(1975) 03 MAD CK 0014

In the Madras High Court

V. Ramanathan APPELLANT

Vs

The Board of Revenue and Others RESPONDENT

Date of Decision : 04-03-1975

Acts Referred:

Citation : (1975) 2 MLJ 367

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—The petitioner herein and the third respondent applied for a no-objection certificate for locating a touring cinema in the

village of Vallalnathi, Periakulam Taluk. The Petitioner''s application was filed on 15th September, 1973 and the third respondent''s application,

though dated 14th September, 1973, is found to have been properly presented only on 17th September, 1973. The petitioner''s application was in

respect of S. No. 423/A while the third respondent''s application was in respect of S. No. 417/3.

2. The petitioner had obtained a no-objection certificate earlier for locating a permanent ciema in S. No. 423/1-A and the said certificate was

current on 15th September, 1073, the date of the application for a no-objection certificate for establishing a touring cinema. It is not in dispute that

both S. No. 423 /I-A and 417/3 were found suitable for locating touring cinemas. While the petitioner''s application was recommended by the

Panchayat, the third respondent''s application was recommended by police authorities.

3. On the above facts, the second respondent, who is the authority empowered to giant no-objection certificates, considered that though the

petitioner''s application was earlier in point of time, the third respondent is to be given the no-objection certificate. In selecting the third respondent

for the grant of no-objection certificate, the second respondent took the view that though the petitioner had earlier obtained no objection certificate

for locating a permanent cinema in the same place he had not taken any steps in that regard and that his application for locating the touring cinema

on the same site can only be with a view to see that no one gets a no-objection certificate for locating the touring cinema in the village in question.

4. On an appeal by the petitioner, the Board of Revenue had affirmed the order of the Collector though on a slightly different ground. The Board of

Revenue having found that the applications filed by the petitioner as well as the third respondent were equal in all other respects, proceeded to hold

that the grant of a no-objection certificate to the petitioner will amount to creation of a monopoly to run the cinema in the village on the family of the

petitioner, and, that, therefore, the no-objection certificate has, rightly, been granted to the third respondent by the Collector. The decision of the

Board of Revenue has been challenged in this Writ Petition.

5. The learned Counsel for the petitioner contends that the Board of Revenue has misdirected itself on certain matters and, but for such a

misdirection, the grant of a no-objection certificate would have been made in favour of the petitioner. The Board is said to have misdirected itself in

stating that the petitioner''s family had been continuously running the cinemas in the village and that in view of such a monopoly, the collections by

way of entertainment tax, have gone down. It is pointed out by the learned Counsel that the family of the petitioner has not been exhibiting touring

cinemas in the village for a continuous period from 1962 to 1974 as stated by the Collector which has been acted upon by the Board, that one

Kandasami Mariam who is said to have conducted the touring cinema in the years 1966-67, was not a member of the petitioner''s family, that one

Mani who ran the touring cinema between the years 1971-74 is only the petitioner''s brother-in-law and not a member of the family and that,

therefore, the Board was not justified in taking the view that for a continuous period from 1962, the petitioner''s family was having a monopoly of

running the touring cinema in the : village. It is also pointed out that the reduction in the collections by way of the entertainment tax can be due to various circumstances and that the Board was not justified in attributing the alleged monopoly as the cause for such a reduction in the entertainment

tax. The learned Counsel also pointed out that even before the Board, the petitioner, made a specific plea that he had become divided from his

father and therefore, even if the petitioner''s father had a monopoly, that circumstance cannot be taken against him but the Board of Revenue has

not given any finding on the question as to whether the petitioner is or is not a divided member of the family. It is said that the petitioner''s

application, being earlier in point of time, the second respondent should have granted the no-objection certificate to the petitioner, straightaway,

without reference to the third respondent''s application. Reliance is placed upon the judgment of this Court in Abdul Malick Vs. The Collector of

Dharmapuri and Others, .

6. After a due consideration of the matter, I am of the view that the petitioner is not right in his contention that the order of the Board of Revenue is

vitiated for the reason that it did not give any finding on the question of partition which has been set up by the petitioner. Whether the petitioner has

become divided from his father or not, the Board of Revenue is entitled to take into account the circumstances that the petitioner''s father,

originally, and thereafter, his brother and lastly, his brother-in-law had run the touring cinema in the same village and with a view to see that no

monopoly exists in the running of touring cinemas in the village, it can consider any other applicant, for the grant of a no-objection certificate, who

is otherwise suitable. If both the applicants were to be considered simultaneously for the grant of the certificate, the question is whether the

petitioner''s family had the monopoly of running the touring cinemas in the village. For considering this general question, it is not necessary to

consider the relationship of the persons in the family in any detailed manner. In this case, both the Collector as well as the Board of Revenue felt

that the petitioner''s family having had a monopoly of running the touring cinema in the village all these years, it is not in the interests of the public to

grant the no-objection certificate to the petitioner.

