

(1985) 10 PAT CK 0006
In the Patna High Court
Case No : C.W.J.C. No. 4747 of 1985

Madan Mohan Prasad Verma

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 10-10-1985

Acts Referred:

Citation : (1985) PLJR 63

Hon'ble Judges : Uday Sinha, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : Shreenath Singh, G. C Bharuka, Navniti Prasad Singh and Ramesh Kumar Agrawal, for the Appellant; Balbhadra Pd. Singh for Intervenor, Advocate General for the State, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Mr. Shree Nath Singh for the petitioner, learned Advocate General for the State and Mr. Balbhadra Prasad Singh for the intervenor. The petitioner has prayed for quashing Annexures 5 and 8/A. The challenge of Annexure 5 is only to that part of the order by which the period of licence of the petitioner was limited to 31.7.1985. In pursuance of Annexure 5, issuance of Annexure 8/A was a foregone conclusion. The question, however, that remains for consideration is whether the State Government was justified in limiting the licence of the petitioner till 31.7.1985. The provisions of Rule 10 of the Bihar Cinemas (Regulation) Rules, 1974, are relevant in this connection. This rule provides that the license granted under rule 8 shall be valid for a period of three years. In pursuance of Rule 10 of the Rules, the licence has to be effective till the expiry of three years which would end in this case on 31.12.1985. The limiting of the licence upto 31.7.1985 was thus clearly against the clear provisions of Rule 10.

2. Mr Balbhadra Prasad Singh learned counsel for the intervenor, submitted that since the building in which the cinema was being exhibited belongs to the intervenor and since the lease in respect of the building was to expire on 31.7.1985, the authorities were fully justified in limiting the duration of the

licence till 31.7.1985. Learned counsel for the petitioner has shown to us a photo copy of the lease executed between Bishwanath Prasad and the petitioner. Clause (4) of the lease reads as follows :-

"That it has been further agreed upon between the lessor and the lessee that the lessee shall have an option of 10 (ten) years further extension of the period of the lease after the expiry of the fixed period on 31st July 1985 at a monthly rent to be determined by mutual negotiation and in case of difference, through the arbitrators one to be appointed by the lessor and the other by the lessee and the said two arbitrators would appoint a third arbitrator and the provision of the said arbitrators or of the authority of them will be binding on the parties for which a fresh lease deed would be executed on the same terms and conditions laid down in this deed including the rate of the rent as detailed in terms of this clause."

From the above it is obvious that the petitioner has option of renewal of the lease. The petitioner has exercised his option. The fact of exercise of option is not denied by the intervenor. The lessor (the intervenor) has filed a suit for eviction of the petitioner from the cinema building. The suit is being resisted. The petitioner lessee has also filed a suit for specific performance of contract being Title Suit No. 120 of 1985. Thus the rights of the parties are pending litigation in the Civil Court. It is not in controversy that the petitioner is in possession of the building in which Cinema is being exhibited. For the licensing authority of the State Government, the possession over the building is sufficient to grant licence to the petitioner. In that view of the matter, the restriction of the licence till 31.7.1985 was clearly illegal. If the provisions regarding sound and health as laid down in the Bihar Cinemas (Regulation) Rules are complied with and if the petitioner is in possession of the building the licensing authority had no jurisdiction to limit the licence to the period less than three years. Annexure 5 to the extent it limits the licence upto 31.7.1985 is thus quashed. It will be deemed to be effective till 31.12.1985. Since Annexure 8/A was issued in pursuance of Annexure 5 that also must fail with Annexure 5. Annexure 8/A is also, therefore, hereby quashed. The application is allowed accordingly.