

(1985) 02 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 16048 of 1984

H.C. Bhogegowda

APPELLANT

Vs

District Magistrate, Mandya District, Mandya

RESPONDENT

Date of Decision : 15-02-1985

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Cinemas (Regulation) Rules, 1971 — Rule 111, 28

Citation : AIR 1985 Kar 218

Hon'ble Judges : K.S. Puttaswamy, J

Bench : Single Bench

Advocate : B.G. Sridharan, for the Appellant; H.L. Dattu, Govt. Pleader, for the Respondent

Judgement

1. On an application made by the petitioner for locating a semi-permanent theatre on site bearing No. 633 of Halgur village, Malavalli Taluk, Mandya District, the District Magistrate, Mandya District, Mandya (D. M.) complying with the requirements of the Karnataka Cinemas Regulation Act, 1964 and the Rules framed thereunder (the Act and the Rules), issued him a No Objection Certificate (NOC) on 16-3-1981 (Annexure-A) for locating a semi-permanent theatre on the said site. Against the said NOC granted by the D.M., two of the objectors filed a revision petition before Government under S. 18 of the Act and obtained its stay. On 5-2-1982 Government dismissed the said Revision Petition (Annexure-B).

2. Without any loss of time thereafter, the petitioner produced the necessary building plans as required by R. 111-M of the Rules, before the D. M. seeking for his prior approval for the same to commence the construction of the building. But somewhat regretfully, the D. M. did not attend to the same with the speed and despatch he is expected to and even to this day, has not approved and returned the same. In the meanwhile, the period specified in the NOC was due to expire and, therefore, the petitioner approached the D. M. to extend the validity of the NOC, who on 15-9-1984 has rejected the same (Annexure-C). In this petition

under Art. 226 of the Constitution, the petitioner has challenged the said order of the D. M. (Annexure-C).

3. Sri B. G. Sridharan, learned counsel for the petitioner, strenuously contends that the D. M. has committed a manifest illegality in insisting on performance of what was impossible of performance and declaring that the NOC had lapsed for such nonperformance.

4. Sri H. L. Dattu, learned High Court Government Pleader, appearing for the respondent, sought to justify the impugned order.

5. The very brief order made by the D. M. on 15-9-1984, reads thus :

*"..... 15-9-84.

..... 17-9-84."

In this order, the D. M. is of the view that the petitioner should have commenced the construction of the building within 12 months from the date of issue of the NOC and completed the same within 31/2 years from that date and on their failure, the NOC issued had automatically lapsed for which reason, he cannot extend its validity under the Act and Rules.

6. Earlier I have noticed that on the termination of the proceedings before Government, the petitioner had submitted a building plan to the D. M. for his approval and the same had not been approved and returned by him at all. Without such approval of the building plan by the D. M. who is the sole and exclusive authority, to approve or disapprove the same, a person cannot commence the construction of the building on the very basis of the NOC itself. If a person cannot commence the construction of the building, the question of proceeding with the construction and completing the same also, will not at all arise. But before all that, it is somewhat odd to insist on the licensee to commence the construction and complete the same also within the time specified in R. 28 of the Rules. Rule 28 like any other Rule, cannot be worked or interpreted in a vacuum. The period of time referred to in R. 28(2) which requires a, person to commence the construction within 12 months from the date of certificate must necessarily be read as requiring him to commence such construction within 12 months from the date the building plan is approved and returned to him from the D. M. and cannot be read from the very date specified in the NOC. What is true of the commencement is also true of the completion of the construction of the building. In other words, the maximum period within which the building should be completed should be reckoned only from the date the building plan is approved and returned and not from the very date of the NOC itself. The progressive rule of construction of statute that has now come to prevail calls for the above construction of R. 28 of the Rules. Unfortunately, the D. M. instead of placing such a construction, has placed too liberal a construction of R. 28, which was impermissible. On this ground itself, the order of the D. M. calls for my interference.

7. After all law does not require a person to perform what is impossible of performance. On the facts and circumstances, it was impossible for the petitioner to complete the construction of the building within 12 months from the date of the NOC, much less complete its construction. In considering the application, the D. M. had not kept before him this aspect at all. In this view also the order made by the D. M. cannot be upheld.

8. Earlier, I have noticed that for one reason or the other, the D. M. had not examined, approved the building plan and returned the same to the petitioner so far. In this view, it is proper to direct the D. M. to forthwith examine the same and pass appropriate orders thereon.

9. In the light of my above discussion, I make the following orders and directions -

(i) I quash the impugned order of the D. M. (Annexure-C).

(ii) I direct the D. M. to forthwith examine and pass appropriate orders on the building plan already submitted by the petitioner in accordance with law.

(iii) I direct the D. M. to reckon the period of NOC already granted to the petitioner for the commencement of the building only from the date he accords his approval and returns the building plan to the petitioner.

10. Writ Petition is disposed of in the above terms. But in the circumstances of the case, I direct the parties to bear their own costs.

11. Let this order be communicated to the respondent within 15 days from this day.

12. Order accordingly.