

Manjunath Vs. Divisional Commissioner

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Court : Karnataka

Decided On : Nov-08-1993

Reported in : ILR1993KAR3561

Judge : A.J. Sadashiva, J.

Acts : Karnataka Cinemas (Regulation) Act, 1964 - Sections 9, 16 and 17;
Karnataka Cinema (Regulation) Rules, 1971 - Rule 85

Appeal No. : W.Ps. Nos. 33010, 33055 and 33056 of 1993

Appellant : Manjunath

Respondent : Divisional Commissioner

Advocate for Def. : H.H. Kaladgi, HCGP for R-1 & R-2, ;K. Subba Rao, Adv. for R-1 and ;R.U. Goulay, Adv. for R-4

Advocate for Pet/Ap. : Jayakumar S. Patil, Adv.

Judgement :

ORDER

A.J. Sadashiva, J.

1. Though the Petitions are listed for orders, by consent of both the Counsel for the parties, the Petitions are taken up for final hearing.

Whether the District Magistrate is empowered to transfer the licence issued under the provisions of the Karnataka Cinemas (Regulation) Act, 1964 (for short 'the Act') from the name of the licensee to the name of a third person, without any application being filed by the licensee for permission to transfer? is the question that arises for the consideration of the Court in these Petitions.

2. Sri Vinayaka Talkies, Gounapalli Village, Srinivasapura Taluk, Kolar District, is located in (Old Sy.Nos.15/4 and 15/6) new V.P. Khate No. 43/1 and K.S.444 of Gounapalli village. Originally these lands belonged to one Gangaiah, the father of the petitioner in W.P.Nos.33055 and 33056 of 1993.

3. That, in the year 1977-78, the second respondent issued 'No objection certificate' in the name of G. Ramakrishna son of Gangaiah for construction of a cinema theatre in the said land. Since construction was not completed within the period prescribed, it was extended by the competent authority. That, after 'No objection certificate' was issued by the District Magistrate and when the construction was in progress, Gangaiah sold the said site measuring East-West 43.60 mtrs. and North-South 75.40 mtrs. in favour of M.S. Rama Mohan for a sum of Rs. 20,000/- under a registered Sale Deed dated 13.4.1987. A copy of the said sale deed is produced at Annexure 'J' in W.P. No. 33055/93. By Registered sale deed dated 20.4.1987 MS. Rama Mohan sold the aforesaid property and also another site measuring East-West 17 mtrs. and North-South 20 Mtrs, bearing Khate No. 246 K.S.Nos.442-443 in favour of Riaz Pasha for a sum of Rs. 30,000/-. That on the same date the said Riaz Pasha sold the eastern portion of Khate No. 43/1 K.S.No. 444 measuring East-West 13.08 mtrs, North-South 22.62 mtrs. in favour of M.S. Rama Mohan and M.S. Nagaraj for a sum of Rs.10,000/-. That, by registered Sale Deed dated 25.8.1988 Riaz Pasha sold the entire property purchased by him from M.S. Rama Mohan under the registered Sale Deed dated 20.4.1987 and also a house bearing Khaneshmari No. 98, Gounapalli village in favour of B.S. Manjunath the petitioner in W.P.No. 33010/93 for a sum of Rs. 1,50,000/-. It appears there is an agreement of re-conveyance executed by B.S. Manjunath in favour of Riaz Pash. That during the aforesaid transaction, the cinema theatre which is under construction came to be completed and the District Magistrate issued a licence for exhibition of cinematograph films in the name of G.

Ramakrishna by Licence dated 3.3.1989 till 31.12.1989.

4. That, after the grant of licence by the District Magistrate in the name of G. Ramakrishna, one Smt. Lakshmi Devamma, a proprietary of another theatre in the same village appeared to have challenged the grant of licence in the name of Ramakrishna before the Divisional Commissioner in Appeal No. CIN Appl.41/88-89, on the ground that G. Ramakrishna is not entitled for grant of a licence on account of the alienation of the property by his father. The said appeal came to be dismissed by order dated 23.1.1992.

5. It further appears that Ramakrishna appeared to have executed a power of attorney in favour of Riaz Pasha to run the theatre on his behalf and in his name and it further appears that Ramakrishna appears to have given no objection for transfer of licence in favour of Riaz Pasha in the year 1989.

6. When things stood thus, dispute arose between Ramakrishna and Riaz Pasha and Riaz Pasha appears to have filed an application before the District Magistrate for transfer of licence to his name from the name of Ramakrishna on 21.6.1990. An endorsement dated 29.6.1990 came to be issued stating that the licence cannot be transferred in view of the pendency of the appeal filed by Smt. Lakshmiddevamma.

