

(1999) 06 MAD CK 0074

In the Madras High Court

Case No : Writ Petition No. 18738 of 1998

Smt. D. Saravanabava

APPELLANT

Vs

State of Tamil Nadu, Chennai Metropolitan Development
Authority and The Collector

RESPONDENT

Date of Decision : 28-06-1999

Acts Referred:

Tamil Nadu Cinemas (Regulation) Act, 1955 — Section 5A, 6A

Citation : (1999) 06 MAD CK 0074

Hon'ble Judges : N.V. Balasubramanian, J

Bench : Single Bench

Advocate : R. Muthukumarasamy, for the Appellant; S. Manikumar, AGP. for Respondents 1 and 3 and S. Govindarajan, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

N.V. Balasubramanian, J.—This writ petition is for a writ of Certiorarified Mandamus calling for the records; of the Secretary to the Government, Home (Cinemas) Department, Chennai -9 relating to the proceedings in G.O. Rt. No. 2362 Home (Cinemas -1) Department, dated 13.11.1998, to quash the said order dated 13.11.1998 in so far as it relates to the imposition of the condition requiring the Petitioner to obtain approval from the Chennai Metropolitan Development Authority (CMDA) for the construction of the theatre and consequentially direct the re-spondents to consider the application of the Petitioner and grant "C Form licence to the Petitioner to run the theatre.

2. The Petitioner is the owner of the land in Survey No. 326/1 part, Plot No. 98, Shanmugam Road, West Tambaram, Chennai. The Petitioner, with a view to construct a non-residential building in the said plot with ground plus two floors made an application before the CMDA for planning permission to construct the building. There is no dispute that the land is situate in a commercial area and the extent of the use of the plot is limited and therefore, the Petitioner sought for exemption from operation of some of the provisions of the Development Control

Rules relating to coverage, set back, parking, drive - way, etc. so as to enable the Petitioner to utilise the maximum extent of the land. The Government has issued the exemption notification dated 21.8.1986 exempting the building that was proposed to be put up in the land from the operation of some of the provisions of the Development Control Rules relating to the coverage, set back, etc. The Petitioner had constructed the building comprising of the ground plus two floors with shops in the ground floor and office space in the 1st and 2nd floors. The Petitioner states that in compliance of the orders of the Government, she has removed the partition walls from the ground floor so as to provide parking facility with office space in the first and second floors.

3. In the year 1987, the Petitioner decided to put up a mini air-conditioned cinema theatre in the third floor of the building. The Petitioner made an application to the licensing authority, the Collector, Kancheepuram District, Kancheepuram for the grant of No Objection Certificate (thereinafter to be referred to as NOC) to the mini cinema theatre in the third floor of the building. The Collector (though in the affidavit it has been stated as the Commissioner, Tambaram Municipality) after considering the claim of the Petitioner and after obtaining reports from various authorities, granted the NOC to locate the mini air-conditioned cinema theatre in the third floor of the aforesaid building. The Petitioner on the basis of the NOC made an application to the CMDA for the approval of the building plan and theatre plan to be put up in the third floor of the building. The NOC granted by the Collector on 28.3.1988 was valid only for a period of three years and the Petitioner made an application for the grant of approval of the plan of the building immediately after the grant of the NOC. The Collector, however, has not issued any order approving the plan. The Petitioner, therefore, made an application for extension of the period of NOC to the second Respondent stating that since the plan was not approved by the Collector, she was not in a position to construct the building and get C Form licence. It is stated that the Collector passed an order on 6.4.1993 granting approval of the drawing and plan of the mini theatre under Rule 38(1) of the Tamil Nadu Cinemas (Regulation) Rules 1957 (hereinafter to be referred to as the "Cinemas Regulation Rules"). It is relevant to notice that on the day when the Collector granted the approval, the period of NOC had already expired. The Petitioner, therefore, made an application to the Government to extend the period of NOC so as to enable her to proceed with the construction of the building for housing the cinema theatre. The Government issued orders on 29.8.1998 extending the validity of the NOC for a period of seven months, that is, up to 29.3.1997 so as to enable the Petitioner to complete the construction of the mini cinema theatre and obtain C Form licence to run the theatre.

