
(2005) 03 AHC CK 0171

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31903 of 2004

Shambhoo Nath Agrawal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-03-2005

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Cinematograph Rules, 1951 — Rule 2, 3(1), 3(2), 4, 7
Uttar Pradesh Intermediate Education Act, 1921 — Section 16A(7)

Citation : AIR 2005 All 313 : (2005) 3 AWC 2397

Hon'ble Judges : B.B. Agarwal, J;A.K. Yog, J

Bench : Division Bench

Advocate : Govind Krishna, for the Appellant; Ashutosh Srivastava and S.C., for the Respondent

Final Decision : Allowed

Judgement

A.K.Yog, J.—The petitioner, Shambhoo Nath Agarwal, filed above noted writ petition under Article 226 Constitution of India, initially praying for a writ of mandamus directing the District Magistrate/Licensing Authority under U.P. Cinematograph Rules, 1951 Mirzapur to permit the petitioner to exhibit feature films in the light of direction given by the Apex Court in its judgment and order dated 19th July, 2004 (Annexure 23 to the petition) and for a writ of mandamus directing respondent No. 1/State of U.P. to recover damages (caused to him by) from Sh. Sabha Raj Singh the then District Magistrate) and Sri Amrit Pal Singh (the then Assistant Commissioner, Entertainment Tax, Mirazpur) /respondents 2 and 3 respectively for dilatory tactics causing loss illegally in not permitting the petitioner to exhibit feature films.

2. This petition was presented on August 9, 2004. The respondent No. 2/ District Magistrate on that day i.e. August 9, 2000 itself happened to pass order rejecting Petitioner"s application for renewal of license for exhibiting feature films under U.P. Cinematograph Rules, 1951 (the "Rules"), framed under the Cinematograph

Act, 1918 (as amended from time to time). The petitioner filed an application for amendment of the writ petition and prayed for issuing a writ in the nature of certiorari to quash aforesaid order dated August 9, 2004 passed by respondent No. 2 (Annexure "33" to the petition).

3. Prakash Chandra and Vikash Chandra sons of Late Kanhaiya Lal Gupta, impleaded as Respondent Nos. 6 and 7 (by amendment) have filed counter affidavits, while Respondents 1, 2, and 3 have filed separate counter affidavits.

4. From the pleadings contained in the petition and the counter affidavits of respondents No. 6 and 7, it seems that the premises in question and cinematograph business belonged to seven co-sharers; out of which six sold their shares by executing registered sale deeds in favour of the petitioner. The petitioner on that basis got his name entered in the revenue records. It is claimed that possession of the property was also delivered in favour of the petitioner in January 1999 (para 5 and 6 of the writ petition). Petitioner further claims that respondent No. 2 permitted him to carry out repairs in the building in question after depositing Rs. 6 lacs i.e. 1/7th share of Late Kanhaiya Lal Gupta (father of respondents 6 and 7). The petitioner, admittedly, submitted application for grant of license under the Act and the Rules framed and license was issued to exhibit Cinematograph films on November 8, 2002 which was valid upto March 31, 2003 (Annexure 5 to the petition), and it is claimed that the petitioner started exhibiting feature films in pursuance of the said license.

5. From the counter affidavit filed on behalf of respondents 6 and 7, it appears that there was dispute between co-sharers and suit No. 97 of 1991 for partition was pending. Paragraph 10 of the said counter affidavit shows that suit No. 77 of 1999 Prakash Chandra Versus Shambhoo Nath Agarwal and others was filed before the Court of Civil judge (Junior Division) Mirzapur claiming decree for permanent injunction to restrain said Shambhoo Nath Agarwal (Defendant No. 1 in the said suit) from interfering in the possession of the Defendants/respondents and from causing alteration/damage to the property in suit. Trial court initially passed an interim order dated 1st February 1999 directing the parties to maintain status quo and after on hearing the parties, continued it vide order dated 25th July, 2001.

6. Feeling aggrieved Shambhoo Nath Agarwal filed First Appeal From Order No. 120 of 2001 Shambhu Nath Agarwal versus Prakash Chandra and others. This Court vide its judgment and order dated 15.5.2002 (Annexure C, A " 1" to the said counter affidavit) allowed said First appeal from Order and quashed the aforesaid interim order of "status quo" dated 25th July, 2001. The aforesaid order dated 15.5.2002 passed by this court was challenged in the SLP (C) No. 21569 - 21570 /71/2002. On 11.11 2002, Supreme Court is pleased to pass the following order:

"Delay condoned. Issue notice on the Special Leave Petition. status quo shall be maintained in the meanwhile. "

7. According to the Respondent Nos. 6 and 7, business of cinematograph exhibition was carried on by joint family and license to run the same under the Act stood in the name of Kanhaiya Lal Gupta (father of the contesting respondents), These respondents, vide para 17 of their counter affidavit, claim to have inherited the property, including the Cinema Hall and cinematograph business.