7. Now, coming to the question as to whether the applications of the petitioner as well as the third respondent should be disposed of on the basis

of priority of applications, as has been held in Abdul Malick Vs. The Collector of

Dharmapuri and Others, , the petitioner has claimed that his

application was prior in point of time. According to him, his application was filed on 15th September, 1973, and the third respondent''s application

was properly filed on 17th September, 1973. Both the Collector as well as the Board of Revenue have proceeded on the basis that the

petitioner''s application was prior'' in point of time. Taking advantage of the observations made by them, the learned Counsel for the petitioner

claims that, by virtue of the above decision, the petitioner''s application should have been, automatically, granted. But, the one crucial circumstance

which has been touched by the Collector in his order but not considered by him has been overlooked by the Board of Revenue and that is this :

The validity of the no-objection certificate granted to the petitioner in respect of the same site S- No. 423/1A was valid till 17th March, 1974.

Therefore, on 15th September, 1973 the date of the petitioner''s application for the grant of a no-objection certificate for locating a touring cinema

for the site S. No. 423/1A the earlier no-objection certificate for that site was current. The petitioner surrendered the no-objection-certificate for

locating permanent cinema in respect of the same site only on 15th October, 1973, before the Collector. This is, presumably, for the reason that an

objection was taken that an earlier no-objection certificate in respect of the same site was subsisting. The question is whether, the petitioner''s

application could be said to have been validly made on 15th September, 1973.

8. According to the learned Counsel for the third respondent, the petitioner''s application should be taken to have been validly made only on 15th

October, 1973 when the no-objection certificate for a permanent cinema in the same site was surrendered by the petitioner and that this obvious

position has been overlooked both by the Collector and the Board of Revenue. If the petitioner''s application is taken to have been validly filed

only on 15th October, 1973, then the third respondent''s application, which was validly presented on 17th September, 1973 should be taken to be

prior in point of time. But the learned Counsel for the petitioner submits that the subsistence of a no-objection certificate in respect of the same site

is not a bar for filing an application for a fresh no-objection certificate for the same site, and that the Cinematograph Act and the Rules framed

thereunder, do not prevent a person who has got a no-objection certificate for a site, to apply, again, for another no-objection certificate with

reference to the same site. I am not inclined to agree with the learned Counsel for the petitioner in this regard.

9. When a person has obtained a no-objection certificate for locating, either a permanent cinema or a touring cinema in respect of the particular

site, so long as that no-objection certificate is current, he cannot make an application for the grant of a no-objection certificate in respect of the

same site during the currency the earlier no-objection certificate. As otherwise, it will lead to this situation. There will be two no-objection

certificates in respect of the same site at the same point of time. This is not, obviously, contemplated by the Act and the Rules. It is only when a no-

objection certificate expires either by efflux of time or by surrender of the same to the concerned authority, an application could be filed for the

grant of a no-objection certificate in respect of the same site. Further, having regard to the purposes for which the no-objection certificate is

obtained, while one no-objection certificate is current, it is not necessary nor is it possible to get another no-objection certificate for the same

period in respect of the same site. In this case, admittedly, the no-objection certificate was surrendered only on 15th October, 1973. Therefore,

though the application was filed by the petitioner on 15th September, 1973 the said application could be said to be validly filed and could be

considered only on or after 15th October, 1973. In this view, the third respondent''s application having, admittedly, been filed on 17th September,

1973 has to be taken to be prior in point of time. The learned Counsel for the petitioner contends that both the authorities below having proceeded

on the basis that the petitioner''s application was validly filed on 15th September, 1973, it is not open to the third respondent to contend now

before this Court that the petitioner''s application should be taken to have been filed on 15th October, 1973, the date on which the earlier no-

objection certificate was surrendered. However, having regard to the materials that are found in the orders of the Collector, a proper inference has

not been drawn from those facts either by the Collector or by the Board of Revenue. Having regard to the admitted fact that the petitioner

surrendered the earlier no-objection certificate only on 15th October, 1973 in respect of the same site, this Court cannot accept the view taken by the authorities below that the petitioner''s application is earlier in point of time. In my view, the attack made against the ultimate order of the Board

of Revenue upholding the grant in favour of the 3rd respondent cannot be sustained. This writ petition is, therefore, dismissed. There will be no

order as to costs.