7. That, on 11.7.1990 Ramakrishna filed an application before the District Magistrate for suspension of the licence granted in his favour. In the said application he has stated that he has cancelled the power of attorney issued in favour of Riaz Pasha and the machineries required minor repairs and the theatre also required some urgent repairs in view of the ensuing rainy season, it is not possible to exhibit the film for some time. That on the same day Riaz Pasha also filed an application for transfer of licence to his name from the name of Ramakrishna on the ground that Ramakrishna had given a no objection for transfer of licence for a consideration of a sum of Rs. 65,000/- and he has further stated that the land on which the theatre is situated has been purchased by him and he has completed the construction. The District Magistrate vide his order dated 18.7.1990 in No. MAB/CNA 14/78-79 temporarily suspended the licence granted in the name of Ramakrishna until he establishes his title to the theatre' on

the ground that he has contravened the conditions of the licence. However no order was passed on the application filed by Riaz Pasha

8. Feeling aggrieved by the aforesaid order, Riaz Pasha filed a Writ Petition before this Court in W.P.No. 15430/90 to quash the order. After hearing the parties this Court observed :

'At the out-set, Sri Chandrasekhar, learned Counsel for the petitioner is unable to satisfy me about the locus-stand of the petitioner to challenge the order suspending the licence impugned in this Writ Petition. The petitioner was running the business of exhibiting cinematograph shows in the Vinayaka Talkies on the strength of the power of attorney executed by the second respondent, who is the licences under the Act. Since the power of attorney in his favour was cancelled, the petitioner has no locus standi to file the Writ Petition in order to challenge the order suspending the licence on any ground.

Accordingly this Court rejected the Writ Petition by its order dated 12.9.1990. Thereafter, that on 13.12.1990 Ramakrishna has filed an application before the District Magistrate for renewal of licence granted in his favour. The District Magistrate by his order dated 26.12.1990 in No.MAG CNA/14/78-79 rejected his application on the ground that he has failed to produce documents to establish his title and possession of the theatre, The District Magistrate during the course of the order has observed that the land and the theatre was sold in favour of M.S. Rama Mohan on 12.4.1987 from whom Riaz Pasha has purchased the same on 21.4.1987 and the said Riaz Pasha has sold the same in favour of Manjunath on 26.8.1988. He has also observed that the Tahsildar, Srinivasapura Taluk has reported that the theatre has been in possession of Riaz Pasha Feeling aggrieved by the said order, Ramakrishna has preferred an appeal before the Divisional Commissioner, Bangalore in Appeal No.CIN.Appl.1 1/90-91.

9. That, during the pendency of the aforesaid appeal, it appearsthe District Magistrate appeared to have taken up the applicationdated 21.6.1990 filed by Riaz Pasha for consideration for transfer oflicence to his name from the name of Ramakrishna. After consideringthe aforesaid transfer of property and also in view of 'no -objection'given by Sri Manjunath for issue of licence in favour of Riaz

Pasha, the District Magistrate has passed an order dated 7.2.1992 ordering transfer of licence to the name of Riaz Pasha from the name of Ramakrishna under Section 9 of the Act. The District Magistrate appeared to have passed the aforesaid order for the reason that Ramakrishna has failed to produce any document to establish his title and possession of the theatre and Sri Riaz Pasha has title and possession of the theatre in accordance with Rule 6 of Karnataka Cinema (Regulation) Rules, 1971 (for short the rules').

9A. Ramakrishna, feeling aggrieved by the aforesaid order has preferred another appeal No. CIN Appl.11/91-92 before the Divisional Commissioner, Bangalore Division, Bangalore. Both the appeals were clubbed together for hearing and disposal with the consent of the parties and the order appealed against was stayed. That during the pendency of these appeals, Sri Manjunath has filed an application under Order I Rule 10(2) C.P.C. for being impleaded as second respondent on the ground that he is the owner of the property and he has withdrawn the 'no objection' given in favour of Riaz Pasha and on the other hand he is entitled for grant of licence. That on 23.6.1993 the appeal was heard and the case was posted for orders on the application for impleading. However on 30.8.1993, the orders were pronounced by the Divisional Commissioner dismissing the impleading application as well as the appeals on merits. It is these orders that are called in question in these Writ Petitions.

10. W.P.No. 33010/93 is presented by Sri B.S. Manjunath challenging the correctness of the order dated 30.8.1993 passed by the Divisional Commissioner in No. CIN Appl.No. 11/91-92 rejecting his application for being impleaded as second respondent. The Divisional Commissioner, Bangalore District, the District Magistrate, Kolar, G. Ramakrishna and Riaz Pasha are respondents 1 to 4, respectively, in this Petition. G. Ramakrishna has presented two Writ Petitions, W.P.Nos.33055 and 33056 of 1993 calling in question the order dated 27.12.1990 and the order dated 7.2.1992 passed by the District Magistrate in Nos. MAG CNA CR 14/78-79 and the order dated 30.8.1993 passed by the first respondent Divisional Commissioner in CIN APPL. Nos. 11/90-91 and 11/91-92. The said orders are produced at Annexures B, C and E, respectively and for a Writ of Mandamus directing the District Magistrate to renew the licence Annexure-F. The

Divisional Commissioner, Bangalore Division, the District Magistrate, Kolar, Riaz Pasha and Manjunath are joined as respondents 1 to 4, respectively, to these Petitions.

