

(1992) 01 MAD CK 0051
In the Madras High Court

Krishna Theatre

APPELLANT

Vs

The Appellate Authority and Joint Commissioner I of Land
Administration and Another

RESPONDENT

Date of Decision : 06-01-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 9, 9(1), 9(2), 9(i), 9A

Citation : (1992) 2 MLJ 32

Hon'ble Judges : Raju, J

Bench : Single Bench

Judgement

Raju, J.—The writ petition is for the issue of a writ of certiorari to call for and quash the proceedings of the 1st respondent in D.Dis. (L) CA. No. 179 of 1988 dated 19.12.1991 and of the 2nd respondent made in Na.Ka.E4/90654 of 1988 dated 16.11.1988.

2. The petitioner is a licensee of a cinema theatre at Vellore. On 15.7.1988, when the theatre of the petitioner was inspected by the officers of the Commercial Tax Department, it was found that persons in excess of permitted capacity, were admitted into the theatre with admission tickets not duly sealed by the Department, and consequently, action was initiated against the petitioner for such an irregularity, and it appears, that the petitioner compounded the offence under the provisions of the Tamil Nadu Entertainment Tax Act, 1939 by paying Rs. 1,000 and also a similar amount for the violations under the provisions of the Tamil Nadu Local Authorities Finance Act, 1961. Thereupon the licensing authority, the 2nd respondent, after issuing due notice, and after giving an opportunity to the petitioner, passed an order on 16.11.1988 suspending the running licence issued under Form C for a period of 15 days from 26.12.1988 to 9.1.1989. Thereupon the petitioner filed an appeal u/s 9-A of the Tamil Nadu Cinemas (Regulation) Act, 1955 and the appellate authority, by its order dated 19.12.1991, rejected the appeal on the ground that the order of the 2nd respondent being one, passed u/s 9(i) of the Act, no appeal as such is

maintainable u/s 9-A of the Act. Aggrieved with the above, the present writ petition has been filed.

3. R. Muthukumaraswamy, learned Counsel appearing for Petitioner contended as follows:

(a) The power u/s 9(i) of the Act cannot be considered to be of an independent source of power and that being an enabling provision, it has to be read along with Section 9(2) of the Act, and consequently an appeal would lie.

(b) If the provisions u/s 9(i) is considered to be an independent source of power having the effect of equating the conviction and composition as one and the same, the said provision is liable to be struck down, as being arbitrary and unconstitutional being violative of Article 14 of the Constitution of India,

(c) In the order of the 2nd respondent it has been mentioned at the end of the order that the petitioner shall be at liberty to file an appeal and that would mean that an appeal would lie in respect of similar orders also.

4. I have carefully considered the submissions of the learned Counsel. I am unable to countenance any one of them. Section 9-A of the Act provides that any person aggrieved by the decision of the licensing authority revoking or suspending a licence under Sub-section (2) of Section 9 may within such time as may be prescribed, appeal to such authority as the Government may specify in this behalf and such an authority may make such order in the case as it may think fit. The power to revoke or suspend a licence is contemplated u/s 9 of the Act. Section 9(1) and Section 9(2) of the Act deal with two distinct and separate classes and categories of cases and circumstances under which there could be revocation or suspension of a licence. Section 9(1) of the Act empowers the licensing authority, when there has been a conviction under the relevant provisions of the Tamil Nadu Entertainment Tax Act 1939 or when the licensee has been permitted, to compound an offence u/s 15 of the said Act etc. to revoke or suspend the licence. The provisions of Sec. 9(2) provides for revocation and suspension in case where licence has been obtained on misrepresentation or by playing fraud as to essential fact or when the licensee has, without reasonable cause failed to comply with any of the provisions of the Act or Rules or any condition or restriction subject to Which the licence has been granted. It is therefore Obvious that whereas in a proceeding initiated u/s 9(2), the basic fact on which action is contemplated or taken is obliged to be found and adjudicated upon on a consideration of the relevant material and the respective claims made. In cases wherein the provisions of Section 9(1) of the Act are invoked there is already a pre-existing conviction or order of composition. An order of composition though legally speaking may not amount to a conviction as such, it is obvious that the basic facts forming the subject matter of violation is in substance and virtually conceded or admitted by the licensee and only to avoid the unpleasantness of conviction the licensee concerned opts to have the offence compounded. That is the very basis underlying an order of composition. Thus, in

case of conviction the facts are found on trial and in a case of composition the licensee concerned himself concedes the position and opts for compounding, and therefore the provisions of law in Section 9(1) of the Act which equates the same for purposes of taking action, in my view cannot be said to be either arbitrary or unreasonable as contended before me. If this vital difference between the nature and classes of cases that falls for being proceeded against, u/s 9(i) on the one hand and Section 9(2) on the other, is borne in mind the object underlying the provision in Section 9(A) restricting the appeal to cases or orders passed in u/s 9(2) is not only well founded but meaningful and purposeful. The mere fact that the original authority considered the order to be an appealable one, is no effective answer to a consideration of an issue as to whether really such an appeal would lie, in a given situation under the provisions of the enactment. The appellate authority while construing the provisions of the statute has come to a different conclusion that Section 9(A) will not be attracted in cases where the orders have been passed u/s 9(1) of the Act. This is obvious and patent from the phraseology of Section 9-A which provides for appeal against orders passed u/s 9(2) of the Act. As referred to supra, Section 9(1) of the Act deals with a distinct and separate category other than those covered by Section 9(2) of the Act. There is no room for a challenge based upon Article 14 of the Constitution of India and the same has not been substantiated before me, effectively. 5. For all these reasons, the writ petition fails and shall stand dismissed.