

Venugopal Vs. District Magistrate

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Court : Karnataka

Decided On : Sep-01-1993

Reported in : ILR1993KAR3603; 1993(3)KarLJ416

Judge : Raveendran, J.

Acts : Karnataka Cinemas (Regulation) Rules, 1971 - Rules 6, 106 and 109(2), ;Karnataka Cinemas (Regulation) (Amendment) Rules, 1990, ; Karnataka Cinemas (Regulation) (Amendment) Rules, 1991, ; Karnataka Rent Control Act, 1961 - Sections 21(1), ; [Transfer of Property Act, 1882](#) - Sections 107, ; [Registration Act, 1908](#) - Sections 17 and 49

Appeal No. : W.P. No. 31590 of 1992

Appellant : Venugopal

Respondent : District Magistrate

Advocate for Def. : H.H. Kaladgi, Adv. for R-1, ;A.V Albal and ;B.G. Sridharan, Adv. for R-2 to R-4

Advocate for Pet/Ap. : K. Suryanarayana Rao, Adv.

Judgement :

ORDER

Raveendran, J.

1. The petitioner's father M. Narayanaswamy was the owner of the property bearing Survey No. 18/5 of Diwanara Palya, Mathikere Village, Bangalore North Taluk, presently within the Bangalore City Corporation limits. He let out a portion of the said property measuring of 100 ft. x 150 ft. for the purpose of running a touring cinema to one Syed Noorulla initially in the year 1983, later renewed as per 'Badige Karar' dated 30.3.1987 for a period of three years i.e., from 1.4.1987 to 31.3.1990. The said Syed Noorulla continued in possession even after 31.3.1990. He died on 14.11.1990 and respondents 2 to 4 are his legal heirs (two sons and wife). M. Narayanaswamy died on 14.3.1992 and the petitioner is one of his legal heirs. Respondents 2 to 4 claimed that on the death of Syed Noorulla, they became the tenants and they filed a suit on 21.3.1991 in O.S.No. 1824 of 1991 on the file of the City Civil Court, Bangalore for a permanent injunction restraining M. Naryanaswamy from interfering with their possession and enjoyment of the said property. It appears within a few days after filing of the said suit, the existing touring cinema theatre building was burnt down in a fire accident and now what remains is a vacant land with a small structure. On 7.6.1991 an interim order of temporary injunction was granted in O.S.No. 1824 of 1991 restraining M. Narayanaswamy from interfering with the possession and enjoyment of the suit schedule property till the disposal of the suit. M. Narayanaswamy filed an appeal before this Court in M.F.A. 2371 of 1991 against the said order of temporary injunction. The said Appeal was dismissed on 29.1.1992 subject to the condition that plaintiffs shall pay a sum of Rs. 3,000/- per month for the period commencing from 1.1.1992. Respondents 2 to 4 are thus in possession of the property.

2. On 23.2.1989 a 'No Objection Certificate' was granted under Rules 28, 105(3) and 111 (B) of the Karnataka Cinemas (Regulation) Riles, 1971 (hereinafter referred to as 'the Rules') for conversion of the existing touring talkies known as Sri Krishna Chitramandira in the said property into a semi-permanent cinema on an application dated 18.5.1987 filed by Syed Noorulla. It was not so converted. Again on an application filed by Syed Noorulla on 28.6.1990, another No Objection Certificate dated 12.10.1990 was issued by the first Respondent under Rule 109(2) of the Karnataka Cinema (Regulation) (Amendment) Rules, 1990 to Syed Noorullah for conversion of the existing Touring cinema into a temporary cinema. Again on an application dated 6.8.1991 filed by respondent No. 4, another No

Objection Certificate dated 29.4.1992 was issued under Rule 109(2) of the Karnataka Cinema (Regulation) (Amendment) Rules, 1990 to fourth respondent for conversion of the existing touring cinema into temporary Cinema. The petitioner has filed this Writ Petition for quashing the said No Objection Certificate dated 29.4.1992.

3. The petitioner contends that the property was permitted to be used by Syed Noorulla on leave and licence basis till 31.3.1990; that even assuming without conceding that the property was let out to him, the said tenancy came to an end on 31.3.1990; that respondents 2 to 4 are not in lawful possession of the premises but are in litigious possession in pursuance of the interim injunction dated 7.6.1991; that there is no structure in the property that could be used as a cinema theatre and the respondents could not construct any structure without the express written consent of the owner; that the owner had objected to the grant of No Objection Certificate and therefore first respondent could not have issued a No Objection Certificate to the fourth respondent.

4. Respondents 2 to 4, on the other hand, contended that Syed Noorulla was the tenant of the premises, that his tenancy was protected under the provisions of the Karnataka Rent Control Act even after 31.3.1990, as a Statutory tenant, that this position was recognised by the order of temporary injunction granted by the City Civil Court in O.S. 1824/1991 and confirmed by this Court in M.F.A. No. 2371/1991; that the first respondent had earlier granted a No Objection Certificate on 12.10.1990 itself when both Syed Noorulla and Narayanaswamy were alive and Narayanaswamy did not challenge the said No Objection Certificate dated 12.10.1990; that the impugned No Objection Certificate dated 29.4.1992 was merely a renewal of the earlier No Objection Certificate dated 12.10.1990; that the earlier structure having been destroyed in a fire, they were entitled to put up a structure which was temporary in nature; that the consent of the owner was not necessary for putting up the structure or for obtaining No Objection Certificate; that they had commenced the construction of the temporary cinema and spent more than Rs. 2 lakhs by the time the interim order was passed in this Petition and they will be put to great hardship and loss if they are not permitted to complete the structure and run the temporary cinema, as they are paying the rents for the

premises, but are not able to use the same. Hence they seek dismissal of the Writ Petition.

