dismissed as per the order passed by this Court on 12th September, 1983. The respondent No. 1 has produced on record a list showing various prosecution and other proceedings launched by the petitioner against respondent No. 1. This all makes it clear that to settle private vengeance, petitioner has filed this petition under the garb of public interest litigation and this very circumstance is sufficient to dismiss the petition.

3. The affidavit-in-reply filed by respondent No. 1 indicates that the respondent No. 1 is running theatre on that place since 1971 after obtaining the licence under the Bombay Cinemas (Regulation) Act, 1953. It may be for sometime his licence might have been cancelled or withheld for one or other reason by the department. Petitioner has nowhere brought on record that actually there was no licence issued to respondent No. 1. Affidavit-in-reply of the Entertainment Duty Officer, Jalgaon filed on behalf of the respondent No. 2 and 3 does not indicate that the petitioner (sic respondent) was running theatre without licence. The documents produced on record, however, indicate that sometimes licence was withheld or renewal of the licence was withheld by the authorities for due compliance of certain conditions of the licence and other matters. So anyway, it may be said that authorities were taking proper action against respondent No. 1 as and when it was necessary. Petitioner collected some information with respect to the prosecution lodged against the respondent No. 1 and then made out his case. In fact, he had no ground to file any such petition when the authorities were taking appropriate action against respondent No. 1. Petitioner had altogether failed to prove that respondent No. 1 was running theatre without licence.

4. So far as the conditions of the theatre, the petitioner has produced on record a report of the Executive Engineer, Jalgaon which indicates that in the year 1977, when the theatre premises were inspected by the Executive Engineer, some shortfalls were noticed. We do not think that petitioner can take advantage of such report prepared in 1977 to file a petition in the year 1986. Petitioner has not produced anything on record to indicate that in the year 1986, when the petition was filed, premises was not in condition as prescribed under the law. The petitioner has also not proved that the shortcomings which were recorded by the Executive Engineer were not complied with by the petitioner (sic respondent) during the period from 1977 to 1986. So here again, petitioner has miserably failed.

5. So far as the contention of nuisance to the people in the neighbourhood, when the licence is issued by the authorities after taking into consideration all the aspects as per the Bombay Cinemas (Regulations) Act, 1953, it cannot be said

that running of the theatre on that place is causing nuisance. If there are particular instances of nuisance, the petitioner can move the authorities as per the circumstance for removal of the nuisance. It is already made clear that the petitioner has filed this petition with ulterior motive and therefore, his allegations of nuisance are also without any basis.

6. Lastly, there remains the contention of the petitioner that respondent No. 1 has not paid entertainment duty tax and the authorities are not taking any steps to recover entertainment duty tax. Here again, there is no substance in the contention of the petitioner. The affidavit-in-reply filed by the Entertainment Duty Officer and the various documents produced on record by this respondents clearly indicate that authorities had taken action for recovery of the tax from the petitioner. Notice was issued to show cause as to why Rs. 4,40,015=66 should not be recovered from the respondent No. 1 towards entertainment duty. The respondent No. 1 filed his explanation and contested the matter upto the level of Minister and ultimately, his liability was fixed at Rs. 1,91,223.19 and when that liability was fixed, already petitioner had paid Rs. 1,77,080.68 and balance of Rs. 14,142.51 only had remained to be paid and that too was recovered immediately from the respondent No. 1 by the authorities. If all these documents produced on record by the respondents are taken into consideration, it can be said that it was not at all necessary for the petitioner to move this Court in the form of public interest litigation alleging that respondent No. 1 was not paying entertainment duty and the authorities are not taking any steps towards the recovery of the duty. Petition is completely devoid of merits and no relief as sought for by the petitioner can be granted. Hence, petition has to be dismissed.

7. The learned Counsel for the respondent No. 1 as well as learned Assistant Government Pleader have argued that by filing unnecessary proceeding, petitioner has taken undue advantage of the Court procedure and has put the respondent in unnecessary expenses and valuable time of the Court is also wasted by the petitioner and, therefore, exemplary costs be imposed on the petitioner. Learned Counsel Shri Dixit for the petitioner, has argued that it may be there was dispute between the petitioner and respondent No. 1 with respect to the property but the petition is filed only for the recovery of the entertainment duty which the respondent No. 1 was not paying and for which steps were not being taken by the authorities for recovery. So, no costs be imposed on the petitioner.

8. However, the observations made would make it clear that the petitioner filed the petition without there being any to protect public interest and it was filed because of personal rivalry with the respondent No. 1. Considering all the circumstances, the petitioner is directed to pay Rs. 1,000/- as token cost to the respondent No. 1 the same taken cost of Rs. 1,000/- to respondent No. 2 and 3 together. With direction, petition stands dismissed. Rule discharged.