8. It appears that and Respondent Nos. 6 and 7 approached Licensing Authority / respondent No. 2 by filing application for grant of license.

9. Para 11 of the writ petition reads:

"That it is needless to mention here that me petitioner started the exhibition of feature film in pursuance of the license issued in his favour and has deposited huge amount as entertainment tax with the respondent No. 2. However, the Hon"ble Apex Court on 11. 11. 02 passed exparte order a copy whereof is being filed herewith as annexure 6 to this writ petition."

10. Para 44 of the counter affidavit (of Respondent Nos. 6 and 7) in reply to above para 11 of writ petition respondent, reads:-

"That the contents of para 11, 12, 13, 14, 15, 17, 18, 19 and 20 of the writ petition needs no reply being matters of record and the true facts may emerge therefrom. It is however, submitted that the entire proceedings undertaken by the petitioner pursuant to his application dated 17.12.2003 were fraudulent, misleading and against the provisions of the UP Cinema Regulations 1955 and the rules framed thereunder."

Thus ensued "tug of war" between the petitioner and the contesting respondents over their respective claim to get license to carry on business of cinematograph exhibition. The petitioner was once granted on 27.03.2004 license in his favour under which he had exhibited feature films up to November, 2002. He now wanted renewal of the same since it was cancelled subsequently (presumably on the complaint of Respondent Nos. 6 and 7) on April 16, 2004.

11. Petitioner challenged aforesaid cancellation order dated 16.04.2004 by filing a writ petition. The writ petition was allowed on the ground that the above noted cancellation order dated 16th April, 2004 was passed in violation of the principles of natural justice since the petitioner was given no opportunity before cancellation order was passes.

12. The petitioner again approached the Licensing Authority but his application appears again rejected on the ground that Apex Court had passed an order of "status quo" dated May 8, 2003 (Annexure 7 to the petition). Petitioner, being aggrieved, filed another writ petition No. 2334 of 2004 challenging the aforesaid order of the District Magistrate dated 17.6.2004 rejecting petitioner's application for renewal of license. This court vide judgment and order dated 25.6.2004 (Annexure 22 to the petition) dismissed the said writ petition observing that it was open for the petitioner to approach the Supreme Court to seek clarification

of the aforesaid status quo order dated 8th May, 2003.

13. In view of the above, petitioner approached the Apex Court which passed order dated 19th July, 2004 Annexure 23 to the petition, relevant extract quoted below:

"We, therefore, clarify that this Court had not by any of its orders sought to decide any dispute relating to the grant or non-grant/renewal of the cinema license. The District Magistrate will be at liberty to decide the application for renewal of the cinema license without taking into consideration the orders passed by this court as those orders do not in any way, relate to the renewal of the license in question. If the petitioner is otherwise so entitled to such renewal, the same shall be granted strictly in accordance with the applicable law. As far as the F.A.O. Is concerned, the High Court is requested to dispose of the same as expeditiously as is conveniently possible. The SLP is disposed of."

14. In the light of the aforesaid clarificatory order issued by the Supreme Court, the petitioner again approached the District Magistrate / Licensing authority for consideration of his application for renewal of his license under the Act.

15. According to the petitioner, District Magistrate was unduly delaying the matter, therefore, he presented this petition claiming writ of mandamus noted above. However, District Magistrate passed the impugned order /Ann. 33 to the petition, as noted above.

16. Learned Standing Counsel and the learned counsel representing Respondent Nos. 6 and 7 raised a preliminary objection regarding maintainability the writ petition. Learned counsel for the petitioner had closed his arguments. In support of his objection he has referred to the decision of the Apex Court in the case of U.P. State Bridge Corporation Ltd. and Others Vs. U.P. Rajya Setu Nigam S. Karamchari Sangh, reliance is being placed on pars 11, 12 and 17.