11. Sri R.U. Goulay, learned Counsel for respondent-4 raised a preliminary objection as to the locus standi of Sri B.S. Manjunath to challenge the order of transfer of licence from the name of G. Ramakrishna to the name of Riaz Pasha. Hence W.P.No. 33010/93 is taken up for consideration first. The contention of Sri R.U. Goulay is that, the petitioner is not an aggrieved person inasmuch as he has not filed any application for grant of licence for exhibition of cinematograph films in Vinayaka Talkies before the District Magistrate, nor he was an objector before the District Magistrate objecting to the transfer of licence from the name of Ramakrishna to the name of Riaz Pasha. On the other hand he had given no objection and Muchalika before the District Magistrate for issue of licence in respect of Vinayaka Theatre in the name of Riaz Pasha, He is not the owner of the theatre in possession. The 4th respondent has raised loan to the tune of Rs.1,50,000 on the security of the theatre and that the document is styled as a sale deed which was not acted upon nor intended to be acted upon. The recitals in the sale deed clearly establishes that the theatre is offered only as a security and he has executed an agreement to reconvey the property. Therefore though the document is styled as a sale deed it is only a security deed for repayment of the loan advanced by him. He was never in possession. Therefore he is not a necessary party to the appeal before the Divisional Commissioner. The order rejecting his application is just and proper as he has no interest in the licence in question which is the subject matter of the order. He has no locus standi to challenge the order passed by the District Magistrate and the Divisional Commissioner. He has further submitted that on account of certain differences that arose between the petitioner and the fourth respondent, he has come up with the application to take vengeance against the fourth respondent. Therefore the Petition is liable to be dismissed on the ground that the petitioner has no locus standi to question the correctness of the order.

12. Per contra Sri Jayakumar S. Patil, learned Counsel for the petitioner, submits that the petitioner is the owner in possession of the property. The Sale Deed

clearly recites the delivery of possession of the property. If there is any agreement to reconvey it is open to the fourth respondent to enforce the agreement and in fact the fourth respondent has filed a suit for specific performance of the agreement and therefore it is not open to the fourth respondent to contend that the petitioner is not a owner in possession. He being the owner in possession he is entitled to object for renewal of licence. The consent given by him is only in respect of the issue of licence and not for transfer of licence and he has withdrawn his no objection and as he himself intends to seek for grant of licence in his name, his interest would be prejudiced if transfer of licence is allowed without hearing him and therefore he is a necessary party.

12. On perusal of the pleadings and the Annexures produced by the parties, it is clear that the fourth respondent has sold the property in favour of the petitioner by registered sale deed dated 25.8.1988 along with another property. The petitioner in turn has also executed an agreement dated 26.8.1988 agreeing to reconvey the property within five years and a suit in O.S.No.99/93 has been instituted by the fourth respondent against the petitioner and the same is pending on the file of the learned Additional CMI Judge, Kolar for a decree for specific performance and directing the defendant to execute a registered sale deed. This Court in a proceeding under Article 226 of the Constitution of India cannot go into the question relating to title. What is to be looked into is whether the petitioner has any interest in the subject matter of the appeal, the subject matter of the appeal being transfer of licence from the name of Ramakrishna to the name of Riaz Pasha, the fourth Respondent herein. It is not the case of the petitioner that he has filed any application for grant of licence to exhibit the cinematograph films in the theatre in question and the licence has been granted in favour of Ramakrishna without considering his application. It is not even the case of the petitioner that he is entitled for transfer of licence from the name of Ramakrishna to his name. On the other hand it is admitted by him that he had given no objection letter dated 3.9.1990 and a Muchalika dated 11.12.1990 for grant of licence in the name of Riaz Pasha. A faint attempt is made for treating no objection letter and the Muchalika as no objection only for issue of licence and not for transfer of licence. Admittedly the licence stands in the name of third respondent and the petitioner, at no point of time has objected for grant of licence in the name of Ramakrishna. He

was never a party to any proceedings relating to grant of licence, nor he has any right, title or interest of whatsoever nature, in the licence in, question. It is not stated as to how his interest is prejudiced by the -order impugned in these Petitions. In the circumstances of the case, I do not think that the petitioner is a necessary party to the appeal and I do not see any infirmity in the order of the first respondent rejecting the application of the petitioner and the petitioner has no locus standi to question the transfer of licence from the name of Ramakrishna to the name of Riaz Pasha, the fourth respondent. The Petition is therefore liable to be rejected and accordingly it is rejected.

13. In WP.Nos. 33055 - 56/93, the petitioner Ramakrishna as stated supra has called in question the order of the District Magistrate (feted 27.12.1990 by which his application for renewal of licence was rejected and the order dated 7.2.1990, passed by the second respondent transferring the licence from the name of the petitioner to that of third respondent and order dated 30.8.1993 passed by the first respondent dismissing the appeals and affirming the orders passed by the second respondent.

