

(1986) 02 KAR CK 0047
In the Karnataka High Court
Case No : Writ Petition No. 10300 of 1983

Parvathi Bai

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 13-02-1986

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Cinemas (Regulation) Act, 1964 — Section 11, 11 (2)

Citation : (1986) ILR (Kar) 3258

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : T. Umashankar, for the Appellant; B.J. Somayaji, HCGP for R-1 and R.C. Castelino, for R-2 and 3, for the Respondent

Final Decision : Allowed

Judgement

K. A. Swami, J.—In this petition under Articles 226 and 227 of the Constitution, the petitioner has sought for quashing the provisional order dated 20-51-983 issued by the Assistant Executive Engineer, Frazer Town, Bangalore City Corporation, under Sub-section (1) of Section 321 of the Karnataka Municipal Corporations Act, 1976; and also the Order passed under Sub-section (3) of Section 321 of the said Act, by the very officer, produced as Annexures A and B respectively.

2. It is not in dispute that the alleged unauthorised construction which is directed to be demolished is a touring cinema theatre situated in Survey No. 13/1 of Gangenahalli- division No. 46.

3. In The Commissioner, Bangalore City Corporation v. Sangeeth Theatre & Anr., WA No. 1515 of 1885 D.D. 30-8-1985 it has been held by a Division Bench of this Court as follows :

"The only question raised in this appeal is whether the proviso to Section 304 of the Karnataka Municipal Corporations Act, 1976 is attracted to construction of a

building for the exhibition of cinematograph films.

2. Learned Single Judge has observed that in view of Section 11(2) of the Karnataka Cinemas (Regulation) Act, 1964, the aforesaid proviso to Section 304 has no application for construction of a building for the exhibition of cinematograph films. We have perused Section 11(2) of the Karnataka Cinemas (Regulation) Act, 1964 and Section 304 of the Karnataka Municipal Corporations Act, 1976. In our opinion, the view taken by the Learned Single Judge appears to be correct.

3. Section 11(2) of the Karnataka Cinemas (Regulation) Act, provides :

"11. Construction or re-construction of buildings or use of places for exhibition of cinematograph films only to be made after obtaining permission of licensing authority.

xx xx xx (2) No provision contained in the enactments specified in the schedule or any other law for the time being in force regulating the erection or construction of buildings, or in the rules or bye-laws made under any such enactment, or law shall apply to an application under Sub-section (1) in so far as such provision relates to any of the matters specified in the said sub-section."

The City of Bangalore Municipal Corporations Act, 1949 has since been repealed by 1976 Act. Mr. Castelino therefore submits that since the Karnataka Municipal Corporations Act, 1976 is not in the schedule, the applicability of the proviso to Section 304 cannot be ignored. That contention would have been sustained provided if Section 11(2) merely mentions "the enactment specified in the schedule." It, however, further states -- ".....or any other law for the time being in force regulating the erection or construction of buildings, or in the rules or bye-laws made under any such enactment,". It thus excludes any other law for the time being in force. It is not in dispute and indeed it cannot be disputed that the 1976 Corporation Act, is a law for the time being in force. The applicability of the Jaw also stands excluded by Section 11(2) of the Karnataka Cinemas (Regulation) Act, 1964.

4. No more need be said in this context in view of the crystal clear provisions of Section 11(2) of the Karnataka Cinemas (Regulation) Act, 1964. The appeal is therefore rejected."

In the aforesaid decision, the construction of a permanent theatre for exhibition of cinematograph films was involved. In the instant case, the construction of theatre for running touring talkies for exhibition of cinematograph films is involved. Therefore, the question for consideration is whether the aforesaid decision applies to the construction or reconstruction of a theatre for touring talkies for exhibition of cinematograph films.

4. Section 4 of the Karnataka Cinemas (Regulation) Act, 1964 (hereinafter referred to as the "Act") provides that no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under the Act, or

otherwise than in compliance with any conditions and restrictions imposed by such licence. Section 5 of the Act, provides for licencing for exhibition of cinematograph films to any person who intends to give exhibition by means of a cinematograph, he has to make an application in writing to the licensing authority for licence. The licensing authority has to grant the licence subject to the provisions of the Act and the Rules made thereunder. Section 7 of the Act, empowers the licensing authority to limit number of places that can be licensed in any area. Sections of the Act, directs the licensing authority that it shall not issue licence unless it is satisfied that the rules made under the Act have been substantially complied with ; adequate precautions have been taken in the place in respect of which the licence is to be granted to provide for the safety, convenience and comfort of the persons attending exhibitions therein; and the limit regarding the number of places for the area determined u/s 7, is not exceeded. These provisions are also applicable to touring cinemas. As per Section 19(2)(c) of the Act, the State Government is empowered to frame the rules regarding limitation of the period for which licences in respect of any place may be granted for touring cinemas and prescribe the distance from a permanent cinema beyond which licences in respect of any place for touring cinemas may be granted.

5. Chapter XII of the Karnataka Cinemas (Regulation) Rules, 1971 (for short the "Rules") framed under the Act, deals with touring cinemas. It contains Rules 88 to 111. Rule 90 of the Rules, which falls under Chapter XII, provides that a person who intends to construct a building for the exhibition of cinematograph film by a touring cinema shall make an application in form-A accompanied by the documents mentioned in Sub-rule (2) therein Rule 91 of the Rules, prescribes the condition, to which the building is intended for running touring cinema, to comply.

6. Section 11 of the Act, makes it abundantly clear that application of the provisions of the Karnataka Municipal Corporations Act, relating to construction of buildings are not applicable to the construction of building for running touring cinema. The word "place", occurring in Sub-section(1) of Section 11 of the Act, is defined as including a house, building, tent, enclosure and any description of transport whether by water or air. Thus, the construction of a building for touring cinema also falls under Sub-section (1) of Section 11 of the Act. Consequently, as per the provisions contained in Sub-section (2) of Section 11, the provisions relating to construction of buildings of the Karnataka Municipal Corporations Act, are not applicable to erection or construction of building for a touring cinema. The result is, the aforesaid enunciation made by a Division Bench of this Court in Writ Appeal No. 1515/85, on 30th August, 1985, WA No. 1515 of 1885 D.D. 30-8-1985 also applies to touring cinemas. That being so, the power u/s 321 of the Karnataka Municipal Corporations Act, cannot be exercised by the Corporation or its authorities in respect of construction or reconstruction of a building for running a touring cinema, as such buildings, or constructions, are exempted from the purview of the relevant provisions of the Karnataka Municipal

Corporations Act including Section 321 thereof, Rules and bye-laws regulating the erection or construction of buildings, by Section 11(2) of the Act. Though this contention has not been raised in the Writ Petition, it is allowed to be urged because it is a pure question of law and goes to the very root of the matter.

7. For the reasons stated above, the Writ Petition is allowed. The impugned orders dated 20th May, 1983, bearing No AEI, (FT) U. C. P. O. 29/ 83-84 produced as Annexure-A ; and 30th May, 1983 bearing No. PO 29/83-84, produced as Annexure B, passed by the 3rd respondent, are hereby quashed. However, it is made clear that this order shall not be construed as holding that the construction in question is in accordance with the provisions of the Act and the Rules. It is open to the relevant authority to take appropriate action under the Act and the Rules.