

(1991) 03 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 3041 of 1991

L. Sundararajan

APPELLANT

Vs

State of Tamil Nadu and others

RESPONDENT

Date of Decision : 08-03-1991

Acts Referred:

Constitution of India, 1950 — Article 19, 226
Rice Milling Industry (Regulation) Act, 1958 — Section 8(3)
Tamil Nadu Cinemas (Regulation) Rules, 1957 — Rule 101(2)

Citation : (1991) 03 MAD CK 0026

Hon'ble Judges : Bakthavatsalam, J

Bench : Single Bench

Advocate : Mr. R. Muthukumaraswamy, for the Appellant; Mr.M. Muthappan, Govt. Advocate, for the Respondent

Judgement

1. The petitioner challenges an order passed by the Government rejecting his revision petition and granting a ""No Objection Certificate"" to the

fourth respondent to locate a touring cinema in S. No. 513/1 (Part), 513/2 (part) and 517 (Part) of Avaniapuram Village. Madurai South Taluk.

2. Originally the fourth respondent applied to third respondent, for the grant of a "No Objection Certificate" to locate a touring cinema in S. Nos.

513/1 (Part), 513/2 (Part) and 517 (Part) of Avaniapuram Village, Madurai South Taluk. That application was rejected. On appeal to the second

respondent, the order of the third respondent (Collector) was set aside and the second respondent granted the "No Objection Certificate" in

favour of the fourth respondent. Against that, the petitioner preferred a revision to the Government which has been rejected.

3. The petitioner alleges in the affidavit filed in support of the writ petition that he is the licensee of an existing touring cinema in

Thirupparankundram and the site preferred by the fourth respondent for locating a touring cinema is very near the petitioner's theatre and is totally unfit for locating a cinema theatre. He also alleges that the site chosen by the fourth respondent is not connected by any public road and is not abutting a public thoroughfare as required by Rules 101 of the Cinema (Regulation) Rules. It is alleged that the orders of the first and the second respondents granting "No Objection Certificate to the fourth respondent are liable to be set aside solely on the ground that they have not considered the question of adequacy which was projected by the petitioner. The petitioner alleges that the question of adequacy is one of the relevant considerations which should be considered before granting the "No Objection Certificate". The petitioner further alleges that the site chosen by the fourth respondent does not satisfy the requirements of Rule 101 (2) of the Tamil Nadu Cinema (Regulation) Rules. According to the petitioner, apart from the fact that there is no public road leading to the site in question, the site also does not have a road frontage on the public thoroughfare upon which the site abuts. The further allegation made in the affidavit is that the site chosen by the fourth respondent is not suitable for cinema exhibition within the meaning of Section 5(1) of the Tamil Nadu Cinemas (Regulation) Act, 1955.

4. Mr. R. Muthukumaraswamy, learned counsel for the petitioner, contends that the Government Order in G. O. Rt. No. 650 Home (Cinemas-B) Department, dated 27-2-1991 which is impugned in this writ petition is liable to be set aside on the ground that before granting the "No Objection Certificate" in favour of the fourth respondent, the respondents have not considered the aspect of adequacy. The learned counsel further states that the petitioner is an aggrieved person since he has got a right of appeal and revision under the Tamil Nadu Cinemas (Regulation) Act, 1955 and rules itself apart from the right to file objections. He further states that the grant of the "No Objection Certificate" to the fourth respondent is in violation of the rules apart from the fact that the question of adequacy has not been considered by [he appellate and the revisional authorities.

5. The question whether the petitioner as the owner of an existing touring cinema can be said to be an aggrieved person by the grant of a "No Objection Certificate" in favour of the fourth respondent has to be decided.

6. On this question, I have taken the view while disposing of W. P. No. 11270 of 1987 by my order dated 9-4-1990. relying on the decision of

the Full Bench of this Court in M.L. Krishnamurthy and etc. Vs. The District Revenue Officer, Vellore and another, etc., , that the owner of an

existing theatre cannot be said to be an aggrieved person. Though this order of mine has been taken on appeal in W. A. No. 813 of 1990

(Marippan P. v. The State of Tamil Nadu 1990 W.L.R. 339) the Division Bench, without deciding that issue, vacated all the findings on that issue.

In the view I have taken earlier in W. P. No. 11270 of 1987 order dated 9-4-1990. I am not inclined to entertain this writ petition by differing

from my previous ruling that the owner of an existing cinema theatre cannot be said to be an aggrieved person.

