
(1978) 07 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1652 of 1976

Smt. Gyan Devi

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 18-07-1978

Acts Referred:

Constitution of India, 1950 — Article 19, 226, 226(3), 31
Rajasthan Cinemas (Regulation) Act, 1952 — Section 5, 5A
Rajasthan Cinemas (Regulation) Rules, 1959 — Rule 16, 16(1)

Citation : AIR 1979 Raj 5 : (1978) RLW 509

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Advocate : G.C. Kasliwal and S.K. Keshote, for the Appellant; B.K. Pathak, for the Respondent

Judgement

G.M. Lodha, J.—This writ petition has been filed against the order of the Collector, Jaipur, dated 25th May, 1976 by which the petitioner Smt. Gyan Devi's application for grant of "no objection certificate" under the Rajasthan Cinemas (Regulation) Rules, 1959, has been rejected.

2. Briefly stated, facts giving rise to this writ application are, that the petitioner Smt. Gyan Devi purchased two plots of land from Shri Himmat Singh Baid by two registered sale-deeds dated 23-11-70 and 24-11-70 for Rs. 44,999/- and Rs. 48,999/- respectively. These two plots are adjacent to each other and they both together measure 3012.13 Sq. Yds. on Moti Dungri Road, Jaipur City. On 8-12-1970 an application was made by her for grant of "no objection certificate" for the above site to the Licensing Authority i.e. Collector and District Magistrate, Jaipur. This application was ultimately not accepted and an appeal filed before the Home Commissioner was also rejected. The petitioner then filed Civil Writ petition No. 100 of 1973 in the High Court. The writ petition was contested by the respondents and ultimately this Court by its detailed judgment dated 23-2-1974* accepted the writ application. The main points canvassed before this Court in the earlier writ petition related to the interpretation of Rule 16. While

accepting the writ application, this Court clearly laid down the following:

"From the plain reading of Clause (a) (1) it appears that the restriction is confined in regard to a site which is within a radius of one furlong from any hostel or boarding house which is attached to any recognised educational institution which may be either a college or a high school or a girls school. Clause (a) (1), therefore, presupposes the existence of a residential Institution which might be attached to a recognised institution as specified in that clause."

"From the facts which have been brought on the record it appears that there is a Bal Mandir School but there is no residential institution attached to the school."

"The finding that teachers reside in the Bal Mandir, is based on no evidence."

"Clause (a) (1), therefore, cannot operate as a bar to the grant of "no objection certificate". So far as Clauses (a) (ii) and (a) (iii) are concerned, they have no relevance nor these clauses have been relied upon by the respondents. As stated earlier, Clause 16 (1) (a) cannot be attracted in this case as there is no residential institution attached to a recognised institution as contemplated by that clause, Mere existence of an educational institution by itself is not relevant ground to attract the provisions of Rule 16 (1) (a) which lays stress upon the existence of a residential institution and that, too, must be attached with a recognised institution. Therefore, Rule 16 (1) (a) of the Rules cannot operate as a bar to the petitioner. The act of authorities disposing the application for grant of "no objection certificate" is quasi-judicial which has to determine the application objectively. Rule 16 envisages the existence of a residential institution at the time when the decision is taken and does not warrant the objective determination on the basis of a new contingency which may or may not take place."

"The report of the Town Planner, P.W.D. and Municipality on the point of thickly populated locality do not clinch the issue. Clause (b) comes into operation only when a locality is thickly populated."

"The term "thickly populated locality" cannot be equated to predominant residential locality. The finding of the Licensing Authority on the point of thickly populated locality must be a finding based upon some evidence. The orders of the District Magistrate and the Home Commissioner do not come to the norm of a quasi judicial determination so far as the point of thickly populated locality is concerned and they are not in conformity to Rule 16. The case is sent back to the District Magistrate for giving a fresh decision in the light of Rule 16 of the Rules and observations made above."

