
(2009) 07 AHC CK 0254
In the Allahabad High Court

Prem Chandra Prakash Sharma and Another	APPELLANT
Vs	
State of UP and Others	RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Citation : (2009) 07 AHC CK 0254

Hon'ble Judges : Virendra Singh, J;Sunil Ambwani, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Heard Shri Navin Sinha, Senior Advocate assisted by Shri Vipin Sinha for the petitioners. Shri Zafer Naiyer, Additional Advocate General has appeared on behalf of State.

2. Shri Zafer Naiyer, Additional Advocate General has produced the order dated 1.7.2009, by which the District Magistrate, Kanpur Nagar has decided not to renew the license of the cinema after 1st July, 2009, and has also produced the original file on which the decision was taken by the District Magistrate. On 1.7.2007, we passed the followed orders:-

Heard Shri Navin Sinha assisted by Shri Vipin Sinha for the petitioners. It is contended that the license for running cinema was renewed only upto 30th June, 2009 vide information received by the petitioner under the Right to Information Act from the Asstt. Entertainment Tax Commissioner, Kanpur Nagar. The lease deed of the cinema executed by respondent No. 3 with the petitioner was valid only upto 30th June, 2009. It is contended that the lease was renewed on 11th May, 2009 for a period of 11 months and that request for extension of the license upto 31st March, 2010 was made on 14th May, 2009 but no orders have been passed. It is contended that the delay will result into closure of cinema from today.

Put up day after tomorrow to enable learned Standing Counsel to seek instructions as to why application dated 14th May, 2009 has not been considered

so far. If there is no other impediment and that the petitioner has not contravened any of the provisions of law, the respondent authorities will take immediate decision in the matter.

In the meantime, the respondents will allow the petitioner to run the cinema provisionally, if there is no other impediment or any contravention of law. A copy of this order be provided to the petitioner today on payment of usual charges.

3. An amendment application and a supplementary affidavit has been filed by the petitioners. By the amendment application the petitioner has challenged the order dated 1.7.2009 essentially on the grounds that the interim orders dated 10.6.2008 in F.A.F.O. No. (794) of 2008 Shri Sanjay Agrawal v. Shri Om Prasad Agrawal had merged in the final order in the F.A.F.O. dated 2.7.2008 by which this Court had directed the parties to maintain status quo till the decision is taken by the trial court on the preliminary issue. According to Shri Navin Sinha the preliminary issue between the co-sharers including the lessors of the premises of Cinema Hall, with regard to the valuation and payment of court fee was decided on 25.10.2008 against Shri Sanjay Agrawal. He has filed a Civil Appeal No. 424 of 2008, Sanjay Agrawal v. Om Prasad Agrawal in which an order was passed on 11.11.2008, the operative portion of which is as follows:

...Since there is no demand made nor the Revisionist has been called upon to make good any deficiency in Court Fees, the findings on the issue of valuation requires consideration after the opposite parties have put in appearance. Therefore till the next date of listing the operation and effect of the impugned order dated 25.10.2008 passed in Suit No. 951 of 2005 Sanjay Agrawal v. Om Prakash Agrawal pending in the court of Civil Judge (Senior Division) Kanpur Nagar shall remain stayed.

List this Revision on the date fixed in the notice.

4. Shri Navin Sinha submits that on the objections of Shri Om Prasad Agrawal, the District Magistrate arrived a prima facie opinion and thereafter formed a confirmed view on an opinion obtained from the District Government Counsel (Civil), without hearing the petitioner. He would submit that there is no interim order, by which Shri Sanjay Agrawal was restrained from extending the period of the earlier lease, and that when the opinion of District Government Counsel (Civil) was taken ostensibly on the doubts over the legal position and validity of the renewal of the lease, it is incumbent on the District Magistrate, Kanpur Nagar to hear the petitioner before taking any decision in the matter.

5. Shri Sinha has relied upon a judgment of Supreme Court in Raj Restaurant and Anr. v. Municipal Corporation of Delhi AIR 1982 SC 19550 in which the Supreme Court held as follows:-

5. Where, in order to carry on business a licence is required, obviously refusal to give licence or cancellation or revocation of licence would be visited with both civil and pecuniary consequences and as the business cannot be carried on

without the licence it would also affect the livelihood of the person. In such a situation before either refusing to renew the licence or cancelling or revoking the same, the minimum principle of natural justice of notice and opportunity to represent one's case is a must. It is not disputed that no such opportunity was given before taking the decision not to renew the licence though it is admitted that for the reasons hereinbefore set out the licence was not renewed. Such a decision in violation of the minimum principle of natural justice would be void. Now, it is true that no specific order is made setting out the reasons for refusal to renew the licence. But the action taken of sealing the premises for carrying on the business without a licence clearly implies that there was refusal to renew the licence and the reasons are not disclosed, and the action disclosing the decision being in violation of the principle of natural justice, deserves to be quashed.

6. The petitioner has a remedy of filing an appeal under the Cinematograph Act, but we find that in the present case the order dated 1.7.2009, by which the decision was taken by the District Magistrate not to renew the license beyond 1.7.2009, was passed without observing the principles of natural justice and thus the Court can interfere with the orders, not to renew the license.

7. The submission of Shri Zafer Naiyer, that since the order was passed on the application of the petitioner for renewal, he shall be deemed to have been heard in the matter, cannot be sustained. The lease was extended on 11.5.2009 and that an application for extension of period of renewal was made on 14.3.2009. The objections of Shri Om Prasad Agrawal were not communicated to the petitioner nor any notice was issued to him.

8. We have perused the original file and do not find that the petitioner was given any notice or opportunity to make objections to the representation of Shri Om Prasad Agrawal, and that petitioner's contention, that there is no interim order in the matter, which may have restricted the co-sharers to renew the lease, was not considered. The opinion of the D.G.C. (C) also was not communicated to the petitioner to submit his reply.

9. After perusing the original file and hearing both the parties we are of the view, that the order dated 1.7.2009 suffers from the violation of principles of natural justice, and causes serious civil consequences on the petitioner. The order as such cannot be sustained. The order has been challenged by the amendment application, which has been allowed today and that we have proceeded to hear the matter with the consent of parties and on the basis of the original record produced before us.

10. The writ petition is allowed. The order dated 1.7.2009 passed by District Magistrate, Kanpur Nagar is set aside. The District Magistrate, Kanpur Nagar shall decide the matter afresh after giving an opportunity of hearing to the petitioner. The fresh order may be passed within one month or earlier, as the case may be, after the District Magistrate has allowed the petitioner giving him copies of the objections of Shri Om Prasad Agrawal and the opinion of D.G.C. (C)

and all other material which is relevant to the issue. The interim order, by which we had allowed the cinema to run, will continue to operate till the final decision is taken by the District Magistrate, Kanpur Nagar by a reasoned order. It goes without saying that the petitioner will comply with the relevant provisions of law in running the cinema and will go on depositing the entertainment tax regularly.