
(1994) 11 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No. 17249 of 1994

M. Ganapathy Swamy

APPELLANT

Vs

The District Collector, Periyar District, Erode, and 6 others

RESPONDENT

Date of Decision : 22-11-1994

Acts Referred:

Citation : (1994) 11 MAD CK 0017

Hon'ble Judges : Raju, J

Bench : Single Bench

Advocate : N.R. Chandran, for M/s. M.S. Umapathy, P. Jagadeesan and T. Teekaraman, for the Appellant; R. Ponnusamy, Additional Government Pleader for Respondents 1 to 3, Mr. K. Sengottian, Advocate for 5th Respondent, Mr. A. Thiagarajan, Advocate, for the Respondents 6 and 7, R. 4 not appearing either in person or through counsel, for the Respondent

Judgement

Raju, J.—The above writ petition has been filed for issue of a writ of certiorarified mandamus to call for the records and quash the

proceedings of the 3rd respondent in G.O.(D) No. 873, Home Cinema S.O. Department dated 12.9.1994 whereunder the 3rd respondent

exercising the powers of revision, has rejected the revision petition filed by the petitioner. The salient features of the facts which are relevant for

determining the issue in question are as hereinafter:

The petitioner and three others by name R. Shanmugham, M. Kumarasami and R. Perumalsami found a partnership firm known as M/s.

Ganapathysamy & Partners. It is seen that initially a share of each one of the four partners was equal, each having 25% of the shares. At the time

of hearing before me, it has been brought to my notice by the learned counsel for the 5th respondent that there has been subsequent change in the

percentage of shares held and that the present position is that the petitioner owns 20% of the shares whereas the 5th respondent owns 40%, 4th respondent 10% and respondents 6 and 7 together owning 30% of share in the firm. The partnership firm represented by four partners have applied for and obtained Form C licence for carrying on business ("Shanmugha Theatre (Permanent)" at Punjai Puliyampatti, Periyar District. It appears that the licence initially was issued on 6.12.1964 in favour of the firm and periodically, the same was being renewed. The petitioner also claims to have been running the theatre in the capacity as Managing Director of the firm with effect from 1.3.1988. When the last renewed licence in Form-C relating to the Theatre in question was to expire by 31.10.1990, and two of the partners M/s. R. Shanmugham and R. Perumalsamy appear to have sent telegram on 23.8.1990 followed by a petition received on 27.8.1990, to the Licensing Authority, the 1st respondent herein, objecting to the renewal of the licence for the period beyond 31.10.1990 in view of certain disputes among the partners. The Licensing Authority appears to have called for a report from the Revenue Divisional Officer, Gobichettipalayam and a report was said to have been submitted on 25.9.1990 by the said Authority. The petitioner appears to have filed an application for renewal of the C-form licence on 1.10.1990. The 1st respondent noticed that the application dated 1.10.1990 requesting for renewal beyond 31.10.1990 was received from M. Ganapathy Swamy, the petitioner herein and M. Kumaraswamy, the 4th respondent herein and the other two partners R. Shanmugam, the 5th respondent herein and R. Perumalsamy, the predecessor-in-interest of Respondents 6 and 7 have not signed in the application for renewal. Dispute in the Civil Court was also said to be pending. In the circumstances, after considering the materials on record, the Licensing Authority rejected the application for renewal for the period beyond 31.10.1990 by his order dated 19.10.1990 on the ground that when the licence is in more than one person's name, all of them should sign the application for renewal and that not only the same has not been done, but there has been dispute with reference to the possession and actual objection for renewal also from the other two partners. Aggrieved, the petitioner and the fourth respondent herein filed an appeal before the second respondent Appellate Authority. The Appellate

Authority also concurred with the order of the Licensing authority rejecting the claim for renewal. It is during the stage of appeal, on account of the

death of Mr. Perumalsamy one of the partners who was a respondent before the appellate authority, his wife & ½ the sixth respondent was brought

on record. Thereupon the petitioner pursued the matter before the third respondent by filing a revision which also rejected the revision confirming

thereby the order of the authorities below by the impugned order dated 12.9.1994. Hence the above writ petition.

2. Mr. N.R. Chandran, the learned senior counsel appearing for the writ petitioner contended that the impugned order is liable to be set aside and

the "C" form Licence of the theatre in question has to be renewed, and the orders of the authorities below taking a contrary view cannot be

justified. Reliance has been placed on a decree dated 15.4.1991 passed by the Court to District Munsif, Sathyamangalam in O.S. No. 307 of

1990. That was a suit filed by the petitioner impleading the other three partners as defendants for a permanent injunction restraining the defendants

to the suit from interfering with the continuous running of the theatre. While allowing the claim of the plaintiff therein it has been decreed that the

defendants therein shall not interfere with the running of the theatre by the plaintiff by any unlawful means or actions.