3. These are the findings which were given earlier by Hon"ble Justice Joshi.

4. The above judgment was given by this Court after placing reliance upon two judgments of the Supreme Court in State of Gujarat Vs. Krishna Cinema and Others, and Jaswant Sugar Mills Ltd., Meerut Vs. Lakshmidhand and Others,

5. The petitioner's case is that after the judgment of the High Court, the Collector was required to decide this matter afresh in a quasi-judicial manner but he did not do so. The petitioner has alleged that he made an application on 23-9-1974 for deciding the case earlier and fixed it early. The Collector inspected the site with the Superintendent of police and made a joint site inspection note on 14-6-1974 wherein no objection of the area being thickly populated was made and the only question considered was regarding traffic matters. In this, it was agreed that "no objection certificate" may be given with a capacity of 620 seats.

6. It is alleged by the petitioner that on 19-8-1974 respondent No. 2 sent a letter with a plan in which 16 conditions were stated to the petitioner so that "no objection certificate" can be given and one of the conditions was that he should surrender 150 Sq. Yds. land to Urban Improvement Trust. The petitioner agreed to abide by most of these conditions which mostly related to the construction of the building which was to be governed by the Rules.

7. However, the petitioner found it to her great surprise that on 25-5-1976 the Collector rejected the application for "no objection certificate."

8. This order of Shri G. Ramchander the then Collector, Jaipur dated 25-5-1976 has been assailed and challenged in this writ application by the petitioner. The writ petition was admitted on 11-10-1976 and on 29-11-1976 it was reported that all the respondents have been served. Many applications were filed for expediting the hearing of this case from time to time. In spite of all this, it appears that the respondents have not filed the reply. Both the State of Rajasthan and the Collector and District Magistrate have been shown as respondents in this case. The matter involved in this case and the issues raised are of importance but in spite of the fact that about two years time has elapsed, the respondents have not controverted the facts alleged by the petitioner by filing reply and substantiating it on an affidavit and documents.

9. I have heard Mr. G. C. Kasliwal, learned counsel for the petitioner and Mr. Pathak, the learned Addl. Government Advocate on behalf of respondents Nos. 1 and 2. On behalf of the respondents a preliminary objection has been raised that the writ application is not maintainable as an appeal has been provided by Section 5(3) of the Rajasthan Cinemas (Regulation) Act, 1952. Mr. Kasliwal on behalf of the petitioner submits that the appeal can be filed only when a decision is taken to refuse or grant licence under the Act. According to him the stage of granting or rejecting the licence has not yet come.

10. Mr. Kasliwal further points out that by an amendment introduced by Act No. 21/1955, Section 5-A has been added to the Rajasthan Cinemas (Regulation) Act and "no objection certificate" is granted in form B, referred to in Rule 4 of Part II. Form B has been prescribed as an annexure to the Rules and it clearly mentions that it is to be used in exercise of powers conferred by Section 5-A (2) of the Act for the purposes of approval of the site of the Cinema only. Mr. Pathak could not give satisfactory answer to the distinction drawn by Mr. Kasliwal in this

respect.

11. In addition to the above reply to the preliminary objection, Mr. Kasliwal further refers to the judgment of the Gujarat High Court reported in *A'bad Cotton Mfg. Co. Ltd. v. Union of India* AIR 1977 Guj 113 and Andhra Pradesh High Court reported in *The Government of India and Others Vs. The National Tobacco Co. of India Ltd., Calcutta*, both of which are full bench judgments. In the above two cases it has been held that the bar of alternative remedy created by Clause (3) of Article 226 of the Constitution of India, is not an absolute bar. In the Gujarat case, it has been observed (at p. 183):

"... .. The second feature which must be borne in mind is that this is a fetter to the entertainment of the petition itself because now the writ jurisdiction for the specified purpose in Clauses (b) and (c) of Article 226(1) has to be exercised if there is no other remedy for such redress provided for by or under any other law for the time being in force. Formerly, by a self-limitation the discretion was exercised not to entertain writ petitions when alternative remedy existed but now when a constitutional fetter is created, the Court would have no jurisdiction if alternative remedy for such redress is provided for by or under any other law. This being a fetter on the jurisdiction of the Court will have to be strictly interpreted. Even though the words "any other remedy" has been used, it is obvious that "any other remedy" has to be for redress of the injury for which this writ jurisdiction is conferred and therefore, it must be equally adequate or efficacious so that qualitatively and quantitatively the same relief would be given for redress of the injury to the petitioner. Therefore, the adequate efficacious remedy is always implicit if the remedy is to be for redressing the injury as effectively as could be done in the writ petition. The third important feature is that such a remedy must have been provided for by or under any other law for the time being in force which makes it implicit that this must be a direct remedy specifically provided by or under the specific law in force under which the impugned action is taken or order is made."