4. While granting the above extension, the Government has imposed two conditions which were not present at the time of original grant. The first condition was that the Petitioner should remove six shops in the ground floor so as to make it available for parking area. The second condition was that CMDA approval should be obtained for the construction. The Petitioner thereafter made

a representation to the Government requesting them to delete the condition No. 2 from the said Government Order. According to the Petitioner, the Petitioner has proceeded with the construction of the theatre, but in the meantime, the time limit prescribed by the Government came to an end on 29.3.1997 and the Petitioner made a representation to the Government on 7.3.1997 for extension of time after deletion of the condition No. 2 so as to enable her to complete the pending work and obtain C Form licence. According to the Petitioner, she has completed the construction and what remained was only the installation of Projector and obtaining of C Form licence. Since the Government had not passed any order, the Petitioner approached this Court earlier with a writ petition, W.P. No. 16701 of 1998 for a direction to the Government to pass appropriate orders and the Government on the basis of the orders of this Court has extended the validity of the NOC up to 31.12.1999 so as to enable the Petitioner to complete the construction of the mini cinema theatre and obtain C Form licence for the theatre subject to the condition that the approval of the CMDA should be obtained. The Petitioner, aggrieved by the condition imposed in the Government Order that the Petitioner should obtain approval from the CMDA has approached this Court with the present writ petition.

5. The grounds raised in the writ petition are that the Tamil Nadu Cinemas (Regulation) Act (hereinafter to be referred to as "the Cinemas Regulation Act") and the Cinemas Regulation Rules are the complete Code and the Petitioner was granted NOC and she had commenced construction on the basis of the NOC. It is stated that she has completed the construction of the building and installed the projector and she has also obtained the approval of the Electrical Inspector in respect of the wiring done and the theatre is almost complete and during all those times, there was no condition that the Petitioner should obtain the approval of CMDA. It is stated that the delay in not extending the period of NOC was on account of the first Respondent and the impugned condition is not sustainable in law in the case of the Petitioner.

6. The first Respondent has filed a counter affidavit stating that while the application for renewal of NOC was pending before the concerned authority, the Petitioner ought not to have proceeded with the construction simultaneously without any order and there has been a violation in the construction of the building in as much as Tambaram Municipality filed a suit in O.S. No. 47 of 1985 on the file of the District Munsif, Poonamallee which was subsequently transferred to the District Munsif's Court, Tambaram in O.S. No. 186 of 1993. The Petitioner has also filed a suit in O.S. No. 1440 of 1985 against the Commissioner, Tambaram Municipality for permanent injunction restraining the Commissioner, Tambaram Municipality not to interfere with the construction of the building and both the suits were tried jointly and in a common judgment dated 8.6.1993, learned District Munsif dismissed the suit filed by the Commissioner, Tambaram Municipality and decreed the suit filed by the Petitioner. However, the judgments and decrees have not become final as appeals have been preferred against the said judgments and decrees in A.S. Nos. 10 and

11 of 1995 before the Sub-Court, Poonamallee and the said appeals are pending. The case of the first Respondent is that entire ground floor and first two floors are unauthorised construction and the Revenue Divisional Officer, Saidapet recommended to grant NOC subject to the condition that approval of the CMDA should be obtained. After examining the recommendation, the Government granted NOC subject to the above condition. It is also stated that by the Tamil Nadu Act 11 of 1994, the Cinemas Regulation Act was amended and after the amendment, the provisions of Tamil Nadu Town and Country Planning Act, 1971 would be applicable to theatres and therefore, the Petitioner should necessarily obtain the approval from the CMDA,

7. The second Respondent has filed an independent counter affidavit stating that after the amendment to the Cinemas Regulation Act, the planning permission has to be obtained under the Tamil Nadu Town and Country Planning Act, 1971 (hereinafter to be referred to as "the Town and Country Planning Act") and the permission obtained in 1986 was for the ground plus two floors and not for the mini cinema theatre. It is also stated that if the cinema theatre is allowed to be constructed the development would not conform to the Development Control Rules as the Petitioner would not be complying with the said Rules.

8. Mr. R. Muthukumarasami, learned Counsel appearing for the Petitioner submitted that the Cinemas Regulation Act is a complete Code relating to the construction of theatres and the exhibition of cinema in theatres. He referred to various provisions of the Cinemas Regulation Rules and submitted that the theatre was constructed in accordance with the Rules and the Collector has granted approval of the drawing plan of the theatre in the year 1993 under the Cinemas Regulation Rules. The main submission of the learned Counsel is that the provisions of the Cinemas Regulation Act is a complete Code and the question of seeking approval from the CMDA for the construction of the cinema theatre does not arise at all. Learned Counsel also submitted that the Cinemas Regulation Act is a special Act dealing with the construction and maintenance of cinema theatres and the provisions of the said Act would prevail over the provisions of the Town and Country Planning Act. Learned Counsel further submitted that in any event on the basis of the order of the Collector granting NOC in the year 1988 and on the basis of the approval granted in the year 1993, the Petitioner had already started the construction of the mini cinema theatre and the amending Act 1994 has no retrospective operation. Learned Counsel also submitted that the CMDA has already granted exemption in the year 1986 and the second condition imposed is unreasonable. The first Respondent is not entitled to impose a fresh condition when extending the validity of the NOC.