14. Sri K. Subba Rao, learned Counsel appearing for the petitioner, would submit that the orders impugned in these Petitions are liable to be quashed for the reason that-

(a) The first respondent has not provided sufficient opportunity of being heard to the petitioner in the appeals;

(b) The order dated 27.12.1990 rejecting the application of the petitioner for renewal of licence violates Section 17 of the Act and Rule 85 of the Rules, respectively; and

(c) The order dated 7.2.1993 is in violation of Section 9 of the Act.

Elaborating his argument, Sri K. Subba Rao would submit that on 23.6.1993 the appeals were argued and the case was adjourned for orders on the application for impleading. The first respondent contrary to the order dated 23.6.1993 has proceeded to pass order both on the impleading application as well as on merits of

the appeals on 30.8.1993. Thereby the petitioner was deprived of an opportunity to argue the matter on merits. The order is, therefore, made in violation of the principles of natural justice.

15. The order sheet dated 8.6.1993 in the appeals before first respondent discloses that the Counsel for the appellant had filed written arguments and the Counsel for the respondent has also undertaken to file written arguments. It is seen from the order that the parties have no objection for passing orders on merits of the case. In view, of the fact that written arguments having been filed by the parties on merits of the case, no prejudice has been caused to the petitioner, even though the first respondent had disposed of the appeals on the date on which they were posted for orders on impleading application. I am, therefore, of the view that it is not correct to state that the petitioner was not given proper opportunity to argue the case.

16, Sri K. Subba Rao further submits that the sale of the land on which the theatre is located in favour of Riaz Pasha is prior to the date of issue of licence in the name of the petitioner. The licence was issued in the name of the petitioner after considering all the materials on record and also on the statement made by the third respondent before the second respondent. The third respondent had no objection for issue of licence in the name of the petitioner. Accordingly the licence was issued in the name of the petitioner after being satisfied of the possession and the enjoyment of the theatre by the petitioner and the question of petitioner's possession and enjoyment of the theatre was also the subject matter of the appeal before the first respondent in No. CIN Appl. 41/88-89 filed by Smt Lakshmidevamma, where it was contended that the petitioner is not entitled for grant of licence as the property in question was sold by the father of the petitioner in favour of the third party. These proceedings were to the knowledge of the third respondent. The right of the petitioner for grant of licence for exhibiting cinematograph films in the theatre has been affirmed by first respondent by his order dated 23.1.1992 in CEN Appl. 41/88-89, In view of the order passed by the first respondent in the aforesaid appeal, it is now not open to the second respondent to insist upon the petitioner to produce documents to establish his title and possession to the property once again for regrant of licence. The licence once

granted may be regranted under Rule 85 of the Rules, which do not require the production of title deeds. The very fact that the licence stood in the name of the petitioner prima facie satisfies his possession and enjoyment of the theatre. The application filed by the petitioner that temporary suspension of the licence in order to attend to certain minor repairs in view of the ensuing rainy season has been misconstrued by the second respondent and the second respondent has fallen into an error in suspending the licence on the ground that he has violated Condition No. 9 of the conditions of the licence and he has further committed an error in cancelling the licence on the ground that he has failed to establish his title and possession. Section 17 of the Act provides for the grounds for which the licence granted may be suspended or cancelled. The licence cannot be suspended or cancelled for any reason other than the one mentioned in Section 17 of the Act. The second respondent has not considered the case in the light of the provisions of Sections 16 and 17 of the Act. Sri Subba Rao further submits that the third respondent was running the show in the name and on behalf of the petitioner as his power of attorney and the same has been affirmed by this Court by order dated 12.9.1990 in W.P.No. 15430/90 where the petitioner has sought for regrant of licence denying the claim of the third respondent for transfer of licence the second respondent is not competent to transfer the licence from the name of the petitioner to that of the third respondent under Section 9 of the Act, inasmuch as Section 9 prohibits the transfer of licence without the approval in writing of the licencing authority. There is no application by the petitioner for permission to transfer. Therefore the order of transfer is in violation of Section 9 of the Act, and it is therefore liable to be quashed. Sri Subba Rao further submits that the first respondent has failed to consider the relevant provisions of the Act and the rules relating to transfer of licence. On the other hand, the first respondent appeared to have proceeded on the basis that the third respondent is entitled to hold the licence as he is found to be the owner of the land in question. It is submitted by the petitioner that the finding of respondents 1 and 2 relating to third respondent's possession of theatre is illegal and invalid, as respondents 1 and 2 have no jurisdiction to adjudicate upon the question relating to title or possession of the property, and the application of third respondent should have been rejected for the very reason of want of title, as he, admittedly, has no title to the theatre.

16. Per contra Sri R.U. Goulay, learned Counsel for the third respondent, would submit that the petitioner is not entitled for any relief in these Petitions inasmuch as the licensing authority and the first respondent have passed the orders impugned in these Petitions taking all the relevant circumstances into consideration. The orders impugned in these Petitions are orders made on the basis of finding of fact. This Court in exercise of its jurisdiction under Articles 228 and 227 of the Constitution cannot interfere with the impugned orders on reappreciating the material produced by the parties even though it is possible to come to a different conclusion.