"When the petitioner is to be asked to exhaust his alternative remedies provided under the Act before entertaining the writ petition this distinction would always be material where the order is a nullity as being *ex facie* without jurisdiction or in non-compliance with the provisions of the Act or the essential principles of justice or on any other ground as explained in *Union of India (UOI) Vs. Tarachand Gupta and Bros, or Bhopal Sugar Industries* case AIR 1967 SC 549 or *Mohd. Nooh's* case AIR 1958 SC 86 (at p. 94) and is, therefore, a purported order or nullity."

12. The Andhra Pradesh High Court in another Full Bench case has interpreted the term "other remedy" used in Article 226 of the Constitution, as under (at Pp. 263-64):

"But it should be remembered that the "other remedy" must be capable of affording such redress as is postulated under Sub-clauses (b) and (c). If the

other remedy is not capable of giving to the aggrieved person similar redress as is contemplated in Sub-clause (b) or Sub-clause (c), then it cannot be considered to be a bar, A suit by itself cannot be ruled out as another remedy available."

"The words "any other remedy for such redress" are significant and meaningful and they clearly bring out the intention of the Parliament that only that other remedy which is truly and really capable of giving such redress as is postulated in Sub-clauses (b) and (c) would be a bar to the maintainability of the writ petition. Needless to say that in order to find out whether there is such a bar to the entertainment of a writ petition, the court will have to examine the facts and circumstances of each case and the redressal that is sought and the nature of the other remedy that may be available under any other law for the time being in force. It is impossible and undesirable to lay hard and fast rules in this behalf."

13. The above principles certainly help the contention of Mr. Kasliwal that the bar of alternative remedy is not absolute and in exceptional cases the Court may interfere under Article 226 of the Constitution.

14. Yet another feature of this case which is in favour of considering the writ petition on merits, rather than throwing it, on the ground of alternative remedy, is that this Court had earlier already considered this matter in details by its judgment referred to above and the Collector, Jaipur exhibited complete disrespect to the judgment of this Court by ignoring it but rejecting the application for "no objection certificate" on those very grounds which were declared to be not lawful grounds by the High Court. This necessitates direct interference of this Court,

15. I am, therefore, of the opinion that on all these grounds, the preliminary objection of the respondents cannot be accepted.

16. Now, coming to the merits of the case, I have reproduced in details the summary of the findings of the judgment of this Court above. As the respondents have not filed any return nor rebutted the facts alleged in the writ application, prima facie, it will be assumed that the petitioner's averments in the writ application are correct. It was open to the respondents to submit a reply and affidavit and also the documents, if any, to support the impugned order of the Collector, Jaipur but since that has not been done, it is obvious that the respondents are not in a position to controvert the facts mentioned in the writ application.

17. Mr. J. S. Rastogi, learned Government Advocate who also argued the case for some time during hearing, candidly conceded, that he cannot support the impugned order, given by the Collector, Jaipur as it is not in consonance with the observations and directions of this Hon"ble Court in the earlier writ application.

18. The Collector has rejected the application for granting the "no objection certificates" as it was argued before him that the Bal Mandir school is located adjoining to the site for which "no objection certificate" is prayed for. As already

mentioned above, this Court has already rejected this ground of the proximity of Bal Mandir school for the purposes of rejecting the application for "no objection certificate" earlier. It was also made clear in this judgment by Hon. Mr. Justice M. L. Joshi that even if there is a proposal for the construction of a hostel that cannot be taken note of for rejection of the application because that is a contingent matter. It was emphasised by this Court that Rule 16 (1) (a) presupposes the existence of a residential institution which should be attached to a recognised institution. This Court categorically repelled the objection of Bal Mandir school in the following manner:--

"From the facts which have been brought on the record it appears that there is a Bal Mandir school but there is no residential institution attached to the school. There is a faint reference in the Home Commissioner's order that the teachers reside in the Bal Mandir but this finding is based on no evidence. Clause (a) (1), therefore, cannot operate as a bar to the grant of no objection certificate."

