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(1958) 02 MAD CK 0018

In the Madras High Court

R. Subramania Odayar — APPELLANT

Vs

Board of Revenue and Another — RESPONDENT

Date of Decision : 12-02-1958

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1958) 71 LW 344 : (1958) 1 MLJ 410

Hon'ble Judges : Balakrishna Ayyar, J

Bench : Single Bench

Judgement

Balakrishna Ayyar, J.—On 20th February, 1956, the Additional District Magistrate of Tiruchirapalli issued a licence u/s 7 of the Places of

Public Resort Act, 1888 to the Manager of the Kala Touring Talkies, permitting him to put up a temporary cinema-shed on S.F. Nos. 310/1,

310/2 and 245/1 of Melakalkandar Kottai Village, hamlet of Alathur. In April 1957, the Collector of Tiruchirapalli issued what is described as a

''no-objection'' certificate to the proprietor of the same talkies in respect of S.F. No. 310/1 of Alathur Village. This meant that subject to the other

requirements of the statute in that behalf being satisfied a temporary cinema could be constructed and run in S.F. No. 310/1 of Alathur village. In

June, 1957, the Collector granted a similar ''no-objection'' certificate to the proprietor of the Vani Touring Talkies in respect of a survey field which

is . two furlongs away from S.F. No. 310/1. One of the rules framed under the Madras Cinemas Regulation Act prohibits the grant of a license to

run a touring cinema if it should be situated within four furlongs of another to which a license has already been granted. Since ''no-objection''

certificates had been granted to two sites within about two furlongs of each other, the Collector had to decide to whom he would give what is

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called the C Form license, that is to say the license actually permitting exhibition of films. He decided to give the license to Vani Touring Talikes.

The Kala Touring Talkies thereupon appealed to the Board and by an order it made on 9th November, 1957, the Board set aside the order of the

Collector and directed the issue of a license to the Kala Touring Talkies. The proprietor of the Vani Touring Talkies has filed the present writ

petition calling in question the order passed by the Board.

2. Rule 109(1) of the rules framed under the Madras Cinemas Regulation Act read as follows:

No building constructed of inflammable materials shall be licensed to exhibit shows in any place for a period longer than one year. There shall be an

interval of three months before the same site is again licensed.

The Collector understood the word ''site'' occurring in the second sentence of this paragraph as referring to the entire area in respect of which a

license had been granted. He, therefore, thought that the Kala Touring Talkies could not be given the C Form license for the same place since, to

do so would have been to contravene this rule which requires an interval of three months. The Board, however, took the view that the word ''site''

occurring in this rule applies only to the actual extent of land occupied by the cinema-shed and that, therefore, if the cinema shed were shifted to

another survey field even though that field was covered by an earlier license, the prohibition laid down in the rule would not be attracted.

3. The word ''site'' has various meanings. In the Shorter Oxford English Dictionary the following meanings have been given to the word ''site'' :

(i) The place or position occupied by some specified thing, frequently implying original or fixed position....Place, position, situation....(2) The

situation or position of a place, town, building, etc. The ground or area upon which a building, town, etc., has been built, or which is set apart for

some purpose. Also, a plot, or number of plots, of land intended or suitable for building.

In Stroud it is mentioned:

The term ''site'', in relation to a house, building, or other erection, shall mean the whole space to be occupied by such house, building, or other

erection, between the level of the bottom of the foundations and the level of the base of the walls--(Metropolis Management Act, 1878 (41 and 42

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Vict., C. 32, Section 14). That definition provided for Part II of the Metropolis Management Act, 1878, (Sup.) was applied to a bye-law made by

the Metropolitan Board of Works: Blashill v. Chambers (1884) L.R. 14 Q.B.D. 479. A like definition is provided for Public Health (Ireland Act)

1878 (41 and 42 Vict., C. 52) Section 41

4. The word ''site'' can be properly used to describe either the exact extent of land occupied by a building or a larger area of which such extent

forms a part. For example when we speak of the site of a shop in a bazaar, it would ordinarily be only the site actually occupied by the building

proper. But when we speak of the site of a factory or the site of a college or the site of a hostel, the word can properly include not merely the

actual extent of land on which the building stands but also the grounds surrounding it. In what sense the word is used would depend upon the

context. Now, it will be noticed that in the second sentence of Rule 109(1) the expression used is ''there shall be an interval of three months before

the same site is again licensed.'' The word ''site'' in that sentence is used in relation to the word license and must be construed in relation to that

word. This means that when a license has been granted for a specified extent of land a license for it cannot be granted again except after an interval

of three months. It makes no difference whether the land for which the license was first granted comprises only a part of a survey field or whether it

comprises several survey fields. Where the prior license covers a number of survey fields or sub-divisions of survey fields, the prohibition created

by this rule cannot be evaded by shifting the cinema-shed to another survey field or sub-division in the area covered by the earlier license. The

argument that since the sub-divisions are different the sites are different will not avail. The construction put upon the word ''site'' by the Board

appears to me to be clearly wrong.

5. Rule 4 of the rules framed under the Madras Cinema Regulation Act runs as fallows:

If any question arises as to the interpretation of these rules otherwise than in connection with the prosecution for an offence, the question shall be

referred to the Government whose decision thereon shall be final.

There was some argument as to the scope and extent of operation of this rule. Into that matter, I do not consider it necessary to go now since it is

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very clear to me that that the rule cannot bind this Court when it exercises its powers under Article 226 of the Constitution.

6. Though the construction put upon the word ''site'' by the Board is erroneous, it was, however, right in thinking that there was no legal bar to the

grant of a G Form license for the location of a cinema-shed in S.F. No. 310/1, because the license which had been issued in 1956 was not a

license granted under the Madras Cinemas Regulation Act. That license had been granted under the Places of Public Resort Act and, therefore, it

is not a license the renewal of which without a break is prohibited by Rule 109(1).

7. Mr. Mohan Kumaramangalam argued that though the previous license was under the Places of Public Resort Act, it was, if we look into the

substance of the matter, just the same as a license issued under the Cinemas Regulation Act. There is some point in this. But at the same time since

it cannot be said that this is a license to which Rule 109(1) in terms applies, we cannot say that the previous license Was one issued under this Act.

This means that the field was open as between the Kala Touring Talkies and the Vani Touring Talkies and the Board was entitled to make a

selection between them. It has not been shown, that in making its selection the Board was influenced by considerations extraneous to the statute.

That being so, its order cannot be interfered with. The petition is dismissed. but in the circumstances of the case without costs.

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