Reliance was also placed on a decision of a Division Bench of this Court in M. Dhanalakshmi Ammal v. Government of Tamil Nadu & four others

(1993-2-L.W.569) in support of the claim for renewal and of lawful possession of the petitioner of the property in question. The learned senior

counsel while elaborating his submission in this regard contended that the renewal application was made by him and the other partner for and on

behalf of the firm seeking for renewal in the name of all the four partners only, and that such action was justified having regard to his rights as a

partner and the law governing the relationship and rights of partners of a firm.

3. Mr. K. Sengottaian, learned counsel appearing for the fifth respondent, while reiterating the contentions raised in the counter affidavit and also

adopting the reasons assigned by the authorities below, contended that any one or more than one partner alone has no right to seek for renewal of

a licence of the nature in question involving rights and obligations under a Statute and statutory rules attendant with provision for punishment and

penalties, and in the teeth of a categorical stand taken by the remaining partners that they are not interested in continuing the business of exhibiting

films there is no scope for renewing the licence in the name of the partnership firm represented by all the partners. It was also contended that the

petitioner has been abusing his position as the managing partner all along which led the situation to a stage beyond redemption and that therefore

the remaining partners do not want the business to be carried on by a single partner particularly by the petitioner, and therefore the order of

rejection is quite in accordance with law and it does not call for interference. Incidentally the learned counsel for the fifth respondent also pointed

out that the petitioner has to his credit only 20% of the share as against 40% of the shares owned by the fifth respondent and the remaining shares

owned by respondents 4, 5 and 7. It is the submission of the learned counsel that a person who owns only 20% of the shares cannot impose

himself and force a business on the other major share-holders when they are not willing to join with the petitioner to continue the business in

question. For all the reasons it is contended that the question of renewal sought for by the petitioner cannot be granted. Reliance was also placed

by the learned counsel on a decision in *S. Rama Thevar v. V. S. Manickam and others* (1990-2 L.W. 506).

4. The learned counsel appearing for the 6th and 7th respondents adopted the submissions of the learned counsel for the fifth respondent in

addition to reiterating the stand taken in the counter affidavit filed on their behalf.

5. On a careful consideration of the submissions of the learned counsel appearing on either side, I am of the view that there are no merits in the

challenge made on behalf of the petitioner; before adverting to the consideration of the claims as such. It would be useful to refer to some of the

decisions on the subject including those referred to by the learned counsel appearing on either side. The decision reported in 1993¹ 2 L.W. 569

(supra) was strongly relied upon for the petitioner. In my view, the said decision has no relevance or application to the case on hand for more than

one reason. That was a case wherein the appellant before the Division bench along with three others obtained a lease from the Muthavalli of a

charity initially for ten years and on the basis of no objection letters given by the other three persons he obtained a no objection certificate in the

exclusive name of the appellant to construct a permanent cinema theatre. Licence in "Form C" was also thereafter obtained. The lease of the site was said to have been renewed for a further term, and when the appellant before the Division Bench applied for renewal of the "C" Form Licence for running the theatre the other partners objected stating that they have surrendered the site and the building to the charity and that the appellant before the Division Bench was not in lawful possession of the site, building and equipment of the theatre. It was in such circumstances the Licensing Authority declined to grant the renewal, and having failed before all the Authorities and also before a learned single Judge of this Court, the licence-holder filed an appeal before the Division Bench. The Division Bench was concerned in that case with the question of lawful possession of the site, building and equipment in terms of Rule 13 of the Rules and as to whether the appellant before them was entitled to the renewal of the "C" Form licence in the name of the appellant for running the cinema theatre. While holding that the appellant was in lawful possession of the site, building and equipment and thereby satisfying the requirements of Rule 13 of the Rules, she having taken lease afresh in her name from the Muthavalli of the Charity. It could be seen from the above that the only question that was concerned for consideration of the Division Bench was as to the requirement of lawful possession of the site, building and equipment in terms of Rule 13 of the Rules, and an issue of the nature which is before me in addition thereto, was not before them; nor could such an issue would have arisen on the facts of the said case, since though the lease was initially obtained by the firm as could be seen from the facts referred to supra, the no objection certificate as well as the "C" form licence appears to have been obtained only in the exclusive name of the appellant before the Division Bench, unlike the present case where the licence itself is stated to have been issued in favour of the firm represented by the four partners with their names enlisted in the licence. That obviously is the position so far as the facts of this case is concerned as seen from paragraph 2 of the order of the Licensing Authority dated 19.10.1990 rejecting the claim for renewal in this case.

6. The decision in 1990-2 L.W. 506 (supra) is also one mainly concerning the question of lawful possession. The case concerned the claim for

renewal of a licence pertaining to a partnership business which came to be dissolved having regard to the disputes among the partners, and in that

context the Division Bench held that the applicant for renewal therein cannot be said to be in lawful possession in terms of Rule 13 of the Rules.