19. If the Collector, Jaipur would have taken the trouble of reading the judgment of the High Court, he would: not have repeated the same grounds for rejection of the application, in spite of the judgment of the High Court. It has not been explained to me by the respondents whether the Collector committed the serious mistake of showing utter disrespect to the judgment of this Court by ignorance, misunderstanding or some bona fide ground. It was necessary for the State and the Collector, Jaipur to have explained this serious lapse to the court in writing and the absence of any explanation is highly undesirable. The State functionaries as all citizens of the State are supposed to respect the judgments of this Court and all the courts with utmost care. An officer in higher hierarchy has got greater responsibility to exhibit greatest respect and omissions cannot be lightly brushed aside because the entire structure of our federal constitution is based on the doctrine of "checks and balances" one of the checks being "judicial review." Any attempt of any officer to undermine the authority of this Court either by deliberately disobeying the judgment or even by negligently avoiding its implementation and enforcement, is a matter which should cause serious concern to all, Who are committed to rule of law. It is high time that notice must be taken of such omissions by Senior officers of the State so that there is no repetition. If the Collector Jaipur would have taken slightest trouble of reading the judgment of this Court, he would not have committed such a serious mistake.

20. This Court has pointed out that the authority concerned is to act in a quasi-judicial manner and I am constrained to observe that in this case the Collector, Jaipur treated it as a routine administrative affair.

21. Other reasons given in the impugned order is that site is situated in an area where the area is densely populated. Apart from using the word "dense population" a phrase which was required to be elucidated and substantiated by data and comparative figures of population of the various areas of Jaipur city, the authority has not written any thing more in his order. This court, when the matter came up earlier, rejected the argument of the State that it was not the

duty of the authority concerned to go into details of the question of thickly populated area. The court observed:

"The duty of the authorities under the Rules being quasi judicial one the determination has to be made in an objective manner on evidence and facts. The learned Home Commissioner has placed reliance upon the reports of the Town Planner, P.W.D., Municipality but these reports do not clinch the issue regarding the determination of the point as to whether the locality is a thickly "populated one or not."

22. For attracting Clause 1 (b) of Rule 16, there must be a decision on the point of thickly populated locality. This Court again observed:

"It is true that the order of the licensing authority on the point of thickly populated locality is final but there must be a finding to that effect based upon some evidence. The order of the District Magistrate and the Home Commissioner, therefore, does not come to norm of a quasi-judicial determination so far as the point of thickly populated locality is concerned."

23. It is startling to note that even though the earlier order of Collector and Home Commissioner on the point of area being thickly populated was quashed by the High Court on the basis of detailed reasons wherein it was pointed out that their finding is based on no evidence and it should be adjudicated in a quasi-judicial manner, the authority again by his one word "Ghani Abadi" rejected the application showing scant regard for the directions of the High Court. Before me even now no material has been placed by the respondents to substantiate the order of the Collector on this point. Contrary to it, Mr. Kasliwal has pointed out to me that in his writ application he has mentioned details for showing that this area is not thickly .populated. The petitioner has contended that the population in this area is below 500 per Sq. Kilometre as per averment in paras Nos. 20, 33 and 39 of the writ application. Contrary to it, the population in other area "Mayur Cinema" within the Chowk Visheshwarji is having density of 49,200 persons per Sq. Kilometre. It has been alleged that the average density of population in Jaipur City is 3,000 persons per square Kilometre. As there is no rebuttal on behalf of the respondents, these averments also show how much superficial was the approach of the Collector in this respect. When the High Court accepted the writ application, it was the duty of the Collector to have entered into a detailed inquiry on the question of thickness or density of the population and as the same has not been done, bis finding that the area in which the petitioner"s land is situated is the area of thickly population, cannot be sustained as it is based on no evidence and is against the earlier judgment of this Court.