9. Learned Additional Government Pleader submitted that the theatre was constructed in violation of the Cinemas Regulation Rules and when the period of the NOC had expired, it is not open to the Petitioner to construct the theatre. Learned Additional Government Pleader also submitted that the application for extension of the NOC was pending when the amending Act came into force and

under the amended Act, it is necessary for the Petitioner to obtain approval from the CMDA for the construction of the theatre.

10. Learned Counsel for the second Respondent also supported the stand of the first Respondent and submitted that the application for extending the period of NOC was pending when the amending Act came into force and since the amended Act is applicable, it is necessary for the Petitioner to obtain NOC from the CMDA.

11. I have carefully considered the submissions of the learned Counsel for the parties. There is no dispute that CMDA by its order dated 21.8.1986 has granted exemption from the operation of certain provisions of the Development Control Rules relating to coverage, set back, parking etc. I accept the submission of the learned Counsel for the second Respondent that the exemption granted by the CMDA was with reference to the construction then proposed of ground plus two floors and the exemption would not be extended to the proposed mini theatre in the third floor. Hence, it is not open to the Petitioner to rely upon the exemption granted earlier by the CMDA for the construction of the mini theatre in the third floor.

12. The Petitioner has made a specific averment in paragraph 5 of the affidavit that the Collector has granted the approval of the plan of the building under Rule 38 (1) of the Cinemas Regulation Rules. The said averment has not been controverted in the counter affidavit and no records were produced to show that the statement is in any way incorrect. Hence, this Court has to proceed on the basis of the averment made in the affidavit that the Collector has granted approval of the plan of the building on 6.4.1993. The Petitioner obtained the NOC under Rule 36 of the Cinemas Regulation Rules on 28.3.1988. The said NOC was valid only for a period of three years under Rule 36 (3) of the Cinemas Regulation Rules. Admittedly, the Petitioner had not constructed the building within the said period of three years and the validity of the NOC has expired on 28.3.1991. On 6.4.1993, when the Collector has granted the approval of the plan of the building, the Petitioner did not have a valid No Objection Certificate. Under Rule 36 (2) of the Cinemas Regulation Rules, the grant of NOC is necessary for construction of a new cinema house and also for converting an existing building into a cinema house. Though the Petitioner has stated that she had commenced the construction of the cinema theatre on the basis of the approval granted by the Collector on 6.4.1993, the commencement of the construction without the NOC, done by the Petitioner is in violation of Rule 36 (2) of the Cinemas Regulation Rules. It may be true that the Petitioner made an application for extension of the validity of the NOC under Rule 36 (3) of the Cinemas Regulation Rules, but the Government has not extended the validity of the NOC as prayed for till 29.8.1996. In the meantime, that is from the date of expiry of the NOC on 28.3.1991 to the date of issue of the Government Order extending the validity of the NOC the provisions of the Cinemas Regulation Act underwent some changes. u/s 5A of the said Act if any person intends to use any place for exhibition of

cinematograph films, he is required to make an application in writing to the authority in the prescribed form and some of the enactments mentioned in the said section are not applicable for the consideration of the application made u/s 5A of the Act.

13. One of the enactments which we are concerned is the Town and Country Planning Act and the said Act was net applicable for consideration of the application filed u/s 5A of the Cinemas Regulation Act by an amendment made by the Tamil Nadu Act 38 of 1989. However by the Tamil Nadu Act 11 of 1994, the reference to the Town and Country Planning Act was deleted and from the enactment of the Tamil Nadu Act 11 of 1994, the provisions of the Town and Country Planning Act have to be complied with for considering an application for permission to put up a cinema theatre in the State. I have already held that the Petitioner did not have the requisite NOC on the date when the Collector granted the approval on 6.4.1998 and under the statutory scheme, it is not permissible for an owner to put up a building for exhibiting cinematograph films without a valid NOC. Though the Petitioner has stated in the affidavit that she had commenced the construction and almost completed the construction except installation of machineries, I am of the view that the construction done by the Petitioner was in violation of the Rule 36 (2) of the Cinemas Regulation Rules. In my view, it is not open to the Petitioner to take advantage of his own wrong and claim that he has already put up the construction and hence she need not comply with the provisions of the Town and Country Planning Act.