17. On the other hand, learned counsel for the petitioner argued that the objection should have been, taken at the very beginning and it should not be allowed when the parties have already exchanged counter and rejoinder affidavits. The submission is that once parties are driven to the High Court, exchanged pleadings by filing counter and rejoinder affidavits under orders of this Court parties should not be compelled to drive back on technicality as it will put litigant to un-necessary wastage of time and expenses apart from unnecessary encroachment and wastage of court time. The learned counsel for the petitioner further submitted that he has to make these submissions which do not require investigation of facts. In case of Diwakar Dutt Bhatt Vs. Life Insurance Corporation of India, Bombay and another, this Court observed that when writ petition is entertained and parties are directed to file and exchanged counter affidavit, and rejoinder affidavit, they should not be thrown out of court on the ground of alternative remedy, which is a self imposed rule of discipline upon courts while exercising extraordinary jurisdiction under Article 226, Constitution of India. The preliminary objection raised by Respondents thus can not be

sustained and fails.

18. In brief the contention of the petitioner before us, while challenging the impugned order dated 9.8.2004 (Ann. 33 to the petition) is that the district Magistrate /Licensing Authority has passed aforesaid order which shows non application of mind and reflects that it had not given due weight to the clarificatory order of the Hon'ble Supreme Court dated 19th July, 2004, by means of which the Supreme court had abundantly clarified the decision (already referred to above). The submission on behalf of the petitioner is that merely by referring to a dispute with respect to the property raised by one (out of seven co-sharers) is not enough and desired compliance of the requirement of the Act and the Rules.

19. On the other hand, learned counsels for the contesting respondents as well as the Standing Counsel submit that in view of admitted fact that a suit for partition is pending, as also a suit for injunction, is pending, the petitioner can not claim exclusive possession and the sale deeds executed in favour of the petitioner by other co-sharers are void and since there is a "dispute" with regard to the property in question, licence can not be renewed / granted under the Act and the Rules.

20. Learned counsel for the contesting respondents secondly, pointed out that they have also filed an application for obtaining licence for exhibiting feature films in this property under the Act and the Rules and license should be granted to them. We shall deal with the second submission first.

21. If we accept the argument of the contesting respondent that a dispute is pending between the parties and therefore the petitioner is not entitled for renewal of the licence under the Act, then on the same argument application filed by the respondent for grant of licence and, in that view of the matter, also can not be entertained. Respondent Nos. 6 and 7 can not blow hot and cold at one and the same time.

22. To appreciate the first submission, we may reproduce relevant rules 4 and 7 which read as follow:

"4. APPLICATION FOR A LICENCE:-

An application for the grant of a new licence for cinematograph exhibition shall be made to the Licensing Authority and shall contain full particulars of the ownership of the premises and the cinematograph machine and shall be accompanied with the following document-

- (a) the order or approval of plan under Rule 3(1);
- (b) plan of the building and premises containing the specification enumerated in sub-rule (2) of Rule 3;
- (c) plan of seating arrangements for each class, separately;

(d) certificate from the Electrical inspector to Government that the electrical installations conform to the required standards and (he existing rules;

(e) certificate from the Medical Officer of Health having jurisdiction that the arrangements for sanitation conform to the requirement of the existing rules; and

(f) certificate from the Regional Fire officer having jurisdiction that the arrangements for fire fighting appliances provided and the precautions taken against fire conform to the requirements of the existing rules.

XXX XXX XXX 7. CONDITIONS FOR GR ANTING AND RENEWING A LICENCE;

(1) No Licence shall be granted or reviewed in favour of any person unless (i) he or his agent appointed for the purpose referred to in Rule 2 (vi) is residing in the city, town or area within whose limit the cinematograph exhibition is intended to be given, and (ii) the licensing authority is satisfied that the requirements of those rules have been fully complied with.

XXX XXX XXX

23. As already noted above, the Licensing authority had granted licence to the petitioner in the past. The said petitioner did run business of cinema exhibition on that basis for some tune. This factual position is not disputed by the learned counsel for the respondents. He, however, added that his clients/contesting respondents have been through out objection to the same. We find that the petitioner has pleaded and also filed document, particularly, the inquiry report submitted by the Tahsildar/annexure 3 to the petition, wherein Tahsildar vide his report dated 17.4.2000 clearly referred to the shares purchased by the petitioner, sale deeds executed in his favour and that petitioner was in possession over the property. It is, therefore, clear that the Licensing authority while initially entertained the application and granted licence to the petitioner, it had on record before it material regarding dispute pending before the Civil Court and the sale deeds in favour of the petitioner. The Licensing Authority did not find it sufficient to reject the application. There has been no change as compared to the past, as far as the "dispute" in question is concerned.

24. In addition to the above, we find that Apex Court, vide its judgment and order dated 19.07.2004 (Annexure 23 to the writ petition), observed: ".....Pending disposal of the FAO this Court directed the status quo to be maintained."