24. Another reason which has been given by the Collector is that this area has not been shown as an area reserved for Cinema in the plan prepared by the Town Planning Department of the State of Rajasthan. Section 5-A of the Rajasthan Cinemas (Regulation) Act, 1952 is complete answer to it. According to it, "nothing contained" in any local law in regard to various clauses contained in

it, shall apply to the construction or reconstruction of or use of or installation of any machinery in any place or building to be used exclusively for the purpose of cinematograph exhibitions.

25. Even "assuming that Section 5-A has got no application for the purposes of location of the site; then also the mere fact that a particular place has not been shown as a place reserved for cinema, cannot oust the jurisdiction of the licensing authority under the Act for granting "no objection certificate". In the present case the land belongs to a private person and not to the Urban Improvement Trust or municipality or Government. That being so while preparing the master plan, the town planner could not have reserved it for cinema unless there was a scheme for acquiring the land. Moreover, the Town Planner's information can only be considered, as one of the factors for consideration, but cannot be conclusive, nor the can be given "Veto power".

26. The Collector has not given reasons as to why a building for cinema cannot be constructed in this locality, which is outside the city walls and located in an open area on the crossing of Govind Marg from Moti Doongri Road. It is well known that normally the citizens have got fundamental right to use the property and also to do business, subject to restriction in Articles 19 and 31 of the Constitution. Since those are in nature of restrictions, the State functionaries should treat the fundamental rights as pious and restrict or deny them only when a strong case, based on cogent, tangible, conclusive, trustworthy evidence is available to them and it is scrutinised in a quasi-judicial manner. This Court earlier also while accepting the writ application, has rejected the opinion of the Collector formed on the basis of reports of the Town Planning Department, Local-self Government Department and the P.W.D., in the following manner :--

"The learned Home Commissioner has placed reliance upon the reports of the Town Planner, P.W.D., Municipality but these reports do not clinch the issue regarding the determination of the point as to whether the locality is a thickly populated one or not."

27. It is regretted that what was rejected by the High Court has again been accepted by the authority and that, too, without giving any specific, important and pressing reasons. This tends to undermine the authority of this Court.

28. Yet another reason which is extremely of omnibus character is that the "law and order" situation would deteriorate, if the permission is granted for a cinema at the site prayed for. It is difficult to understand when Shri L. N. Gupta, the predecessor of Shri G. Ramchandran Collector, Jaipur after having an inspection of the site with the Superintendent of Police, opined the place to be a fit one for the location of the Cinema; "what were those factors which weighed with Mr. G. Ramchander to change the opinion and that, too, by an absolutely general and vague expression "deterioration of law and order situation." If the existence of cinemas in crowded localities and heart of the city of Jaipur, cannot disturb the law and order situation, it is difficult to imagine in what manner, law and order

situation could be disturbed by granting permission at a far distant area, from the main heart of the city, like Moti Doongari road.

29. Mr. Kasliwal during the course of arguments pointed out that on 25-5-1976 when the impugned order was passed, the Collector was acting under extraordinary powers of the situation created by proclamation of emergency and due to that he acted arbitrarily. This Court cannot adjudicate upon the issue raised by Mr. Kasliwal, regarding emergency as that is more a political issue with which Court is not at all concerned.

30. The functionaries of the State, when they are required to discharge "quasi-judicial function" under the various statutes, should realise that they are not to act as "Kotwals" (Police) or the "Monarchs", but should act as most humble quasi-judicial tribunals on whom onerous burden to discharge the statutory function lies on account of the duties and responsibilities entrusted to them by the legislature. The discharge of their duties presupposes the greatest care, vigilance, balance restraint and judicious approach; particularly when they are dealing with laws, which restrict the fundamental right of the citizens under the Constitution. They should not use such general catch phrase like "law and order" which conveys no sense and cannot be tested on the touch-stone of objectivity. I am, therefore, of the opinion that this ground also cannot withstand the scrutiny of this Court and it has not been supported by the learned Government Advocate during the course of argument in this Court.