17. Sri R.U. Goulay further submits that the third respondent is the owner in possession and enjoyment of the theatre in question. It was he who constructed the theatre, purchased the machineries and paid a sum of Rs. 65,000/- to the petitioner for transfer of licence, has invested huge sums of money and the petitioner has unequivocally stated in writing that he has put the third respondent in possession to run the shows and he has no objection for the transfer of the licence to the name of the third respondent as having received consideration of a sum of Rs. 65,000/-. The petitioner has not denied before the second respondent his statement made in writing, giving consent for transfer of licence. In these circumstances, respondents 1 and 2 after having taken all these facts and circumstances into consideration have held that the petitioner has failed to satisfy his title and possession of the theatre and the third respondent has been in possession and enjoyment of the theatre and operating the business and therefore entitled for transfer of licence. This finding of fact cannot be interfered with by this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution,

18. In order to appreciate the rival contentions of the parties mentioned above, it is useful to re-state certain admitted facts. The site on which the theatre is located was sold during its construction, by which time the second respondent had already issued 'No Objection Certificate' in the name of the petitioner. The licence came to be issued on 3.3.1989 and the said licence was valid till 31.12.1990. It was issued and renewed in the name of the petitioner by which time the title to the property had changed hands. The property in question was sold by Riaz Pasha in favour of the fourth respondent by registered sale deed dated 25.8.1988. By another sale

deed dated 20.4.1987 the third respondent had already sold the eastern portion of the property in Khaneshumari No. 43/1, K.S.No.444 measuring East-West 13.08 mtrs North-South 22.62 mtrs in favour of M.S. Rama Mohan and M.S. Nagaraj, who are said to have given no objection in favour of the petitioner. Smt Lakshmiddevamma, the another exhibitor in the village had filed an appeal before the first respondent in CIN Appl. 41/83-89 challenging the grant of licence in the name of the petitioner on the ground that the petitioner had no right, title and interest in the land and the theatre. The said appeal came to be dismissed on 23.1.1992. The said order is not produced before me for the reasons best known to the parties. The petitioner had given a power of attorney in favour of third respondent in the year 1967, to exhibit films in the theatre in his name and on his behalf and had also given a statement in writing on 15.3.1990 stating that he had no objection for transfer of the licence. That by application dated 11.7,1990 he has stated that he had cancelled the power of attorney executed in favour of third respondent. By another application dated 13.12.1990, a copy of which is produced at Annexure-G, the petitioner has specifically denied the claim of third respondent. The relevant portion reads as under;

3) I submit that one Sri Riyaz Pasha has approached the Hon'ble High Court of Karnataka in W.P.No.15430 of 1990 for quashing of the orders issued by this Hon'ble authority dated 18.7.1990 on the ground that i was given a power of attorney in favour of Riyaz Pasha, and that on the strength of power of attorney he was running the theatre, The Hon'ble High Court was pleased to reject the W.P. (writ petition) filed by him on 12,9.90 on the ground that the said Riyaz Pasha has no locus-stand to file and question the orders issued by this Hon'ble authority nor challenge the orders of suspension of licence which was issued to me and the Hon'ble High Court was pleased to hold that I am the licence of the theatre. The said Riaz Pasha is also challenged the orders issued by this Hon'ble Authority dated 29.6.90 wherein the said Riaz Pasha appears to have claimed the transfer of ownership of the theatre in favour of him. Even though I have not given any thing in his favour to do so.'

The order of suspension dated 18.7.1990 passed by the second respondent was challenged by the third respondent before this Court in W.P.No. 15430/90 and the

same was rejected as stated supra It is also on record that the petitioner had filed an original suit before the Civil Court for a judgment and decree for permanent injunction restraining second respondent from transferring the licence and it is said to have been not pressed. In addition to this the third respondent has produced certain receipts to show that it was he who spent the money for the construction of the theatre and purchased all the Machineries and exhibiting the films. The Tahsildar has also reported that the third respondent has been in possession of the theatre.

19. In the light of the aforesaid facts, it has to be examined whether this Court could in exercise of its jurisdiction under Articles 226 and 227 of the Constitution interfere with the orders impugned in these Petitions. In this context Sri R.U. Goulay has placed reliance on the following Decisions of the Supreme Court -

: (1957)ILLJ472SC ; (ii) : [1961]41ITR12(SC) ; (iii) : [1967]1SCR174 ; (iv) : AIR 1972 SC1680 ; (v) : AIR 1976 SC386 ; (vi) : [1987]3SCR593 ; (vii) : [1986]3SCR866 .

