

(1999) 11 MAD CK 0047

In the Madras High Court

Case No : W.A.No. 644 of 1998 and C.M.P.No. 6833 of 1998

The Madura Talkies Pvt. Ltd.

APPELLANT

Vs

The District Collector, Madurai and another

RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Madras City Tenants Protection Act, 1922 — Section 9
Tamil Nadu Cinemas (Regulation) Rules, 1957 — Rule 13, 92
Transfer of Property Act, 1882 — Section 111, 116

Citation : (2000) 1 CTC 68 : (2000) 1 LW 604 : (2000) 1 MLJ 675

Hon'ble Judges : K.G. Balakrishnan, C.J;K.P. Sivasubramaniam, J

Bench : Division Bench

Advocate : Mr. R. Muthukumaraswamy, for the Appellant; Mr. R. Thirugnanasambandam, Additional Government Pleader, Mr. A.L. Somayaji, for M/s. Aiyer and Dolia, for the Respondent

Judgement

Judgement pronounced by K.P. Sivasubramaniam, J.—Three writ petitions were filed by the appellant, Madura Talkies Private Limited all

relating to the grant of "C" form licence for running the cinema theatre, and for various reliefs, which were disposed of by S.S. Subramani, J. by a

common order dated 29.4.1998. W.P.No. 1170 of 1998 was filed for a writ of certiorified mandamus to quash the proceedings of the Collector,

Madurai District, dated 30.12.1997 and to direct him to consider the application for the renewal of "C" form licence issued in favour of the

petitioner. W.P.No. 3514 of 1998 was directed against the grant of "E" form licence which was granted for restricted period between 1.3.1998

and 24.3.1998. The present appeal has been filed against the order in W.P.No. 4193 of 1998 wherein the appellant had prayed for the issue of a

writ of certiorarified mandamus to quash the order of the first respondent, District Collector, Madurai, dated 21.3.1998 in so far as it restricted the period of "C" form licence only up to 24.3.1998 and to enable the petitioner/ theatre to function up to the expiry of the period of the certificate issued by the Chief Electrical Inspector, to the appellant.

2. According to the appellant, it was a company registered under the Companies Act owning a permanent theatre known as New Cinema in

Madurai. The land on which the theatre is located belongs to the second respondent and others. The land was leased to the appellant in the year

1935 under a registered lease deed for putting up a cinema theatre. After taking over the property on lease the appellant had put up buildings to

run a cinema, erected machinery, furniture, fittings etc. and have been running the cinema theatre since then. Theatre has also been duly licensed

under the Tamil Nadu Cinemas (Regulation) Act and Rules thereunder. The lease was granted to the appellant in the year 1935 and renewed from

time to time by registered deeds up to 1990. From 1990 the lease had been renewed in favour of the appellant under unregistered lease deeds.

The last of the renewal was executed in April, 1997 renewing the lease up to 24.3.1998. Since they have put up the construction in the land, the

appellants were entitled to the benefits under the City Tenants Protection Act. The last of the "C" form licence was granted up to 31.10.1997 and

the appellant made an application under for renewal of "C" form licence under Rule 92 of the Tamil Nadu Cinema Regulations Rules after

enclosing all the necessary and relevant documents as required under the said Rule. Even though the application was made within the prescribed

time and all the requirements are complied with, the first respondent Collector, kept the renewal of the application pending and was issuing only

"E" form permit under Rule 97 from month to month. While granting "E" form permit for the period from 1.3.1998 to 24.3.1998 the appellant was

informed that since the lease was coming to an end on 24.3.1998, the renewal would be granted only if they produce registered lease deed in

respect of the land for the period beyond 24.3.1998. Since the order was contrary to the provisions of the Tamil Nadu Cinemas (Regulation) Act

and the appellant was in lawful possession of the site, there was no warrant for the first respondent to pass an order. The appellant had therefore,

filed a writ petition in W.P.No. 3514 of 1998 questioning the said order. This Court had ordered notice to the respondents. While matters stood

thus the District Collector, Madurai, passed an order on 21.3.1998 on the appellant's application for renewal, restricting the period of renewal up

to 24.3.1998, on the ground that the lease of land was up to 24.3.1998. Therefore, according to the appellant, the restriction of the period of "C"

form licence up to 24.3.1998 was irregular and without jurisdiction. The reasons contained in the order as confirmed by the Joint Commissioner of

Land Administration, were illegal and contrary to law. The authorities failed to see that in view of the fact that the appellant was entitled to the

benefits of the Tamil Nadu City Tenants Protection Act, even after the efflux of time after the lapse of period of lease, they were in lawful

possession of the property and were entitled to the renewal. The appellant is the owner of the building, equipment, furniture etc. and they are also

the lessees of the land from the year 1935 and therefore, they were in lawful possession of the theatre.

3. In the counter filed by the first respondent the District Collector, it was contended that "C" form licence was renewed up to 24.3.1998 namely,

the period up to which the appellant had the lease deed executed in his favour. The appellant had no locus standi to claim the renewal of the licence

beyond the said period since he cannot be construed to be in lawful possession of the property in terms of Rule 13 of the Tamil Nadu Cinemas

(Regulation) Rules, 1957. Therefore, the appellant was duly informed that his request for renewal of the licence beyond period of 24.3.1998 will

be considered only if he produces registered lease deed for the period beyond 24.3.1998. Since the appellant had failed to prove the lawful

possession through the documentary evidence, the "C" form licence was not extended after the period of 24.3.1998.