31. The plot of the applicant as shown in Annexure 1 is located in front of an open park at a distance of about 80" or so. This open park has got wide roads on all sides ranging from, width 80" to 60". The plot is open on two sides completely and third side partially. It is difficult to understand how there would be a problem of traffic as pointed out by the Collector vaguely. No details have been given. If that would have been so, how the Superintendent of Police who inspected the site along with Shri L. N. Gupta, Collector, Jaipur would have approved it.

32. The Collector has neither mentioned in this order nor it has been pointed out to me either by oral or by any document, that any traffic difficulty was pointed out to him by the Traffic Inspector at any point of time before he passed the order. The Government Advocate, could not point out any traffic difficulty, and had to concede that seemingly there was none. Under these circumstances, it appears to be purely flight of imagination as unless the traffic problem is surveyed by the competent officer, such imaginary defects cannot be taken note of by a quasi-judicial authority. The fact that three roads pass near the proposed site of Cinema house only shows that the traffic would be divided. Moreover, it is always for the police authorities to regulate the traffic even when there are traffic hazards by making one way traffic or put some other restrictions; but that can never be a ground for refusal of certificate or for raising objection.

33. Last ground given by the respondent relates to the opinion of the Town

Planner, a ground which has already been rejected by this Court in judgment of the earlier writ application. Now from the impugned order, it is most clear as to what were reasons on the basis of which the Town Planner had opined against the grant of "no objection certificate". No letter, note, memorandum of Town Planner has been submitted to this Court in order to ascertain whether it is an opinion giving some reasons and passed on relevant factors or it is arbitrary as the impugned order is. The failure of the respondents to place the opinion of the Town Planner on the record of this Court for perusal and consideration, certainly raises an adverse inference against them. In that view of the matter also the impugned order cannot be sustained on this ground.

34. It has been mentioned in the Impugned order that certain residents have raised objections and those objections are based on the ground that there is Bal Mandir School, another institution of deaf and dumb and one Dadu Mahavidyalaya. The exact distances at which these institutions are situated have not been given in the order. The relevant Rule 16 is as under:

"16. Situation.-- No permanent building except that already licensed at the commencement of these rules shall be licensed for cinematograph exhibitions, if it is situated :--

(a) within a radius of one furlong from--

(i) any residential institution attached to a recognised educational institution such as a college, a high school or girls school;

(ii) a public hospital with a large indoor patient ward; or

(iii) an orphanage containing one hundred or more inmates; or

(b) in any thickly populated residential area which is either exclusively residential or reserved or used generally for residential as distinguished from business purposes.

(2) For the purpose of this rule, the Licensing Authority shall, subject to the general control of the State Government, determine what is a hospital, a recognised educational institution, a large indoor patient ward or a thickly populated residential area, and his decision shall be final and conclusive:

Provided that the Licensing Authority may for sufficient reasons and with the prior approval of the State Government, relax this rule or any part thereof in any case and specially in the case of cinemas already completed or nearing completion prior to the commencement of these rules.

Provided further that in relaxing this rule or any part thereof the State Government shall take into consideration the nature of the proposed building and whether or not it is sound proof or is within a radius of 50 feet from any petrol pump or any shop or store dealing in highly combustible material or is air conditioned."

35. It prohibits the establishment of a cinema building within a radius of one furlong if there is a residential institution attached to a recognised educational institution, a public hospital with a large indoor patients ward or an orphanage containing one hundred or more inmates. The second prohibition is of having such a building in a thickly populated residential area which is either exclusively reserved or used as a residential as distinguished from business authorities. In order to reject an application authority concerned is required to apply its mind and determine in a quasi-judicial manner each and every objection raised before it giving details and the order must be such which can be termed as a speaking order. Mere mention of a thickly populated area or an educational institution or an institution of deaf and dumb near about a furlong or so, cannot be sufficient for rejecting the application.

36. Mr. Kasliwal, learned counsel for the petitioner has pointed out that in his writ application in para 17, he has made an averment duly supported by an affidavit that there are 14 commercial establishments on the Govind Marg, where the proposed site is located. These industrial establishments are as follows:

1. Auto Cars Centre (Petrol Pump).
2. Ramjimal Cement Factory.
3. Hari Oil Mills.
4. Rawal Industries, Manufacturers of Nuts & Bolts.
5. Nav Bharat Ice Factory,
6. Waxlite Industries.
7. Jaipur Hosiery Mills.
8. Flour Mills.
9. Adarsh Chemical Industries,
10. Restaurant (Chat House).
11. Happy Wines (a liquor shop),
12. Burma Dry Cleaners.
13. Khetan Ice Factory.
14. Krishna Gopal Dal Mill.