I do not think that it is necessary to consider separately each of the aforesaid Decisions as the law is well settled. However it is useful to extract the relevant portion in the last two Decisions of the Supreme Court. The Supreme Court in VENKATLAL G. PITTIE AND ANR. v. BRIGHT BROTHERS (PVT) LTD., : [1987]3SCR593 has held -

'Interference by the High Courts under Article 227 of the Constitution must be within limits. The question has been considered by this Court from time to time and principles laid down. This Court in Ganpat Ladha v. Shashikant Vishnu Shinde : [1978]3SCR198 expressed the view that the High Court commits a gross error in interfering with what was a just and proper exercise of discretion by the Court of Small Causes in exercise of its power under Article 227 of the Constitution. This was unwarranted. The High Court under Article 227 has a limited jurisdiction. It was held in that case that a finding as to whether circumstances justified the exercise of discretion or not, unless clearly perverse and patently unreasonable, was, after all a finding of fact and it could not be interfered with either under Article 226 and 227 of the Constitution. If a proper court has come to the conclusion on

the examination of the nature of the structure, the nature of the duration of structure, the annexation and other relevant factors that the structures were permanent in nature which were violative of section 13(1)(b) of the Rent Act as well as section 108 Clause (p) of Transfer of Property Act and such a finding is possible it cannot be considered to be perverse. In such a situation the High Court could not have and should not have interfered.'

The Supreme Court in CHANDRASEKHAR SITA RATNA RAO v. ASHA LATHA, : [1986]3SCR866 has held -

'20. It is true that in exercise of jurisdiction under Article 227 of the Constitution the High Court could go into the question of facts or look into the evidence if justice so requires it, if there is any direction in law or a view of fact taken in the teeth of preponderance of evidence. But the High Court should decline under Article 226 and 227 of the Constitution to look into the fact in the absence of clear and cut down reasons where the question depends upon the appreciation of evidence. The High Court also should not interfere with a finding within the jurisdiction of the inferior tribunal except where the findings were perverse and not based on any material evidence or it resulted in manifest injustice (See: Trimbak Gangadhar Telang - : AIR 1977 SC1222 . Except to the limited extent indicated above, the High Court has no jurisdiction. In our opinion therefore, in the facts and circumstances of this case on the question that the High Court has sought to interfere it is manifest that the High Court has gone into question which depended upon appreciation of evidence and indeed the very fact that the learned trial Judge came to one conclusion and the Appellate Bench came to another conclusion is indication of the position that two views were possible in this case. In preferring one view to another of factual appreciation of evidence, the High Court transgressed its limits of jurisdiction under Article 227 of the Constitution.'

In the light of the aforesaid Decisions, Sri R.U. Goulay, learned Counsel for the third respondent, would submit that this Court should refuse to interfere with the impugned orders. It is well settled that this Court in exercise of its jurisdiction under Articles 226 and 227 of the Constitution, cannot interfere with the orders which are the result of finding of fact. The appreciation of evidence in order to

come to a different conclusion is prohibited. Where two views are possible, the views expressed by the inferior tribunal shall prevail on the appreciation of evidence.

20. However it is also well settled that this Court in exercise of its jurisdiction under Article 227 of the Constitution, could go into the question of fact or look into the evidence if justice so requires, if there is any misconstruction in law or a view on fact taken in the teeth of preponderance of evidence.

21. In the instant case, the appreciation of facts would not arise for the consideration of the principal question relating to the transfer of licence, as the facts are disputed. The third respondent says that he is the owner in possession and enjoyment of the theatre in question and he has constructed the theatre, purchased the machineries and in support of that he has produced certain material. The petitioner contends that it was he who put up the construction and on account of financial stringency he had to borrow money and in that regard a sale deed came to be executed. He further submits that as on the date of grant of licence, the third respondent had no title to the property having transferred the same in favour of the fourth respondent. He denied the contention of the third respondent with respect to the investment. He has disputed the genuineness of the receipts and he has pointed out certain over-writing in the receipts. As these are disputed question of facts the correctness of which can be agitated in a properly constituted civil suit, I do not propose to consider the genuineness or otherwise of the said documents. I am also of the view that these facts are not material to consider the question, as to what are the grounds under which licence can be suspended or revoked by the licencing authority and when can a licence be transferred under Section 9 of the Act. In the facts and circumstances of the case, I am of the view that neither this Court nor respondents 1 and 2 has jurisdiction to enter into an enquiry relating to title and possession of the property in question.

22. Having regard to the facts and circumstances as aforesaid, the only question that falls for my consideration is whether the first and second respondents have acted in accordance with the provisions of the Act and the Rules in refusing to regrant the licence in the name of the petitioner and further ordering transfer of

licence from the name of the petitioner to that of third respondent. In this context it is useful to note the operative portion of the order. It is produced at Annexure-C. It reads thus:-

It is seen from the aforesaid order that the same has been passed on the ground that the petitioner is not in possession of the theatre and inspite of many opportunities were given, he has failed to produce the documents to show his title and possession of the theatre in question and his request dated 30,1,1992 for further opportunity is rejected and the 3rd respondent has title and possession of the property in question as prescribed under Rule 6 of the Rules and therefore the licence is transferred from the name of G. Ramakrishna to that of Riaz Pasha under Section 9 of the Act. In this context it is useful to extract Section 9 of the Act, which reads thus:

'9. LICENCE PERSONAL TO THE GRANTEE AND NOT TRANSFERABLE EXCEPT WITH PERMISSION OF LICENSING AUTHORITY.

