

(1975) 10 KAR CK 0001
In the Karnataka High Court

Swastik Enterprises

APPELLANT

Vs

The District Magistrate and Others

RESPONDENT

Date of Decision : 24-10-1975

Acts Referred:

Karnataka Cinemas (Regulation) Rules, 1971 — Rule 117
Mysore General Clauses Act, 1899 — Section 6, 6 (c)

Citation : AIR 1976 Kar 129 : (1976) ILR (Kar) 453 : (1976) 1 KarLJ 100

Hon'ble Judges : K. Jagannatha Shetty, J

Bench : Single Bench

Advocate : R.U. Gonley, for the Appellant; S.G. Doddakale Gowda, High Court Government Pleader, for the Respondent

Judgement

1. On 6th August 1969, the petitioner filed an application for grant of "No Objection Certificate" for the purpose of constructing a permanent cinema theatre at Hoskote. Then the Mysore Cinematograph Rules, 1946, which I shall refer to as "the old rules" were in force. When the application was pending consideration, the old Rules were repealed by Karnataka Cinemas (Regulation) Rules, 1971, which I shall shortly call as "the new rules". The statutory authorities dismissed the application by applying the principles set out under the old rules.

The question raised in this writ petition is whether the said application should have been disposed of by the procedure provided A under the old rules, or by the principles set out under the new rules.

2. By Rule 117 of the new rules, the old rules were repealed providing thereunder that the said rules shall not affect the previous operation of the old rules and the principles of Section 6 of the Mysore General Clauses Act, 1899. Section 6 of the General Clauses Act, 1899, so far as it is relevant, provides:

"6. Effect of repeal. - Where this Act or any Mysore Act made after the commencement of this Act repeals any enactment hitherto made or hereafter to

be made, then, unless a different intention appears, the repeal shall not -

(a) xxx xxxxx xxxxxxxx (b)xxxx xxxxx xxxxxxx (c) Affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or

(d) xxx xxx xxx (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed."

Let me see whether the petitioner had any right acquired or accrued under the old rules when the new rules came into force. The position then was that the petitioner did not and could not know whether a "No Objection Certificate" could be given. The application for "No Objection Certificate" was pending before the District Magistrate. The petitioner then had no increase than a hope or expectation that the authorities would give a favorable decision, might be, on found grounds for optimism as to its prospects. Had there been no repeal, the application would, in due course, have been disposed of by one way or the other. When such was the position, there was nothing remained to be preserved by the provisions of Section 6 of the General Clauses Act on the repeal of the old rules. The right referred to in Section 6 (c) is a right acquired or accrued under the repealed enactment and the investigation, legal proceeding or remedy referred to in Section 6 (c) is also in respect of such accrued or acquired right. If the investigation or legal proceeding is not in respect of a right, but only to determine whether some right should or should not be given, then such investigation or legal proceeding is not saved by Section 6 of the General Clauses Act. That was neatly stated by Lord Morris in *Director of Public Works v. Ho Po Sang* 1961 (2) All ER 721 in the following words:

"But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. On a repeal, the former is preserved by the Interpretation Act. The latter is not."

3. Now, in the present case, in the absence of any accrued right or privilege neither the petitioner could demand that its application should be disposed of in accordance with the old rules, nor the authorities could say that the new rules cannot be applied to his case. The rules provide only the procedure for the grant of "No Objection Certificate". The application of the petitioner, therefore, should have been disposed of in accordance with the rules in force at the time of its disposal. The Divisional Commissioner and the District Magistrate were therefore in error in not following the new rules.

4. This is sufficient to allow this petition. The contentions urged on the merits of the matter are kept open and it is for the District Magistrate to consider the same.

5. In the result, the rule is made absolute. The orders impugned are hereby quashed, with a direction to the District Magistrate to dispose of the petitioner's application in accordance with law.

6. No costs.

7. Order accordingly.