37. These allegations also remain un rebutted. If that is so, how can it be said that the area wherein the plot is situated is purely residential area. Mere making of it as a residential area in blue print or Master Plan may only show that the Town Planner or the Urban Improvement Trust desires to be so but the Licensing Authority cannot shut its eyes to the reality of its situation and cannot act on paper work only.

38. To start with, I was of the opinion that since this is the duty of the Licensing Authority, this Court should not take upon the burden of adjudication upon merits. Mr. Kasliwal strenuously argued that if the orders of the Court are disobeyed, as has happened in this case, it would be a mockery of justice and rule of law, if his client is thrown from "pole to pillar and pillar to pole" by being forced again to go and submit himself before the same authority which has exhibited scant regard for the judgment of this Court.

39. The application for obtaining "no objection certificate" was made as early as in the year 1970, the writ application by this Court was decided earlier on 23-2-1974 after the matter remained pending for about a year. More than two years were taken by the Collector for passing this arbitrary order. The petitioner has approached this Court again on 27-9-1976 and another two years have passed since then. It is a serious question to be considered by this Court, whether after this chequered history of eight years of ordeal of a citizen trying to enforce his fundamental rights though restricted by laws of the land; he should be again told that we accept his writ application, but feel helpless to grant any relief. Is the Court so powerless to grant relief in appropriate cases, even though the rule of law and authority of the Court is undermined, is a matter of serious concern, and it is on account of this that I am finally inclined to consider the request of Mr. Kasliwal for deciding the matter finally,

40. It has been mentioned in the writ application that Mr. L. N. Gupta, the predecessor in office to Mr. G. Ramchander after inspecting the site with the Superintendent of Police placed the joint site note on , record on 14-6-1974 wherein he opined that a "no objection certificate" should be granted with a capacity of 620 seats. This is not disputed. This Court cannot grant a blanket order directing the respondent to give "no objection certificate" because in spite of all what has been said above, it is primary duty and responsibility of the statutory authority to work out details on the basis of which "no objection certificate" can be granted. Since, I am of the opinion that the conditions of Rule 16 are fulfilled and there will be no violation of it, if "no objection certificate" is granted, I hereby direct that the present Collector would grant a "no objection certificate", but while doing so, he may if the present situation and the condition of the locality and society so warrant, insist upon the laying down of the conditions which were mentioned in the letter of Shri L. N. Gupta, the then Collector dated 19-8-74. It would be open to him to waive any of those conditions and also to add any fresh one, if situation so warrants, as this Court cannot and should not take upon it the duty of the statutory authority, which alone can consider the matters of details. However, it is made clear that it is desired, that under the garb of laying down conditions the statutory authority should not again repeat same serious mistake which was committed earlier by the impugned order.

41. The writ petition is, therefore, accepted. The impugned order dated 25-5-1976 is quashed. The respondent No. 2 Collector and District Magistrate,

Jaipur is directed to issue "no objection certificate" in the form prescribed in form B attached to the Rajasthan Cinemas (Regulation) Rules after ensuring that the conditions of letter dated 19-8-74 subject to such modification as he may deem proper, are complied with by the petitioner who has shown his willingness to comply the same in this Court. In doing so, he should further ensure that there is no inconvenience to public of that locality, as rights of society are always more valuable than that of one individual citizen. As the matter has been enough delayed and eight years have already passed, the District Magistrate, Jaipur should comply with the directions of this Court, within a period of eight weeks.

42. The observations made against the former Collector, Shri G. Ramchander, are in his capacity as authority under the relevant rules and are confined to his functioning as a "quasi-judicial authority" only. Since Shri G. Ramohander is not party by name in this writ, he had no opportunity of defending himself personally and, therefore, those remarks should be taken note of for limited purposes of this case only.

43. The petitioner would get costs of this writ petition from the respondents.