Every licence under this Act shall be personal to the person to whom it is granted and no transfer or assignment thereof whether absolute or by way of security or otherwise shall be valid unless such transfer or assignment is made with the approval in writing of the licencing authority,'

It is not the case of the third respondent that the licence is transferred to his name on the basis of the application filed by the petitioner for transfer of licence from his name to that of the third respondent. Even the order at Annexure-C does not indicate that the licence is transferred to the name of the third respondent from the name of the petitioner on the basis of any application filed by the petitioner or by the petitioner and the third respondent, it is nowhere stated that the petitioner has filed an application seeking for approval in writing of the licensing authority to transfer the licence to the name of the third respondent nor stated that the transfer of the licence is approved by the licensing authority on the strength of the consent given by the petitioner.

23. From the reading of Section 9 of the Act, it is clear that the licence under the Act shall be personal to the person to whom it is granted and no transfer or

assignment of whatsoever nature of such licence shall be valid in the absence of approval of such transfer in writing by the licensing authority. In order to appreciate the true intent and purport of Section 9 of the Act, it is necessary to know the meaning of the expression 'approval' in the context of nature of licence issued under the Act and the transfer thereof. In BLACK'S LAW DICTIONARY, the meaning of expression 'approval' is given as follows:

'APPROVAL. The act of confirming, ratifying assenting, sanctioning, or consenting to some act or thing done by another. 'Approval' implies knowledge and exercise of discretion after knowledge.'

The act of approval pre-supposes that there shall be some act or thing done by the parties with a request seeking for ratification or to give assent to their such act or thing done, and in the absence of any request for ratification or to give assent for any act or thing done the question of according approval does not arise. Section 9 of the Act empowers the licensing authority only to accord ratification of transfer or assignment of the licence agreed to by the parties and the licencing authority has no power to pass an order of transfer of a licence on its own in the absence of any agreement between the parties. It is implicit in the provision that the licensing authority has no jurisdiction to pass an order transferring licence under Section 9 of the Act, only on the basis of the application filed by the alleged transferee where his right to transfer is denied. The licensing authority has no jurisdiction to adjudicate upon the genuineness, legality and enforceability of the contract which falls within the domain of a competent Civil Court.

24. In view of the facts and circumstances stated above, it is not possible to hold that the second respondent has jurisdiction to transfer the licence from the name of the petitioner to that of the third respondent under Section 9 of the Act, It is also not possible to hold that the licensee should produce evidence to show his title and possession in order to get the licence re-granted/renewed under Rule 85 of the Rules. The said Rule does not prescribe the production of the documents relating to title and possession of the property in question where an application is filed for regrant of the licence. The 1st and 2nd respondents have taken into consideration the materials which are not germane for regrant of licence and

passed the order transferring the licence from the name of the petitioner to that of the 3rd respondent under Section 9 of the Act. The reasons assigned by The 2nd respondent and affirmed by the 1st respondent, in the order transferring the licence from the name of the petitioner to that of the third respondent cannot be the reasons to invoke Section 9 of the Act for ordering transfer of licence from the name of the petitioner to that of the 3rd respondent. It is also useful to observe that the 2nd respondent has not accorded approval of transfer of licence but has himself transferred the licence from the name of the petitioner to that of 3rd respondent. The orders vide Annexure C and E are therefore unsustainable in law and are liable to be quashed.

25. The petitioner has also sought for quashing the order produced at Annexure-8 by which the licence issued in the name of the petitioner has been cancelled for non-production of documents of title. It is submitted by Sri K.S. Subba Rao, learned Counsel appearing for the petitioner that the order suspending and revoking licence issued in the name of the petitioner, is in violation of Section 17 of the Act. Section 17 of the Act provides for reasons to revoke or suspend the licence. It reads thus:

'17. POWER TO REVOKE OR SUSPEND A LICENCE:-

(1) Where the holder of the licence has been convicted of an offence under Section 16 of this Act or Section 7 of the Cinematograph Act, 1952 (Central Act 37 of 1952) or Section 12 or has compounded an offence under Section 13 of the Karnataka Entertainments Tax Act, 1958 (Karnataka Act 3 of 1958), the licensing authority may, by an order in writing revoke the licence or suspend it for such period as it may think fit.

(2) Any person aggrieved by an order under Sub-section (1) may within thirty days from the date on which the order was communicated to him, and subject to such conditions as may be prescribed appeal to such authority as may be prescribed and where no authority is prescribed to the State Government.'

From the reading of Section 17 of the Act, it is clear that licence granted under the provisions of the Act may be suspended or revoked only when the holder of the

licence has been convicted of an offence under Section 16 of this Act or Section 7 of the Cinematograph Act, 1952 or Section 12 or has compounded an offence under Section 13 of the Karnataka Entertainments Tax Act, 1958, in order to attract the provisions of Section 17 of the Act, the holder of licence must have been prosecuted under Section 16 of the Act and must have been convicted in accordance with law by a Court of competent criminal jurisdiction, in the absence of conviction of the holder of the licence for any offences prescribed by Section 17 of the Act, the licensing authority gets no jurisdiction either to suspend or to revoke the licence.

