(2010) 01 AHC CK 0279

In the Allahabad High Court

Manendra Singh (Recovery) APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 04-01-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Chalchitra Adhiniyam, 1979 — Section 12

Citation : (2010) 01 AHC CK 0279

Hon'ble Judges : S.C. Chaurasia, J;Devi Prasad Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard Shri Om Chandra holding brief of Shri Vinod Kumar learned Counsel appearing on behalf of the petitioner and learned Standing counsel and perused the records.

2. Writ petition under Article 226 of the Constitution of India has been preferred by the petitioner against the impugned order passed in pursuance to Section 12 of the Uttar Pradesh Chalchitra Adhiniyam 1979 (in short hereinafter referred as the ''Act'').

3. In brief, the petitioner, who is the owner of Raj Touring Video Fakharpur, was granted licence to run touring video for the period commencing from 14.1.2003 to 13.7.2003. According to terms and condition of the licence granted to the petitioner, the petitioner was only entitled to show the cinema on temporary structure and not in permanent talkies. However, during the course of inspection done by the Inspector on 2.2.2003 followed by 12.7.2003 then again on 14.7.2003 it was found that the petitioner was running cinema in a permanent cinema hall namely Priya Talkies. After inspection a report was submitted to the District Magistrate who in turn issued a notice dated 1.8.2003, a copy of which has been filed as Annexure-3 to the writ petition. The District Magistrate while serving a notice specifically mentioned therein that during the course of inspection the petitioner was found running a picture/cinema in the Priya Talkies

whose license was cancelled long back.

4. In defence, petitioner had admitted that licence of Priya Talkies was cancelled long back and it was belonging to petitioner''s father. However, petitioner had denied the fact that he was running the cinema in the Priya Talkies. After considering the reply submitted by the petitioner, District Magistrate arrived to the conclusion that running of cinema in a picture hall having permanent structure violates the terms and condition of the licence. The petitioner was held liable to pay an amount of Rs. 23,500/- as entertainment tax and Rs. 20,000/- penalty.

5. While assailing the impugned order learned Counsel for the petitioner submits that the Priya Talkies was closed long back hence, there was no occasion to run the picture in the said talkies by the petitioner.

6. It has also been submitted by the petitioner''s counsel that the Entertainment Tax Inspector after spot inspection has given a report that the petitioner is running the cinema in accordance with the terms and condition provided for the purpose. At no stretch of time, the inspector had given a report that petitioner is running the cinema in the permanent constructed picture hall.

7. The submission of the learned Counsel for the petitioner seems to be misconceived. In the present case, allegation is based on three surprise inspection done by the Inspector. Even if during the course of regular inspection the petitioner was found running the cinema in accordance to terms and conditions provided for the purpose but when surprise inspection was done he was found to running the cinema in breach of licence.

8. Nothing has been brought on record to establish that the report submitted by the Inspector during the course of surprise inspection was false or it was submitted for ulterior motive. In the absence of any adverse material, the report of surprise inspection dated 2.3.2003, 12.7.2003 followed by 14.7.2003, District Magistrate does not seem to be acted in derogation of law. The decision taken by the District Magistrate in pursuance to report of the Inspector does not seem to suffer from any impropriety or illegality. However, so far as penalty imposed by the District Magistrate while passing the impugned order is concerned it seems to be excessive. Penalty and entertainment tax imposed by the District Magistrate seems to be almost same. Accordingly, we are of the view that penalty may be reduced up to Rs. 10,000/-.

9. Subject to aforesaid modification, writ petition is dismissed and petitioner is permitted to pay the entire dues to the tune of Rs. 33500/- within a period of one month from today. In the event of default of payment, the amount shall be recovered in accordance with law. In case, petitioner has already deposited certain amount, it shall be adjusted from the amount aforesaid.