And

"A contempt petition was then filed by the respondent alleging that the petitioner had violated this Courts Order of status quo by running of cinema hall. The contempt proceedings were dropped by holding that there had been no violation of the Courts order as the petitioner had been operating the cinema hall under a licence when the order of status quo was passed."

And,

"we, therefore, clarify that this Court had not by any of its orders sought to decide any dispute relating to the grant or non-grant renewal of the cinema licence. The District Magistrate will be at liberty to decide the application for renewal of the cinema licence without taking into consideration the orders passed by this court as those orders do not in anyway relate to the renewal of the licence in question. If the petitioner is otherwise so entitled to such renewal, the same shall be granted strictly in accordance with the applicable law. "

25. It is clear that Apex Court did take cognizance of the fact that the petitioner was operating / running cinema business in the past and contempt proceedings were dropped as the petitioner was not found violating any court order.

26. This shows that the petitioner was found to bonafide running the cinema business, and status quo order did not come in his way and in the way of consideration of application for renewal of Licence.

27. The Supreme Court permitted that the Licensing Authority should decide the application for renewal of licence on merit in accordance with the Act and the Rules, notwithstanding its order of status quo passed pending disposal of the First Appeal From Order in the High Court.

28. There are two aspects in the present case.

29. Supreme Court either itself took cognizance of the fact that the dispute which was pending before civil court or in the First Appeal From order in this court, was not the dispute of the kind, which dis-entitled consideration of application for grant of licence. The other aspect of the matter is that Licensing Authority should apply its mind and consider on merits as to whether the dispute in the instant case; is of such nature which warrants rejection of an application to grant / renew Licence in question.

30. The Licensing Authority, has not at all adverted to the order of the Apex court dated 19.07.2004 from the above point of view. The "pith and substance" of the said judgment of the Apex Court has been completely ignored. The District Magistrate is under statutory obligation to consider the application for renewal of licence under the rules, after investigating relevant ingredients and circumstances under law and whether dispute between parties was such as to reject the application.

31. Besides the order of the Apex Court, the concerned authority must attempt to appreciate that merely raising a dispute to any body's title / ownership by another person which is fanciful or self created without substantial merit, is not the kind of dispute contemplated under the Rules. The dispute must be real and substantial one while viewing in the light of other attending circumstances. Mere creating dispute to black mail another person or as a means of abuse of process of law or Court, is not enough to reject application for renewal of licence under law.

32. Reference may be made to the following decisions:

1978 A.W.C. 124 Committee of Management and Anr v. The District Inspector of schools, Meerut and Anr., wherein this Court, dealing with a case u/s 16-A (7) of U.P. Intermediate Education Act, observed:

".....In Committee of Management, S.A.V. Inter College v. District Inspector of Schools, writ petition No. 12725 of 1975 decided on 24th November, 1977, a Division Bench of this court held: "Under the U.P. Intermediate Education Act as well as under the High Schools and Intermediate Colleges (Payment of Salaries of Teachers and other Employees), Act 1971, the District Inspector of schools has to perform various administrative functions of statutory character in collaboration with the Management of High Schools and Intermediate Colleges. These duties can not be discharged by the District Inspector of Schools unless he is in a position to find out on an administrative level as to who are the real office bearers of the College. For this limited purpose the District Inspector of Schools must of necessity satisfy himself as to who, according to him, are validly elected office bearers of the Institution. If any party feels dissatisfied with the administrative decision taken by the District Inspector of schools he is at liberty to file a suit against the rival Claimants for adjudication of their rights either as office bearers or as members of the Managing Committee. In the event of a decree being obtained by such a party there can be little doubt that the District Inspector of Schools, in case he has taken a wrong decision, will alter his decision and will recognize (hat party in whose favour decision has been given judicially."

It is true as pointed above that some sort of a dispute in regard to the validity of the election of the members of the Managing Committee and its office hearers said to have been held on 7th August, 1977, was raised by some one before (he District Inspector of Schools and a similar challenge has been made even before us on behalf of respondent No. 2, but in our opinion the mere raising of a dispute did not absolve the District Inspector of Schools from his duty to "find out on an administrative level as to who are the real office bearers of the College" in order to perform his statutory junctions under the aforesaid two Acts. It was the duty of the District Inspector of Schools " to satisfy him as to who, according to him, are the validly elected office bearers of the Institution. "In the instant case the District Inspector of Schools does not appear to have applied his mind at all to the facts brought to his notice by the petitioners in regard to a fresh election of the members of the Committee of Management and its office bearers having taken place on 7th August, 1977. Simply because a dispute was raised in regard to the validity of said election the District Inspector of Schools was not right in taking the view that until the dispute was resolved by a Civil Court or amicably between the parties it is the office bearers of the old Managing Committee whose term had apparently expired would continue to be recognized by him. If the view taken by the District Inspector of Schools is upheld it is likely to lead to disastrous results....."