26. This Court, in *VENKATESHWARA TALKIES v. DISTRICT MAGISTRATE, BANGALORE*, 1980 (2) KLJ 389 has held:-

'6. In the instant case, it is not disputed that the petitioner has not been convicted under any one of the aforementioned acts enumerated in Section 17 of the Act. However, the learned Government Pleader has argued that the petitioner having committed an offence under Section 12 of the Entertainments Tax Act and compounded the same, it must be presumed that the petitioner was convicted. It is difficult to subscribe to such a proposition much less endorse it. The conviction as is normally understood, as it ought to be understood, is conviction in accordance with law by a court of competent criminal jurisdiction, in the absence of such conviction in a Criminal Court, which has become final, the District Magistrate cannot proceed under Section 17 of the Act.'

In *C. SHIVANNA GOUD v. DISTRICT MAGISTRATE, RAICHUR*, 1980(2) KLJ 392 this Court has held:-

'6. Section 17 of the Act empowers the District Magistrate to suspend or revoke a licence issued to a licensee under the Act, But, that power can be exercised by the D.M. only if there is conviction for one or the other offence referred to therein and not otherwise. The D.M. is empowered to suspend or revoke a licence only on the basis of a conviction by a criminal court and not otherwise. Section 17 of the Act does not confer power on the D.M. to independently examine the violations, decide the truth or otherwise of them and then suspend or revoke a licence. Why the legislature has so restricted the power of the D.M. is not for the Courts to

examine. But, so long as the legislature has restricted the power and requires the authority to exercise that power only on the basis of conviction by a criminal court for offences under the Act, Section 7 of the Cinematograph Act of 1952 or Section 12 of the Karnataka Entertainments Act of 1958, the D.M. cannot ignore the same and revoke or suspend a licence granted to a licensee under the Act.'

In the light of the aforesaid pronouncements of this Court, it is necessary to examine whether the second respondent is justified in suspending the licence issued in the name of the petitioner for the reasons stated in the order dated 27,12.1990, Annexure-B. By Annexure-B, the second respondent has refused to renew the licence for the reason that the petitioner is not the owner in possession and enjoyment of the theatre in question and further has held that he has violated the conditions of the licence by transferring the same in favour of the third respondent without the approval. It is not in dispute that on the date of the order, the licence had not been transferred. It is the contention of the petitioner that by virtue of the power of attorney executed by him appointing and constituting the third respondent, as his agent, the third respondent was managing the affairs of the theatre. This Court in W.P.No. 15430/90 has held that the petitioner is the licensee and the third respondent is only a power of attorney holder. It is also not in dispute that no action had been taken by the second respondent as prescribed by Section 16 of the Act and prosecuted the petitioner, it is also not in dispute that the petitioner has not been convicted for any offence prescribed by Section 17 of the Act, It is clear from Section 17 of the Act that the District Magistrate gets the authority to revoke or suspend the licence only for the reasons enumerated therein and not otherwise. The reasons assigned by the District Magistrate in his order dated 27,12.1990, Annexure-C, refusing to renew the suspended licence is beyond his powers and therefore it is unsustainable in law. Similarly the order of the first respondent confirming the order of the second respondent is also unsustainable and both of them are liable to be quashed.

27. In the result I make the following order: -

(i) WP.No. 33010 of 1993 is rejected.

(ii) W.P.Nos.33055 and 33056 of 1993 are allowed.

(iii) The order dated 30.8.1993 passed by the first respondent in No. DIN APLNo. 11/91-92, so far as it relates to rejection of application for impleading the petitioner in W.P.No. 33010 of 1993, as additional respondent in the appeal is affirmed.

(iv) The orders dated 27.12.1990 (Annexure-8) and 7.2.1992 (Annexure-C) passed by respondent-2 in No. MAG CNA.CR. 14/78-79 and the order dated 30.8.1993, passed by the first respondent in GIN APL Nos.11 of 90-91 and 11 of 91 -92 (Annexure-E) affirming orders in Annexure B and C are quashed.

(v) The application of the petitioner for renewal of licence is remitted to the second respondent for fresh consideration and disposal in accordance with law.

(vi) In the circumstances of the case, there is no order as to costs.

Sri H.H. Kaiadgi, learned High Court Government Pleader, is permitted to file memo of appearance within four weeks.

After pronouncement of the order Sri. Jayakurnar S. Patil, learned Counsel appearing for the petitioner submitted that the order reads as if the petitioner in W.P. 33010/1993 has admitted the execution of agreement of reconveyance which is the subject matter of the suit. He further submits that he has disputed the execution of the agreement. I have not given any finding as to the admission or otherwise of the execution of the said agreement of reconveyance, since it is a matter to be adjudicated upon by the Civil Court. I have only made a reference to the documents produced before me.

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