(2004) 04 JH CK 0013

In the Jharkhand High Court

Case No : L.P.A. No. 263 of 2003

Kamal Kumar Jain and Others — APPELLANT

Vs

State of Jharkhand and Others — RESPONDENT

Date of Decision : 08-04-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 JCR 453

Hon'ble Judges : P.K. Balasubramanyan, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : Biren Poddar, Darshana Poddar and Mishra, for the Appellant; R.N. Sahay and A.K. Das, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Balasubramanyan, C.J.—The petitioner in WP (T) No. 5220 of 2002 on the file of this Court are the appellants. They claim to be the owners of a building known as Ratan Talkies. According to them, they had a licence for exhibiting cinematograph films. They let out the premises to a firm known as S.N. Ganguly & Company. According to them S.N. Ganguly & Company had the liability under the Bihar Entertainments Tax Act, 1948, to pay the entertainment-tax in respect of the films exhibited in Ratan Talkies. The appellants filed a suit for eviction against S.N. Ganguly & Company as T.S. No. 2/95 on the plea that the partnership had defaulted in payment of rent and had also breached the terms of the tenancy. It appears that the appellants had also objected to the renewal or grant of any license under the Cinema Regulations Act to S.N. Ganguly & Company. It is also seen that S.N. Ganguly & Company defaulted in payment of entertainment-tax due under the Entertainments Tax Act. Taking the position that S.N. Ganguly & Company were exhibiting films unauthorisedly in Ratan Talkies, the concerned Magistrate sealed the Projector room and seized the Machineries and Equipments belonging to S.N. Ganguly & Company. This was done on 6.5.1995. On 2.9.2000, a compromise petition was filed by the appellants on the one hand and S.N. Ganguly & Company on the other, in T.S. No. 2/95. As per the compromise, S.N. Ganguly & Company agreed to vacate the Ratan Talkies within two months and also agreed to suffer a decree for arrears of rent passed against them. The Subordinate Judge, Ranchi, mechanically accepted the compromise and on 6.9.2000, passed a decree in terms of the compromise. We say mechanically because it does not appear that the Subordinate Judge considered the question of liabilities of the parties under the Cinema Regulations Act, the Cinematograph Act and the Bihar Entertainments Tax Act and see whether any provision had been made for payment of the dues. Whatever it be, the suit for eviction ended in a compromise decree for eviction. The compromise did provide that the parties together were to move the concerned Magistrate for getting the seizure lifted and/or to get the sealed Projector Room re-opened. S.N. Ganguly & Company is alleged to have not acted as per the terms of the compromise. But we find that the firm did file W.P. (C) No. 1400 of 2003, praying for a writ of mandamus to direct the District Cinema Magistrate, Ranchi, to lift the attachment or to release the seized articles. The appellants, the claimed owners of the Ratan Talkies are not seen to be parties to the said writ petition. The authorities resisted the writ petition. They, inter alia, pleaded that huge amounts were due by way of entertainment tax as against the owners and the licensee of the Cinema Talkies. The learned Judge declined to grant any relief in the light of the allegations in the counter-affidavit and also having regard to the fact that S.N. Ganguly & Company was neither the owner, nor the licensee of the Cinema Hall. There is no case for S.N. Ganguly & Company represented by the respondents No. 8 and 9 before us, that any appeal has been filed against this judgment.

2. It is at this stage that the appellants approached this Court with the writ petition essentially seeking the opening up of the projection room and the lifting the seizure or attachment. S.N. Ganguly & Company, as noticed, was also impleaded. Whereas the appellants pleaded that S.N. Ganguly & Company was liable for any taxes that may be due under the Entertainments Tax Act, S.N. Ganguly & Company disclaimed any liability. It is seen that the appellants had also moved the Deputy Commissioner, Ranchi with a petition to direct the Cinema Magistrate to remove the lock from the projection room of Ratan Talkies and to remove the articles therefrom forthwith and that application had not been disposed of.

3. The authorities reiterated their position that substantial amounts were due by way of entertainment-tax and that there was some unauthorized exhibition of cinematograph films, which led to the action and that was not a fit case where this Court should exercise its discretionary jurisdiction under Article 226 of the Constitution of India and the grant of any relief would tend to defeat the revenue and consequently the interests of the State. Thus, the dismissal of the writ petition was prayed for.

4. The learned Single Judge, after referring briefly to the controversies projected, took the view that disputed questions of fact were involved and it could not be

decided as to who was liable to pay the dues which the State Government was entitled to collect. The learned Single Judge, therefore, decided that the jurisdiction under Article 226 of the Constitution of India need not be exercised and that no specific direction need be given. Without prejudice to the rights of the aggrieved person to move a Court of competent jurisdiction, the writ petition was dismissed.

