(2002) 02 MAD CK 0101

In the Madras High Court

Case No : Writ Petition No. 5100 of 2001 and W.M.P. No''s. 7249 and 7250 of 2001

V.R. Venkatachalam APPELLANT

Vs

State of Tamil Nadu and Others RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Partnership Act, 1932 — Section 4
Tamil Nadu Cinemas (Regulation) Rules, 1957 — Rule 13(1)

Citation : (2002) 1 MLJ 575 : (2002) WritLR 638

Hon'ble Judges : A. Kulasekaran, J

Bench : Single Bench

Advocate : R. Krishnamurthy, for the Appellant; R. Kanniappan, Government Advocate and Perumbulavil Radhakrishnan, for the Respondent

Final Decision : Allowed

Judgement

1. The petitioner has filed the above writ petition seeking for a writ of certiorarified mandamus to call for the proceedings of the first respondent in

G.O.Ms .No. 148 Home (Cinema) Department dated 26.2.2001 of the second respondent made in Cinema Appeal No. 10 of 2000 D.Dis.L.

dated 17.7.2000 and of the third respondent dated 13.12.1999 and quash the proceedings of the respondent 1 to 3 dated 26-02-2001,

17.7.2000 and 13.12.1999 respectively to include the name of the petitioner and the fourth respondent in ""C"" form Licence and grant renewal of

the same in respect of the Star Talkies, Triplicane High Road, Chennai - 600 005.

2. Heard both sides...It is the case of the petitioner that Star Talkies is located in door No. 40 and 41, Triplicane High Road, Chennai. The theater

is located in Door No. 40 and Door No.41 has been used as parking area for the above theatre. The lands comprised in Door No.41 is absolutely owned by the petitioner and in Door No. 40, the petitioner is owning 50% undivided share in land and building. The Cinema Theatre was run by

Partnership consisting of four persons namely M.V. Babji, M.V. Prakash, M.V. Padmanabhan and M.V. Basha. The equipments and furnitures in

the theatre belonged to the partnership firm. After the death of Babji, his son M.V. Pratap was inducted as Partner and after the demise of the said

M.V. Pratap, his wife Saraswathi Devi Pratap became ode of the partners of the firm. In the year 1993, the petitioner has purchased 50% of the

undivided share of the land and building in Door No. 40, Triplicane High Road from the said Saraswathi Devi Pratap. Now, the petitioner is

holding 50% of share in both land and building at Door No.40 and also 75% share in the partnership, besides that he is the absolute owner of the

property in Door No.41. In the year 1996, the petitioner along with the 4th respondent has submitted an application to the 3rd respondent

requesting to issue ""C"" Form Licence and also for inclusion of their names in the ""C"" Form Licence. Later, the 4th respondent withdrew her

consent and opposed the renewal as well as transfer of ""C"" Form licence in the name of the petitioner. The licensing authority has rejected the

application, which was confirmed by the appellate authority, 2nd respondent herein. The petitioner has also preferred a revision before the 1st

respondent, who has granted ""E"" Form licence temporarily to run the theatre, later, on 26.2.2001, the revision was dismissed. Hence, this writ

petition.

3. Mr. R. Krishnamurthy, learned senior counsel appearing for the petitioner argued that the petitioner is holding major share namely 75% in the

partnership firm as well as 50% undivided share in Door No.40, besides he is the absolute owner of the property in Door No.41, Triplicate High

Road, Madras as such the petitioner is in lawful possession of the theatre for the purpose of Rule 13 (1) of the Cinema Regulations Rules. The

respondents 1 to 3 have committed grave irregularity in rejecting the claim of the petitioner. The findings of the respondents that the petitioner is not

in lawful possession as the 4th respondent has opposed the renewal and transfer is unsustainable in law.