7. The decision reported in ""V. G. Balasundaram v. V. G. Gopalakrishnan and others"" (1972--II M.L.J. 566 : 86 L.W. 453 (DB), in my view, is

directly on the point which is involved for consideration in this case. That was a case wherein the licence was originally issued in the names of two

persons jointly, but at a stage when the application for renewal was made it was by one of two persons in whose names the licence stood. The

application for renewal made by one of the joint licensee was objected to by the other person, and the objection was sustained. Having failed

before the statutory authorities the matter has been pursued before this Court up to the writ appeal. The learned Judges of the Division Bench have

considered elaborately the position of law with particular reference to the rules in question and held as hereunder:-

As far as the Tamil Nadu Cinema (Regulation) Rules are concerned, there are specific provisions regarding renewal made in Rules 92 to 97.

There is an elaborate procedure in. this behalf and even these Rules contemplate grant of a temporary permit during the interval between the

application for renewal of the licence and the actual grant of the renewal and as a matter of fact, a perusal of these rules will give an indication that

the renewal of a licence is merely a continuation of the original licence and not a fresh grant at all. Consequently, the decision of the Supreme Court

relied on by the learned counsel for the appellant does not support his case. We are clearly of the opinion that the very word ""renewal"" is opposed

to the person applying for renewal being different from the person in whose name the licence was originally issued. If, as in the present case, the

licence was originally issued in the names of the appellant and the first respondent jointly, a renewal of that licence could be applied for and

obtained only in the names of these two persons and on the application of those two persons. So long as only one of them applies for the renewal

of the licence in his own name, when the original licence stands in the names of both, such an application cannot be considered to be an application

for renewal of the licence and on the basis of such an application, no renewal of licence can be granted. If the appellant has requested the

authorities to treat his application as an application for a fresh licence on the ground that he is in lawful possession of the premises both by virtue of inter-se arrangement between the appellant and the first respondent and by virtue of the original lease from the owner of the building, the position might be different. In so far as the appellant purported to apply only for the renewal of the licence in his own name, the orders complained of cannot be challenged. In this view, no interference is called for with the order of the learned Judge and the writ appeal fails and dismissed.

8. Considering the issues raised before me and the case of the petitioner in the light of the above pronouncements, I am of the view that the

authorities below were right in rejecting the claim of the petitioner. As noticed by the Licensing Authorities, if the "C" form licence, the renewal of

which is sought for, stood registered in the names of M/s. Ganapathysamy & Partners½(1) M. Ganapathysamy, (2) R. Shanmugham, (3) M.

Kumarasamy, (4) R. Perumalsamy, it is but natural and inevitable that all the four persons whose names also were found engrossed on the licence

should apply for renewal since as held by the Division Bench the very word "renewal" is opposed to the person applying for renewal being different

from the person in whose name the licenced was originally issued, and if, as in the present case, the licence was originally issued in the names of all

the persons is representing the firm, the renewal of that licence could be applied for and get only in the names of all those persons on an application

made by all of such persons. It is not the case of the learned senior counsel for the petitioner before me that on any one occasion or point of time

earlier the petitioner alone has made an application and obtained any such renewal. As a matter of fact even for the current renewal, when applied

for it was not only the petitioner but the fourth respondent also joined together. But only the other partners refused to join and as the matter stand,

even the fourth respondent has also fallen out from the petitioner and is not willing to go along with the petitioner.

9. In this context, the further feet that the petitioner owns only 20% of the shares, and in a licence of the nature and character with which we are

concerned involving performance of duties and obligations, exposing the licensee to the risks of prosecution and penalties for violation of any of the

conditions of any of the provisions governing the issue of licence, the objection of the other partners½respondents have to be given due weight

and consideration, and cannot be lightly brushed aside. As noticed earlier the decision in 1993-2 L.W.569 (supra) was merely concerned with the question of lawful possession of the site, building and equipment in the teeth of disputes relating to the same and there was no occasion for the Division Bench, dealing with the said case to decide an issue of the nature which directly fell for consideration of the Division Bench which decided the decision in 1990--2 L.W.506 (supra). At the instance of repetition it may be pointed out that in the latest decision of the Division Bench the licence stood only in the name of one person, unlike the present case. The plea based on the capacity of any one partner applying for renewal against the wishes of other partners and purporting to represent the other partners who do not wish to continue the business by taking shelter under the general law has no relevance and such claims can have no application also to claims arising under the special legislation in question which, as pointed out earlier, carries with the licence issued thereunder onerous responsibilities and obligations exposing the licensee to the risk of prosecutions and penalties for any violation in addition to the mere right of running the theatre alone. This fact taken together with the negligible share of the petitioner compared with the other objecting co-licensees-cum-partners, who held absolute majority of the shares, cannot be ignored and the petitioner has no right to claim to represent such unwilling and opposing co-partners. For all the reasons stated above, I am of the view that no exception could be taken to the orders of the authorities below, particularly the order of the third respondent rejecting the revision filed by the petitioner. The Writ Petition therefore fails, and shall stand dismissed. No costs.