

(2016) 01 KAR CK 0188
In the Karnataka High Court
Case No : Writ Petition No. 22412/2010 (C)

Raju Setty

APPELLANT

Vs

The District Magistrate, Mysore District and Others

RESPONDENT

Date of Decision : 13-01-2016

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g)

Citation : (2016) 01 KAR CK 0188

Hon'ble Judges : A.S. Bopanna, J.

Bench : Single Bench

Advocate : A.C. Balaraj, Advocate, for the Appellant; T.S. Mahantesh, A.G.A., for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J.—1. The petitioner is before this Court assailing the orders dated 03.04.2006 and 01.02.2010 which are impugned at Annexures-S and T to the petition. The petitioner in that light is seeking issue of mandamus to direct the first respondent to consider the application filed by the petitioner together with certificates enclosed thereafter and pass orders as directed by this Court in W.P. No. 5219/1987 dated 18.07.1996. The petitioner in that light seeks for grant of licence for exhibition of Cinematograph shows in the permanent Cinema Theatre constructed on the site bearing No. 1802, Assessment No. 2027 situate at Rashtrapati Road, Nanjangud town, Mysuru District.

2. The instant petition has a chequered history. The father of the petitioner was before this Court in W.P. No. 5219/1987 seeking that the endorsement which had been issued at that point on 28.01.1986 be quashed and a direction be issued to the first respondent to consider the application for grant of licence. This Court by the order dated 18.07.1996 had disposed of the petition.

3. Pursuant thereto, an application has been filed by the petitioner seeking grant of licence. The consideration of such application has been made through the

order dated 03.04.2006 as at Annexure-S and the same has been rejected. The petitioner claiming to be aggrieved had filed a revision before the Regional Commissioner which is dismissed by the order dated 01.02.2010. Therefore, the petitioner claiming to be aggrieved by the same is before this Court.

4. The respondents including the private respondents have filed their objection statement opposing the prayer made in the instant petition. The contention as put forth by the respondents is that the construction as put up is not in accordance with law and as such, the same does not satisfy the requirement as contemplated under the Karnataka Cinemas Regulation Act, 1964. It is in that light, contended that the rejection of the application and the revision petition is justified.

5. In view of the nature of the contentions that has been put forth and the reason that had been assigned by the authorities to reject the application, this Court to satisfy itself had directed that a spot verification be made and a report be filed before this Court. A report is filed along with a memo dated 14.08.2013. The spot verification made and the report as filed is by the Deputy Commissioner, Mysuru District, who himself is the licencing authority. A perusal of the report would disclose that on the spot inspection being made, though it is noticed that a full-fledged theatre has been constructed, the defects as indicated is that the compound wall is not appropriately constructed; that there is no objection certificate" for construction of two theaters in the premises, no objection certificate" has not been renewed on 21.12.1985 and as such, all these constitute violation of regulations. The case as put forth requires to be addressed taking note of the said observation that have been made in the spot inspection report. Essentially the main objections which are to be taken note are with regard to no objection certificate" being issued for construction of one theatre while two theatres have been constructed and that the no objection certificate" had not been extended subsequent to 21.02.1985.

6. Insofar as that aspect of the matter, what is evident is that the father of the petitioner was before this Court in W.P. No. 5219/1987 which was disposed of on 18.07.1986. This Court at that point has taken into consideration that aspect of the matter relating to the "no objection certificate" and in the background of the same had directed that the application filed by the petitioner therein be considered and while so directing, it has also kept in view the provision contained in Article 19(1)(g) of the Constitution and had indicated that the consideration be made in the light of the Cinemas Regulations Act, 1964.

7. At this juncture, it is pointed out by the learned counsel for the private respondents that in fact as on the said date itself, the petitioner therein had expired. Be that as it may, when subsequently the petitioner herein who is none other than the son of the petitioner therein had taken note of the said order dated 18.07.1996 and had filed the application seeking grant of licence as permitted therein and such application has been considered and rejected on a different ground, that in itself cannot take away the benefit that had been

granted by this Court.

8. If that be the position, when this Court in the earlier petition had taken note of the "no objection certificate" dated 21.12.1985 which had been granted and in that background as late as on 18.07.1996 had directed that the application for grant of licence be considered if filed within six weeks, the very same objection cannot be put forth to deny the benefit to the petitioner at this stage. Therefore, the said defect pointed out would not be material for consideration, if the petitioner satisfies other conditions for grant of licence.

9. Insofar as the observation that two theatres have been constructed in the same premises, despite the "no objection" being granted for one theatre, that should not act as a bar for considering the grant of licence atleast for one theatre when such construction has been put up and "no objection certificate" was issued for construction of one theatre. In that regard, it is also relevant to refer to the decision of a Division Bench of this Court in the case of Channagiri Rangappa and Sons vs. District Magistrate, Chitradurga and Another [, 1971 (1) My. L.J. 60] wherein this Court has taken a view that even conversion of the existing building would also be permissible for consideration for grant of licence.

10. That apart, one other observation which is also contained in the spot inspection report is with regard to the licence to be renewed from the Fire Force Department. That is an aspect which in any event the petitioner will have to satisfy by securing licence from the Fire Force Department and submit the same to the authority.

11. Therefore, the consideration that is required to be made by the first respondent is with regard to the licence that is to be granted for one of the theatres constructed in the premises which in any event would remain valid on the application that had been made pursuant to the leave granted by this Court. At this juncture, it is also necessary to observe that in view of the Karnataka Cinemas (Regulations) Rules, 2014 being notified, the approval for grant of licence to multiplexes and more than one theatres in the same building is also provided for. If the petitioner makes a separate application with regard to the additional theatre that is constructed in the premises and if the petitioner satisfies the requirement as contemplated in law, certainly insofar as the second theatre, consideration be made by the licencing authority keeping in view the requirements to be satisfied by the petitioner in that regard.

12. Therefore, to enable such consideration to be made by the licencing authority, the orders dated 03.04.2006 and 01.02.2010 are quashed. A direction is issued to the first respondent to consider the application made by the petitioner, subject to the observation made hereinabove. The requirement relating to the certificate from the Fire Force Department shall however be complied by the petitioner and such licence be produced before the first respondent who shall thereupon take note of the above directions and pass fresh orders on the application filed by the petitioner. The order to be passed by the

first respondent shall be done in an expeditious manner, in any event not later than eight weeks from the date on which the certificate from the Fire Force Department is produced by the petitioner before the first respondent.

In terms of the above, the petition stands disposed of.