5. Before we proceed to consider the arguments of learned counsel for the appellants, we may notice, one or two aspects here. The licence said to have been granted to the appellants under the Cinema Regulations Act, is not produced in the writ petition. Similarity, the lease deed allegedly executed by the appellants and S.N. Ganguly & Co. is also not produced. The result is that it is not possible to precisely know the rights and obligations of the appellants and S.N. Ganguly & Co. regarding the various statutory dues. The compromise decree is also silent on those aspects. There is, therefore, no material on the basis of which this Court exercising jurisdiction under Article 226 of the Constitution of India, can come to a satisfactory decision on those inter se rights and obligations, even if it were inclined to go into that question. This aspect got further emphasized in arguments before us, when the appellants and respondents 8 and 9 S.N. Ganguly & Co. each sought to disclaim liability and sought to allege that the other one was responsible for whatever dues that may remain under any of the relevant Regulations and the obligations arising out of those enactments or on breach of the terms of the licence and so on.

6. learned Counsel for the appellants essentially argued that the appellants were the owners of the Ratan Talkies and it was not open to the authorities to keep the projector room sealed perpetually, especially who there was no demand for payment of any amounts from the appellants. Counsel contended that the machinery in the projection room belonged to S.N. Ganguly & Co. and it was for the authorities to remove those machineries and deal with them in accordance with law and to release the projector room in the premises to the appellants so as to enable the appellants to put it to proper use since the appellants have become entitled to possession on the basis of the compromise decree. It was also contended by him that even if there was any breach of any obligation or violation of law or the terms of the licence the liability would be that of S.N. Ganguly & Co. and the learned Judge was not justified in declining jurisdiction since the effect, would be to keep the sealing of the projection room alive indefinitely which would amount to making inroads into the rights of the appellants as owners of the Theatre. Counsel for S.N. Ganguly & Co. submitted that there was no liability on the part of S.N. Ganguly & Co. and the claim of the appellants that all the liabilities are that of S.N. Ganguly & Co. was untenable. Counsel also sought to raise various factual disputes as to who held the licence originally under the Cinema Regulations Act and on the question of liability to tax under the Entertainment Tax Act. Learned Government Counsel submitted that the attempt here was to defeat the interest of the State. Substantial amounts were due to the State by way of entertainment tax and the same has not been

paid either by the appellants by S.N. Ganguly & Co. without paying the dues it was not open to the appellants to raise a plea that the seizure of the projector room should be put an end to or that the premises should be freed and made available for use by the appellants. Counsel also submitted that the liability for using the premises for exhibition of cinematograph films without licence and the liability for all taxes including the entertainment tax, would also be on the licensee, here the appellants even on their own claim and in that situation this was a fit case where this Court should uphold the declining of jurisdiction by the learned Single Judge Government counsel also submitted that the judgment in WP (C) No. 1400 of 2003 had also to be taken note of as supporting the stand adopted by the State.

7. Prima facie, we are inclined to agree with the learned Single Judge that this was a case where the parties should be left to a Court of competent jurisdiction to establish their rights and rid themselves of their obligations, if any. To that extent we have no difficulty in holding that this is not a fit case for interference by this Court. But at the same time, we felt that it did not help anyone, if the projection room alone is kept sealed and the machinery allowed to rot inside that room. The sealing of the room was on 6.5.1995 and 8 years have elapsed since then. For reasons not clear, the authorities have also not taken appropriate steps for recovery of the amounts due under the Entertainments Tax Act or under the Cinema Regulations Act or the other relevant enactments. By virtue of the compromise decree S.N. Ganguly & Company the alleged lessee of the Ratan Talkies has also given up its rights under the lease. Thus, some sort of a stalemate has been created. This did not appear to benefit anybody. In that situation, we put it to the Government Counsel to tell us what exactly was the amount due by way of arrears of entertainment tax in respect of the films exhibited in the Ratan Talkies and if there was any other liability under any of the relevant enactments in respect of the Ratan Talkies. We may notice that whereas in one of the document it is stated that some fifty thousand rupees is due by way of entertainment tax in the year 1995, we find that a certificate case was initiated claiming Rs. 4,25,890/32. A claim has been raised before us that a sum of Rs. 1,36,61,590/ 54-P was duo by way of arrears of entertainment tax. It was in this confusing state of affairs that we directed the Government Counsel to clearly state before us the amount due by way of entertainment tax from the Theatre and any other amount that may be due on any other ground on the basis of the licence granted for the Ratan Talkies. Government Counsel talk time and has filed an affidavit indicating that more than a sum of Rs. 16,16,281.09 is due by way of entertainment tax when the Theatre was operational and that other sums are also due. It is also disclosed that the proceedings are continuing and are pending at original and appellate stage. Though during arguments learned counsel for the appellants offered that the appellants would deposit the entertainment tax that was he without prejudice to their rights to take recourse against S.N. Ganguly & Company for recovery of that sum an affidavit has now been filed in answer to the affidavit on behalf of the State that the liability is that

of S.N. Ganguly & Company and that appellants are not able to give the details.

8. After these affidavits, we find that we could not pass any effective order as originally envisaged. The only direction possible is to expedite the proceedings pending at different stages. In that situation we agree with the decision of the learned Single Judge that the dispute has to be fought and settled elsewhere. Our attempt to break the impasse has to be given up. On the merits as we have stated earlier we find no ground to interfere.

9. We, therefore, confirm the decision of the learned Single Judge and dismiss this appeal. We direct the authorities to expedite all the proceedings relating to the taxes due in respect of this Theatre, including the completion of the recovery steps'' and complete the same within six months.

