
(1975) 12 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No. 6429 of 1975

O.P. Muthiah

APPELLANT

Vs

The Board of Revenue and others

RESPONDENT

Date of Decision : 02-12-1975

Acts Referred:

Citation : AIR 1976 Mad 209

Hon'ble Judges : Ramanujam, J

Bench : Single Bench

Advocate : R.D. Indrasenan, for the Appellant; T. Sathiadev, Asst. Govt. Pleader and P. Chidambaram, for the Respondent

Final Decision : Dismissed

Judgement

Ramanujam, J.—The petitioner is the owner of a permanent cinema called "Sri Murugan talkies" in Valangiman in Papanasam Taluk, Tanjore Dist., he having purchased the said theatre in a court auction in 1968. The third respondent herein applied for a "no objection certificate" for locating a touring cinema in R.S. 171/5B of Virupatchipuram village which is adjacent to Valangiman where the permanent cinema is located. This was objected to by the petitioner on the ground that the said site is within the prohibited distance of 1.609 km from his permanent theatre. On this objection the second respondent, the Licensing Authority called for a report from the Tahsildar Papanasam. The Tahsildar measured the distance between the permanent theatre and the site proposed for the touring cinema by three available routes and on 10-3-1975, reported that while the distance is more than 1.609 km, along two of the routes, it is less than 1.609 km along the short route marked ACDEFX in the sketch appended to the report. Later, the Assistant Collector, Kumbakonam, was also asked to make a local inspection and report about the distance. The Assistant Collector after inspecting the said three routes marked in the sketch appended to the Tahsildar's report, informed the second respondent on 16-5-1975, that the distance along the three routes is as mentioned in the Tahsildar's sketch, but

that out of the three routes the route marked ACDEX measuring 8173 links is the most commonly used one and the route ACDFX which is 7713 links which has come into existence recently due to the opening of a back entrance to the permanent theatre is not much used. Based on the said reports of the Tahsildar as well as the Assistant Collector, the second respondent rejected the petitioner's objection based on Rule 14 (2) of the Tamil Nadu Cinemas (Regulation) Rules 1957 and granted a "no objection certificate" to the third respondent. There was an appeal to the first respondent which, however, confirmed the grant on the ground that the Licensing authority had sufficient material to hold that the short route suggested by the petitioner was not generally used by the members of the public and, therefore, the grant of no objection certificate to the third respondent does not violate the provisions of Rule 14 (2). The petitioner challenges the validity of the appellate order of the first respondent confirming the order of the second respondent granting the "no objection certificate" in favour of the third respondent.

2. The petitioner's case is that on the materials the respondents 1 and 2 were not justified in holding that the site proposed by the 3rd respondent for locating the touring cinema is not within the prohibited distance referred to in Rule 14 (2), that admittedly there being a shortest pathway between the permanent theatre and the proposed site measuring less than 1.609 kms. it is not open to respondents 1 and 2 to ignore the same on the ground that it is not much used by the public, that the user is not relevant for applying the distance rule provided in Rule 14 and that the authorities having found that the said pathway is also being used by the public, they should have upheld the petitioner's objection that the proposed site offends the distance rule provided in Rule 14 (2). It has also been contended by the learned counsel for the petitioner that respondents 1 and 2 have taken into account certain extraneous circumstances which go to vitiate their orders.

3. It is better to dispose of the second contention first. The second respondent while dealing with the petitioner's objection based on Rule 14 (2) stated-

At the time of grant of "C" form licence to Sri Murugan Talkies, Velangiman, in the year 1971, there was a touring cinema running in the same place, in Rs. 171/5B of Virupachipurem village. Neither, the owner nor the manager of the permanent theatre objected to the running of the touring cinema.

The first respondent in its order dated 24-9-1975 had referred to the following facts while dealing with the petitioner's objection: (1) The proposed site had already been licensed once before, and at that time the petitioner had not objected and (2) the short route suggested by the petitioner was only through a recently opened new gate and it should not be taken into account. It is said that the fact that at an earlier stage the owner or the manager of the theatre did not object to the grant of a "no objection certificate" to the proposed site will not disentitle him to put forward any legal objection that is open to him at present and that the second and third respondents should not have taken such an

extraneous circumstance into consideration. I is also said that the only matter that has to be considered with reference to Rule 14 (2) and (3) is to see as to which is the shortest pathway, that whether the pathway is new or old is not relevant for the purpose and that even if the route has been opened recently still if it is the shortest route measuring less than 1.609 km, a "no objection certificate" could not be granted to the site in question. The learned counsel for the petitioner has also referred to the certificate issued by the Executive Officer of the Town Panchayat to show that the pathway was in existence even before 1972, and that it is not a recent one. It is not necessary in this case to go into the question whether the shortest pathway is old or new as I am of the view that the question whether the pathway is old or new is not quite relevant for the application of Rule 14 (2) and (3). The learned counsel is right in my view when he says that even if a new route is resorted to by the public, then such user by the public of such a route cannot be ignored while considering the application of Rule 14 (2).

4. The main question, therefore, is whether the short route ACDFX which is said to be 7713 links (less than 1.609 km) is to be taken into account for purpose of calculating the distance under Rule 14 (2). Rule 14 (2) provides that a touring cinema in any place shall not be allowed within a distance of one mile (1.609 km) from the nearest permanent cinema Rule 14 (3) indicates how the distance between the permanent cinema and the proposed site is to be reckoned. It says that the distance has to be reckoned, along the route which is generally used by the members of the public. In this case the Tahsildar has stated in his report dated 5-4-1975, that the public are not using this route at all and that they are using the other two routes for reaching the permanent theatre. The Assistant Collector has reported after local inspection that the shortest route is not much used. These reports were accepted by the second respondent and he has held that the shortest route was not much used by the members of the public and the other two routes alone are commonly used by the cinemagoers . The first respondent has construed the finding of the second respondent as one holding that the shortest route was not generally used by the members of the public and, therefore, held that this route should not be taken into account for finding out the distance between the permanent cinema and the proposed site for the purpose of Rule 14 (2). The contention of the learned counsel is that Rule 14 (3) has not been correctly understood by respondents 1 and 2, that the extent of the user is not relevant, and that if a route is used by the public the distance has to be measured along that route under Rule 14(3). According to the learned counsel the word "generally" occurring in Rule 14 (3) cannot be understood as meaning "mostly" and that it only means "not casually or intermittently". I am not, however, inclined to agree with the learned counsel for the petitioner that the word "generally" occurring in Rule 14 (3) does not postulate the extent of user when a route is said to be generally used it normally indicates that the route is commonly used by the public. The intention of Rule 14 (3) appears to be to exclude all the routes which are not in much use. The observation of the second

respondent that the route is not in much use only means, as pointed out by the learned Counsel for the third respondent that the route in question is not generally used by the members of the public. It is not possible to agree with the learned Counsel for the petitioner that the extent of the user is outside the purview of Rule 14 (2).

5. On the finding given by the first and second respondents that the shortest route indicated by the petitioner is not commonly used, which is based on local inspection made by the local officers, the grant of the "no objection certificate" in this case cannot be assailed. The writ petition therefore fails and it is dismissed. But there will be no order as to costs.