4. The learned senior counsel appearing for the petitioner has relied on the following Judgments in support of his case.

(i). The Licensee, Sri Lala Talkies, Vadipatty, Madurai Taluki, 1999 (I) MLJ 526, wherein in Para 12 it has been held as follows:

A question may arise whether petitioner is entitled to do cinema business without the consent of others. A co-owner is entitled to enjoy the

property and make use of the same without detriment to the other co-owners. At the most, he will be liable for accounts. In a joint property, any

co-owner has to use such property usefully in the sense that his user should not amount to ouster of their co-owners; In this case, petitioner admits

the right of other co-owners and he does not want the right of other co-owners to be taken away. If a theatre is closed, it is a loss to the entire

family. It is settled law that a co-owner is entitled to make use of joint property in a way quite consistent with the continuance of joint ownership

and possession, so long as he is not excluding the right of any co-sharer. If that be so, even the objection of the 4th respondent is not relevant for

consideration. The licensing authority is bound to consider only Rule 13 of the Tamil Nadu Cinema (Regulation) Rules. If the petitioner is a lawful

owner, there cannot be any objection for the grant of licence. In this case, I find that the petitioner has satisfied both the grounds. In a similar case

viz., in R. Dhasaiyan and another v. The Government of Tamil Nadu and others, W.P. No. 17859 of 1997 order dated 7.12.1997, I have taken a

similar view.

ii. P. Subba Naidu Vs. The Licencee, Sri Lala Talkies and Others, in Para No.5, the Division Bench of this Court held as follows:-

5, As to the contention of the learned counsel, referring to Rule 13 (1) of the Rules, the learned Single Judge has taken the view that the applicant

has to satisfy about the ownership and possession and according to the learned Single Judge, the ""possession"" contemplated in Rule 13 (1) of the

Rule is not the exclusive possession. At any rate, it cannot be said that the respondent No. 1 is not in possession of the theatre for the purposes of

law, may be as co-owner. The learned Single Judge, after referring to the various decisions, has taken the view that one of the co-owners can use

the property to the advantage of all. In case the licence is not granted to the respondent No. 1 the effect and position would be, it would not be for

the benefit of any of the brothers. In other words, the theatre has to be closed. The proceedings initiated u/s 145 of the Code of Criminal

Procedure were almost 1 1/2 months subsequent to the order passed in the writ petition. Obviously, those proceedings could not be taken note of.

The proceedings u/s 145 of the Code of Criminal Procedure initiated are for different purpose and to achieve different object, and mainly

concerned with law and order in regard to the likelihood of breach of peace concerning an immovable property. The parties thereto are to seek

appropriate remedy in respect of those proceedings before the competent authority or Forum. Merely because proceedings are initiated u/s 145 of

the Code of Criminal Procedure it cannot be said that the licence, if granted, will take away the right of the parties as co-owners over the property.

This being the position, we do not find any good or valid ground to admit the writ appeal

5. Mr. Perumbulavil Radhakrishnan, learned counsel appearing for the fourth respondent argued that the theatre is run by partnership, hence, as far

as the possession of the theatre is concerned, the question of co-ownership does not arise; that the respondents 1 to 3 have rightly rejected the

claim of the petitioner as such issuing ""E"" Form permit is contrary to Rule 97 (2) of the Rules; that under Rule 6 Partnership firm is permitted to

hold licence and in case any one of the partners objects to it, the renewal shall not be granted; that under Rule 123, ""C"" Form Licence and copy of

the proposed instruments of transfer shall be enclosed along with the application for transfer and in the absence of it, the transfer in the name of the

petitioner shall not be considered; that the power of licensing authority is restricted u/s 12 of the Cinematograph Act.

Mr. Perumbulavil Radhakrishnan, learned counsel appearing for the 4th respondent relied on the following decision in support of his case.

(i) V.T, Ranganayaki Anni v. State of Tamil Nadu, rep. by its Commissioner and Secretary to Government, Home (Cinemas) Department, Fort St.

George, Madras-9 and Anr., 2001 (3) CTC 598 : 2001 (3) LW 166 wherein in Para-15, a Division Bench of our Court held thus:-

15. When we consider the lawful possession with reference to Rule 13 of the said Rules, even in the first part if the applicant either for the grant of

licence or renewal, if he is the owner of the property, he has to produce before the licensing authority the necessary records not only relating to his

ownership but also regarding his possession. It is implicit that the owner having a title to the property, if he can satisfy the licensing authority with regard to his possession also will indeed be in, the lawful possession although the word ""lawful"" is not used in the first part. It is in this context, the

word ""possession"" is even not necessary to be qualified by lawful in the first part of Rule 13. However, the applicant, for the licence or renewal, is

not the owner, there is no question of his showing title to the property and the only requirement of the law is to produce to the satisfaction of the

authority, documentary evidence with regard to its lawful possession of the property. The word ""lawful possession"" naturally assumes significance

in the second part, while it was not even necessary in the first part. The fact that after the expiry of the lease the tenant will be able to continue his

possession or the property by filing a suit for injunction restraining the owner of the land from interfering with his possession does not satisfy the

requirement of ""lawful possession"" of the property within the meaning of Rule 13 of the said Rules. After the expiry of the lease, there is no

relationship between the landlord and tenant and as such the possession of lease would amount to litigious possession, which is without any legal

authority.