7. In Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, the Supreme Court had an occasion to consider the powers of a

High Court under Article 226 of the Constitution especially with regard to the issue of a writ of certiorari in relation to the location of a cinema

theatre. In that case, the Bombay Cinemas Regulation Act, 1953 and the Bombay Cinema Rules. 1954 were under consideration. The Supreme

Court held that the Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common

with the rest of the public, to lodge an objection in response to the notice published under R. 4. The Supreme Court further held that the proprietor

of a Cinema theatre holding a licence for exhibiting Cinematograph films has no legal right under the statutory provisions or under the general law

which can be said to have been subjected to or threatened with injury as a result of the grant of "No Objection Certificate" to the rival trader.

8. Mr. Muthukumaraswamy, learned counsel appearing for the petitioner, submits that the above decision of the Supreme Court is distinguishable

on the ground that the Tamil Nadu Cinema (Regulation) Act and the Rules enable the persons like the petitioner can file objections to the grant of

"No Objection Certificate" and a right of appeal is also given to them under the statute. As such, he states, the petitioner has got a locus standi to

maintain this writ petition. I am not able to agree with this contention. Though the Tamil Nadu Cinemas (Regulation) Act and the rules made

thereunder might give a right to object to the grant of "No Objection Certificate", such right, in my view, cannot infringe the right of the fourth

respondent to locate a theatre, especially in the light of the right given under Art. 19(1)(g) of the Constitution to carry on a trade or business

subject to reasonable restrictions imposed by law. The objection of the petitioner here seems to be on the ground that another theatre is not

necessary in the locality. This aspect has been considered by the Supreme Court in the decision referred to above and after referring to the

averments made in para 7 of the writ petition in that case, the Supreme Court observed as follows (at pages (587 & 588) of AIR) :

Thus, in substance, the appellant's stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial

interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not

result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity, Juridically, harm of this

description is called *damnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law. (Salmond on Jurisprudence

12th edn. by Fitzgerald p. 357 para 85). The reason why the law suffers a person knowingly to inflict harm of this description on another, without

holding him accountable for it, is that such harm done to an individual is a gain to society at large.

After observing so, the Supreme Court held that an existing theatre owner cannot be said to be a person aggrieved" and had no locus standi to

challenge the grant of the "No Objection Certificate". The Supreme Court has taken note of the earlier view of the Supreme Court in *The Nagar*

Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, that an existing rice mill owner has no locus standi to challenge

under Art. 226, the setting up of a new rice-mill by another even if such setting up is in contravention of S. 8(3)(c) of the Rice Milling Industry

(Regulation) Act, 1958 because no right vested in such an applicant is infringed.

9. As such, even assuming that there is a violation of the rules in the grant of the No Objection Certificate in favour of the fourth respondent herein,

as contended by the learned counsel for the petitioner, even then, in view of the decisions of the Supreme Court in *The Nagar Rice and Flour Mills*

and *Others Vs. N. Teekappa Gowda and Bros. and Others*, and *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, the

petitioner herein cannot be said to be an aggrieved person. As such, the distinction sought to be made by the learned counsel for the petitioner is, in

my view, without any substance. Still I hold that the dicta laid down by the Full Bench of this Court in M.L. Krishnamurthy and etc. Vs. The

District Revenue Officer, Vellore and another, etc., covers this case and the petitioner cannot be said to be an aggrieved person.

10. Apart from, that even on merits I think the petitioner has no case: The appellate Authority has considered all the objections of the petitioner. In

fact, the Appellate Authority has held that there is a lay-out road which was duly approved by the Madurai Corporation and that the said road

could be used by the cinema going public as a public road to reach the proposed site of the fourth respondent. The Appellate Authority has taken

note of the fact that the approved layout road being a public road, no one can have any right to prevent the use of such road by members of the

public including the members of the cinema going public. The Appellate Authority has also taken note of the fact that it would suffice if three lamp

posts are erected along the lay-out road as undertaken by the fourth respondent in order to provide lighting facilities for the benefit of the cinema

going public using the said road. The Appellate Authority has also found that the Collector of Madurai has leased out an extent of 4 cents of land in

S. No. 518 to the fourth respondent for three years to enable him to build a culvert over the channel to provide access to the public road from the

proposed site. As such, even on merits, the petition has to fail. This view has been affirmed by the Government. Accordingly, the writ petition is

dismissed. No costs.

11. Petition dismissed.