Again in 1980 ALJ 174 JASWANT SINGH AND ANR. V. DISTRICT INSPECTOR OF

SCHOOLS AND ANR. this Court observed:

".....

(2) Since the District Inspector of schools under the aforesaid two Acts has to perform various administrative functions of statutory character in collaboration with the management of High Schools and Intermediate Colleges and since these duties can not be discharged by him unless he is in a position to find out on an administrative level as to who are the real office bearers of the college, he for this limited purpose must of necessity satisfy himself as to who, according to him, are the validly elected office bearers of the Institution. This satisfaction has to be reached by the District Inspector of Schools by making a summary inquiry on an administrative level.

(3) The order so passed by the Dist. Inspector of schools does not have the effect of finally adjudicating upon the dispute between the parties. The remedy of the aggrieved party is to institute a suit in the Civil Court for appropriate relief and the decision given in the suit will alone have the effect of making a final and binding adjudication in the matter and the said decision will have to be given effect to by the District Inspector of Schools in supersession of the order that may have been passed by him earlier.

(4).....

(5) The District Inspector of Schools is not expected to write a detailed orders if it were a judgment of a Court of law. His order must, however, indicate that he has applied his mind to the controversy involved before him for if the order does not disclose application of mind it is likely to be termed arbitrary.

(6) The District Inspector of Schools having once passed an order in the manner stated above does not have jurisdiction to review his, order unless it is established that the said order had been obtained by misrepresentation or fraud or was the result of mistake in the sense that it was passed on incorrect facts and would not have at all been passed if the correct facts had been brought to his notice. These facts should, however, be such which go to the very root of the matter. The District Inspector of Schools has no power to review his earlier order on a fresh assessment of facts or law.

(7).....

(8) The opportunity of hearing which the District Inspector of Schools has to give either at the stage of passing the initial order or recalling or revoking it in the circumstances stated above, is to be confined to giving the persons concerned an opportunity to put forward their case. It is not to be converted into a regular hearing as is done by a Civil Court. The District Inspector of Schools has. to keep in mind that the inquiry to be made by him is of a summary nature and on an administrative level meant to satisfy himself as to who, according to him, are the validly elected office-bearers of the Committee of Management. In other words, the District Inspector of Schools should not arrogate to himself the jurisdiction of

a Civil Court and thereby assume the power to decide the fate of the parties before him."

33. Relevant rule 4 does not refer to the expression "dispute". It refers to title which, in our opinion, considering the object for grant of licence under Cinematograph Act, is that a person in possession should be in a determinative position to deal with the premises and run the business. On that criterion, we find that then application filed by petitioner for renewal of licence could not be rejected on the pretext of "dispute" regarding premises in question. Apex Court order of "status quo"; record prima facie title to the premises on the basis of six co-sharers having sold their shares to petitioner vide registered sale deeds and petitioner being in possession as he had run the Cinematograph business in the preceding years; rupees six lacs have been deposited by the petitioner in lieu of the share of contesting respondents, made out, at least a prima facie case for consideration of his application irrespective of the alleged dispute.

34. Further it is to be noted that dispute should be real and substantive and not merely imaginative or motivated with ulterior motive so as to disentitle a prima facie--de jure and de facto owner in possession from seeking Licence under relevant Rules.

35. We find that the petitioner is in possession on the basis of sale deeds executed in his favour by six coparceners (out of seven); there is no order of law court restraining petitioner to seek renewal of license (in view of Supreme Court Judgment and order dated 19.07.2004).

36. The District Magistrate is, under statutory obligation to consider the petitioner's application for renewal of licence ignoring the dispute before Civil Court, and in the light of the Apex Court Judgment and order dated 19.07.2004 of status quo and required said authority to consider application for renewal of license according to law. Whether the dispute raised by the contesting respondents was of such a nature which could adversely affect running of the cinema business in the premises or the same would not have been in public interest should have been considered objectively. We find that the Licensing Authority has not applied his mind to these aspects at all,

37. In view of the above, the writ petition succeeds and is allowed The order of the District Magistrate, Mirzapur impugned in this writ petition dated 9.8.2004 is set aside. The Licensing Authority is directed to consider the application of the petitioner for grant of license afresh in accordance with law and keeping in view the observations made by the Apex Court as also in this judgment. The District Magistrate shall pass appropriate orders within six weeks from the date of receipt of this order.

38. There shall be no order as to costs.