

(1998) 08 MAD CK 0009
In the Madras High Court

P. Subba Naidu

APPELLANT

Vs

The Licencee, Sri Lala Talkies and Others

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 145

Citation : (1999) 3 MLJ 688

Hon'ble Judges : Shivaraj Patil, J

Bench : Single Bench

Judgement

Shivaraj Patil, J.—Heard the learned senior counsel for the appellant and the learned Additional Government Pleader representing

respondents 2 to 4.

2. The fourth respondent in Writ Petition No. 15915 of 1997 is the appellant before us, challenging the order dated 29.6.1998 passed by the

learned single Judge in the said writ petition. Writ Petition No. 15915 of 1997 aforementioned was filed by the respondent No. 1, herein, which

was filed for issue of a writ of certiorari calling for the records of the Secretary to Government, (Home Cinema-II) Department in G.O. No. (ID)

666, dated 24.6.1997. The respondent No. 1, herein was the licensee of Sri Lala Talkies, Vadipatti, Madurai District. The said theatre originally

belonged to late Pon.Perumalsamy Naidu. On his death, it devolved on his three sons viz., Perumal, Pon.Subbiah and Thirumalaisamy Naidu.

Perumal is the eldest son among the three brothers, There was division of properties among the brothers. However, the said cinema theatre was

kept in common and in other words, it was not the subject matter of partition between the three brothers. The controversy now raised is one

whether the licence for the said cinema theatre could be granted in the name of Perumal or not. The learned single Judge, after considering the rival contentions and after hearing the learned Counsel for the parties, allowed the writ petition directing the District Collector, Madurai to consider the case of the writ petitioner (the respondent No. 1 herein) for grant of "C" Form licence within a period of one month from the date of production of copy of his order dated 29.6.1998. In the said order, it is also made clear that none of the parties to the writ petition is entitled to take up any other issue. The fourth respondent in the writ petition, as already stated above, has filed this appeal.

3. The learned senior counsel for the appellant urged that the respondent No. 1, in this writ appeal (writ petitioner) is not in exclusive possession of the cinema theatre; in view of Rule 13(1) of the Cinemas (Regulation) Rules unless and until such person satisfies his ownership and possession over the property or properties, where the theatre is located, licence cannot be granted. He further submitted that after passing of the order by the learned single Judge on 29.6.1998, The Revenue Divisional Officer, Madurai Sub Division has initiated proceedings u/s 145 of the Code of Criminal Procedure in M.C.No.776 of 1998 dated 12.8.1998; since there is dispute as to the possession of the very cinema theatre property. The Collector cannot grant licence as directed by the learned single Judge in the order impugned in the writ petition.

4. We have considered the submissions made by the learned senior counsel. The facts that are not in dispute are: the appellant, the respondent No.

1 and one other brother of the appellant viz., Thirumalaisamy are the co-owners of the said cinema theatre property the said property is not

divided after the death of their father Perumalsamy Naidu, the licence had been granted for the cinema theatre in the name of the respondent No.

1, subsequently, it was cancelled. The learned single Judge in paragraph 12 of his order has stated thus:

12. A question may arise whether the petitioner is entitled to do cinema business without the consent of others. A co-owner is entitled to enjoy the

property and make use of the same without detriment to the other co-owners. At the most, he will be liable for accounts. In a joint property, any

co-owner has to use such property usefully, in the sense that his user should not amount to ouster of other co-owners. In this case, petitioner

admits the right of other co-owners to be taken away, if a theatre is closed it is a loss to the entire family. It is settled law that a co-owner is entitled

to make use of joint property in a way quite consistent with the continuance of joint ownership and possession, so long as he is not excluding the

right of any co-sharer. If that be so, even the objection of the fourth respondent is not relevant for consideration. The licensing authority is bound to

consider only Rule 13 of the Tamil Nadu Cinema (Regulation) Rules. If the petitioner is a lawful owner, there cannot be any objection for the grant

of licence. In this case, I find that the petitioner has satisfied both the grounds. In a similar case, viz., in *R. Dhasaiyan and Anr. v. The Government*

of Tamil Nadu and Ors. W.P. No. 17859 of 1997, dated 8.12.1997, I have taken a similar view.

Merely because order is passed directing the Collector to consider the question of granting licence in favour of the respondent No. 1 (the petitioner

in the writ petition), it cannot be construed or understood that the appellant or the other brother Thirumalaiswamy is deprived of their right in the

property and enjoyment of the property as co-owners. The said position is made clear in the very impugned order of the learned single Judge.

5. As to the contention of the learned Counsel referring to Rule 13(1) of the Rules, the learned single Judge has taken the view that the applicant

has to satisfy about the ownership and possession and according to the learned single Judge, the "possession" contemplated in Rule 13(1) of the

Rule is not the exclusive possession. At any rate, it cannot be said that the respondent No. 1, is not in possession of the theatre, for the purposes of

law, may be as co-owner. The learned single Judge, after referring to the various decisions, has taken the view that one of the co-owners can use

the property to the advantage of all. In case the licence is not granted to the respondent No. 1, the effect and position would be, it would not be

for the benefit of any of the brothers. In other words, the theatre has to be closed. The proceedings initiated u/s 145 of the Code of Criminal

Procedure were almost 1 1/2 months subsequent to the order passed in the writ petition. Obviously, those proceedings could not be taken note of.

The proceedings u/s 145 of the Code of Criminal Procedure initiated are for different purpose and to achieve different object, and mainly

concerned with law and order in regard to the likelihood of breach of peace concerning an immovable property. The parties thereto are to seek

appropriate remedy in respect of those proceedings before the competent authority or forum. Merely because proceedings are initiated u/s 145 of

the Code of Criminal Procedure, it cannot be said that the licence, if granted, will take away the right of the parties as co-owners over the

property. This being the position, we do not find any good or valid ground to admit the writ appeal.

6. Accordingly, the writ appeal is rejected at the stage of admission. C.M.P.No. 11408 of 1998 is dismissed.