4. A separate counter was filed by the second respondent, the owner of the property. The second respondent disputed the allegation that the

appellant was given lease of the vacant site. The land with buildings were originally leased out to one N.R. Narasimha Iyer and two others by the

father of the second respondent under a registered lease deed 18.1.1935 and the appellant was not a party to the lease. Only in the year 1951,

after the expiry of the said lease, registered lease deed was executed between the appellant alongwith predecessors of the lessor. After the death

of Raja Iyengar, who had executed the original lease deed, subsequently, registered lease deed was executed between the appellant and the legal heirs of Raja Iyengar. On the expiry of the lease deed, the appellant was requested to hand over the possession of the property and as the appellant requested time to vacate the property and in order to avoid litigation, the second respondent had been extending the lease period from time to time and the lease period being 11 months only for each period. The last unregistered lease deed was executed on 25.3.1997 and the lease period expired on 24.3.1998. The appellant was also duly informed that no further lease deed would be executed after 25.3.1998 and that he has to vacate the premises. It is further stated that the appellant in fact agreed to vacate the premises. Therefore, the second respondent sent a registered letter to the District Collector informing the fact that lease had expired on 24.3.1998. A lawyer's notice dated 22.1.1998 was also issued to the appellant terminating the lease period. The contentions that buildings were put up by the appellant and that therefore, they were entitled to the benefits of Tamil Nadu City Tenants Protection Act were also denied and disputed by the second respondent. The land was leased to the appellant alongwith the building which would be evident from the fact that property tax was assessed only in the name of the owner of the building. Since there was no lawful possession by the appellant, the conclusions of the District Collector are correct. A reference to the certificate issued by the Chief Electrical Inspector was also irrelevant. Even though an appellate remedy was available, the appellant had erroneously resorted a petition under Article 226 of the constitution of India, which cannot be sustained.

5. The learned Judge held that the impugned order was justified since after the lapse of period the possession by the lessee cannot be held to be lawful and also held that the question as to whether the lessee was entitled to the protection of Tamil Nadu City Tenants Protection Act or not, would be a matter for the Civil Court to ultimately decide. With the result, W.P.Nos. 1770 and 3514 of 1998 were dismissed as infructuous; W.P.No. 4193 of 1998 was dismissed on merits and hence the present appeal .

6. The only fact which is necessary for the disposal of the writ appeal is admitted and there is no dispute over the issue namely, that the period of

lease granted in favour of the appellant came to an end on 24.3.1998. Hence, the renewal of "C" form licence was restricted to the period ending

24.3.1998. The contention of the lessee/appellant is that the property was taken on lease in 1935 and subsequently the appellant had constructed a

Cinema theatre and had been running the same for the past 62 years after having put up the building and erected machinery and furniture.

Therefore, according to the appellant they were entitled to the protection of Tamil Nadu City Tenants Protection Act and on the basis of the

principles laid down by the Supreme Court, their possession even after the lease period by efflux of time was lawful within the meaning of Rule 13

of the Tamil Nadu Cinemas. (Regulation) Rules and hence entitled to "C" form licence. One other relevant fact for decision in this appeal which is

not in dispute is that the lessor, the second respondent herein, had positively informed the lessee that the lease will not be renewed after 24.3.1998

and that the licensing authority has also been informed so by the lessor.

7. Though learned counsel for the appellant had cited several judgments of this Court and the Supreme Court, in a bid to substantiate his

contention that the appellant's possession was legal, it would be sufficient to refer only to the latest judgment of the Supreme Court which holds the

field reported in R.V. Bhupal Prasad Vs. State of Andhra Pradesh and others, . After considering the previous rulings on the subject the Supreme

Court had held that where the site was taken on lease by the licensee, continuance in possession by him even after the expiry of the lease period in

contravention of the terms of the lease and there was no acquiescence by lessor. such possession was not lawful possession as there was no

landlord and tenant relationship. The Supreme Court made a distinction between the tenant holding over and tenant at sufferance and had held that

the tenant at sufferance cannot be held to be continuing in lawful possession of the property. It was held as follows:

In view of the settled position law, the possession of the law, the possession of the appellant is as tenant at sufferance and is liable to ejection in

due course of law. But his possession is not legal nor lawful. In other words, his possession of the theatre is unlawful or litigious possession until he

is rejected in due course in execution of the decree in the suit filed by the respondent. His possession cannot be considered to be settled

possession . He is akin to a trespasser, though initially he had lawful entry.

Therefore, the licensing authority was right in holding that the lessee was not entitled to renewal after the expiry of the lease period.

8. The only other point which is required to be considered is as to whether the tenant/appellant was entitled to the benefits of the Tamil Nadu City

Tenants Protection Act and if so whether his continued possession even after the lapse of the period of lease, could be considered as lawful or not.

On this issue, both parties are at variance over the basic facts. While the appellant contends that originally only the site alone was leased out,

according to the lessor/the second respondent, the land with buildings thereon were leased out. In view of the disputed facts, it is not possible for

this Court to go in to such disputed facts under Article 226 of the Constitution of India. Therefore, the learned Judge was right in holding that the

issue as to whether the appellant was entitled to the benefits of the Tamil Nadu City Tenants Protection Act, is a matter to be decided by the Civil

Court.

9. Therefore, we do not find any error in the order of the learned Judge and in the result, the writ appeal is dismissed. No costs. Consequently,

connected C.M.P. is also dismissed.