6. Admitted facts in this case are the petitioner is a co-owner holding major shares in the theatre and partnership business, the parties have entered

into a partnership agreement to promote the business namely functioning of the theatre and the possession of the petitioner as a co-owner is not

disputed by the fourth respondent.

7. Now we look into the relevant provisions of Rule 13 (1) of The Tamil Nadu Cinemas (Regulation) Rules, 1957:

Rule 13 (1) - If the applicant ''for the licence is the owner of the site, building and equipment, he shall produce to the licensing authority the

necessary records relating to his ownership and possession thereof. If he is not the owner, he shall, to the satisfaction of the licensing authority,

produce documentary evidence to show that he is in lawful possession of the site, building and equipment.

8. The relevant Rules relating to the disputes involved in this case is Rule 13 (1). As per Rule 13, the applicant shall be owner of the site, building

and equipment. In case, the applicant is not the owner, he shall produce documentary evidence to prove that he is in lawful possession of the site,

building and equipments. The second limb of the said rule namely to prove lawful possession arises only in the case of the applicant not a owner.

Admittedly, the petitioner and the fourth respondent are co-owners besides partners of the business of running the theatre as such the petitioner

satisfy the first limb of Rule 13 (1) and it is needless to mention that the possession of co-owner is lawful.

9. According to Section 4 of the Indian Partnership Act, partnership is the relation between persons who have agreed to share the profits of a

business carried on by all or any of them acting for all of them. Three elements seen in the partnership are (i) there must be an agreement (ii)

agreement to share the profits and (iii) business must be carried on by all or any. The third element shows that person who conducts business do so

for all, therefore liable to account to all.

10. When a fiction is created by a deed of partnership, it must no doubt be limited; to its purpose, but for the purpose for which it was created

shall be considered, the putative state of affairs should be excluded. It is well settled that where a legal fiction is created full effect must be given to

it and should be carried to its logical conclusion. When under a partnership that something shall be deemed to have been done, which in fact and

truth was not done, the court is entitled to give effect to the fiction and it should be carried to its logical conclusion.

11. Admittedly, in this case, the ""C"" Form licence was in the name of the firm which was created for the purpose of running the theatre. All the

partners are bound to carry on the business of the firm to the greatest common advantage to be just and faithful to each other. The deeming

provision of the said section without any doubt stipulates that ""the partners are bound to carry on the business"". Admittedly, the 4th respondent has

not assigned any reasons whatsoever for not carrying on the business. As I have mentioned supra, the petitioner herein is a co-owner holding

major share in the property as well as in the partnership firm as such he satisfy the legal possession required under Rule 13 (1). The petitioner has

rightly approached the licensing authority to incorporate his name and the name of the 4th respondent herein in the ""C"" form licence to continue the

business of running the theatre. The reasons assigned by the respondents 1 to 3 for rejecting the claim of the petitioner are invalid. No doubt, the

petitioner is bound to render true accounts and full information to the 4th respondent.

12. The renewal of ""C"" form licence of the partnership enure the benefit of all. The petitioner has prayed for issuance of ""C"" form licence

incorporating his name as well as the name of the 4th respondent. Hence, in the interest of the partnership firm, it is absolutely necessary to issue

C"" form licence in the name of the petitioner and the 4th respondent; otherwise the very purpose of partnership will be defeated. Moreover, as I

have already pointed, the petitioner has satisfied all the requisite elements. The order passed by the authorities below are liable to be quashed and

quashed accordingly.

13. The judgment relied upon by the petitioners are well applicable to the facts and circumstances of the, case on hand. The Division Bench

Judgment cited by the fourth respondent is not at all applicable to the present case.

14. In the result, this writ petition is allowed as prayed for. No costs. Consequently, connected WMPs are closed.