14. I am not able to accept the submission of the learned Counsel for the Petitioner that the Cinemas Regulation Act and the Rules are the complete Code and it is not necessary to obtain approval under the provisions of the Town and Country Planning Act. The intention of the legislature is clear that the provisions of the Town and Country Planning Act should be complied with for construction of a cinema theatre. Though there are several Rules particularly Rules 48,49, up to 79 of the Cinemas Regulation Rules dealing with the construction of a cinema theatre, in my view, the mere compliance of those Rules is not sufficient and the owner of the theatre, in addition to the compliance of the said rules has to comply with the provisions of the Town and Country Planning Act. If there are some violations or if there are some variations in the applicability of the said Rules, I hold that the provisions of the Town and Country Planning Act would prevail. I am of the view that the Cinemas Regulation Rules deal with the construction of a cinema theatre and the said Rules have been enacted for the safety and welfare of the cine going people. I have already held that the mere compliance of the said Rules would not be sufficient as the provisions of the Town and Country Planning Act deal with the proper development of the area in question and the question of construction of a building is one aspect, but the development of the area as whole is another aspect of the matter. Therefore, it cannot be stated that once the approval has been granted under the Cinemas Regulation Act and the Rules, the Petitioner need not comply with the provisions of the Town and Country Planning Act. In my view, the Petitioner should comply

with both the Acts and the Rules made thereunder and if there is any conflict in the matter of provision of set back, the Petitioner should so construct the building to comply with the provisions of both the said Acts. In my view, the construction of a cinema theatre is possible only after complying with the provisions of both the Acts and though there may arise certain conflicts in certain areas, but it is possible to construct the building in such a manner to comply with both the Acts and the Rules. I hold that the intention of the Legislature is clear that the provisions of the Town and Country Planning Act would also apply for the construction of a cinema theatre, and hence, it is impermissible for any theatre owner to construct the building in deviation of the provisions of the Town and Country Planning Act, though he may have complied with the provisions of the Cinemas Regulation Act and the Rules. In other words the theatre owner should endeavour to complying with both the enactments and in my view, there is no question of any special enactment or general enactment in the matter of applicability of both the Acts. Hence, I am unable to accept the submission of the learned Counsel for the Petitioner that the Petitioner need not comply with the provisions of the Town and Country Planning Act on the ground that Cinemas Regulation Act and the Rules are complete Code in the matter of construction of cinema theatre.

15. The next submission of the learned Counsel for the Petitioner is that the NOC was granted in the year 1988 and since the provisions of the Town and Country Planning Act were made applicable from the year 1994 would not apply for the construction of the cinema theatre. I have already held that the validity of the NOC had expired in the year 1991 and on the date when the Tamil Nadu Act 11 of 1994 came into force, the Petitioner did not have a valid NOC. The Petitioner might have had an approval, but, as already held by me, without the NOC, it is not permissible for the Petitioner to construct the theatre. When the NOC was granted in the year 1996, the Town and Country Planning Act was already extended to the construction of a cinema theatre and hence, the first Respondent was quite justified in holding that the Petitioner should get approval of the CMDA for construction of mini theatre in the third floor.

16: Learned Counsel for the Petitioner referred to certain passages in the decisions of the Supreme Court in Food Corporation of India Etc. Etc. Vs. Om Prakash Sharma and Others, and in Chairman Railway Board and Ors. v. C. R. Rangadhamaiah and Ors. (1997) 6 SCC 621 wherein the Supreme Court dealt with the question of retrospective effect of a statute. However in the view I have taken without the NOC it is impermissible for the Petitioner to construct the mini theatre and hence the commencement of the construction of the theatre was made in violation of the statutory rules. It is well established that where a person violates the law, it is not open to him to take advantage of his own wrong. I do not find any irregularity in the condition imposed that the Petitioner should obtained the approval from the CMDA and I am not able to accept the contention that the condition was not in accordance with the provisions of Section 6 A of the Cinemas Regulation Act. So I do not find any infirmity in the order passed by the

first Respondent. There is also another submission made by Mr. Muthukumarasami that in view of the regularisation scheme by the CMDA, it is open to the Petitioner to obtain the approval from the CMDA for regularisation of the ground plus first two floors of the building. In my view the question whether the construction of ground plus first two floors is in deviation of the plan is a different matter altogether and I am not inclined to express my opinion on the question. This Court is concerned with the question with reference to the construction of the third floor and the question is whether the Petitioner should obtain the approval of the CMDA which the first Respondent is insisting upon in the impugned order. I have already held that there is no infirmity in the order impugned and accordingly, the writ petition is dismissed. There will be no order as to costs.