5. On these contentions the following questions arise for consideration : (a) Whether petitioner is entitled to object to the grant of No Objection Certificate for conversion (b) Whether the impugned No Objection Certificate dated 29.4.1992 under Rule 109(2) is valid?

6. The undisputed facts are: (a) that Syed Noorulla has been in occupation of the premises from 1987; (b) a structure was in existence till March 1991 which was being used as a touring cinema by Syed Noorulla; (c) that the said structure was destroyed in a fire in March 1991; (d) that a new structure will have to be constructed if the premises is to be used for a temporary cinema; (e) that the petitioner/landlord has objected to grant of any licence to the legal heirs of Syed Noorulla.

7. Rule 6 of the Rules provides that the applicant for licence, who is not the owner, shall produce to the satisfaction of the licensing authority, documentary evidence in proof of his lawful possession of the property. In *M.C. CHOCKLINGAM AND ORS. v. V. MANICKAVASAGAM AND ORS.*, : [1974]2SCR143 while dealing with the corresponding provision in the Madras Cinemas (Regulation) Rules, 1956, namely Rule 13, the Supreme Court held -

'The fact that after expiry of the lease, the tenant will be able to continue in possession of the property by resisting a suit for eviction, does not establish a case in law, to answer the requirement of lawful possession of the property within the meaning of Rule 13, Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Law possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it.... Juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession.'

Thus if under a special law, the tenant continues in possession, after the period of lease, then in spite of absence of any renewal of lease or consent from the landlord to continue in possession, the possession of the tenant will be lawful. A Division Bench of this Court in K.E. GOVERDHAN v. N. KRISHNA RAO, 1986(1) KLJ 297 while considering Rule 6, held that where the tenant was in possession of a premises in regard to which he was entitled to protection from eviction under the provisions of the Karnataka Rent Control Act, 1961, and therefore was not liable to be evicted in the manner provided under the Provisos of Section 21(1) of the said Act, his possession must be regarded as lawful.

8. The petitioner contended that the 'Badige Karar' dated 30.3.1987 being an unregistered document, no valid tenancy was created in favour of Syed Noorulla and Syed Noorulla was at best a licensee. It is true that the deed purports to be a lease for three years and thus required to be registered under Section 107 of the Transfer of Property Act. It is also true that no document required to be registered, under Section 17 of the Registration Act or by any provision of Transfer of Property Act, shall affect any immovable property comprised therein or be received as evidence of any transaction affecting such property unless it has been registered-Section 49 of [Registration Act, 1908](#). In view of the above position, though the said document and its terms are inadmissible for want of registration, it can nevertheless be relied, to prove the character of the possession of the person who holds under it. A person who enters into possession as a tenant or who is already in possession as a tenant, will not cease to be a tenant, by reason of execution of a Lease Deed or Agreement, which requires registration, but is not registered. He continues to be a tenant, but cannot claim a term lease, in terms of such document. Where the tenancies are governed by Rent Control Laws, such tenant will continue as tenant, not in terms of such unregistered deed, but as a tenant having the protection against eviction under the provisions of the Rent Control Act. In view of the admitted facts that the premises was in the occupation of Syed Noorulla from 1987 (according to respondents 2 to 4 from 1983) and he was paying monthly rents and in the absence of any document showing that the nature of occupation was only by way of leave and licence, prima facie, respondents 2 to 4 are to be held to be in lawful occupation of the premises as tenants having the protection against eviction under the provisions of the Rent

Control Act

9. Rules 89 and 90 deal with grant or refusal of a licence for a touring cinema. Rule 88(b) defines 'Touring Cinema' as an outfit comprising the cinema apparatus with accessories taken from place to place for exhibition of cinematograph films or shows at any one place for a period not exceeding three months. Rule 106 defines 'temporary cinema' or a cinema other than touring cinema, semi-permanent cinema, drive-in-cinema or permanent cinema. Rules 106 to 110 dealing with temporary Cinema were introduced under the Karnataka Cinema Regulations (Amendment) Rules 1990. Rule 107 provides that the provisions of Rules 111F to 111Z except Rule 46 and Sub-rules (13) and (14) of Rule 49, Rule 111(L), (M) and (R) applicable to semi permanent cinema apply mutatis mutandis to temporary cinemas. Rule 108 provides that the licence period for a temporary cinema shall be one year and the total period of such licence shall not exceed five years. Rule 109 deals with conversion of Touring Cinema into a temporary cinema. Sub-rule (4) of Rule 109 provided that the temporary Cinema Building shall conform to the model building plan specified by the Government. Rule 109(4) was however substituted by Rule 4 of the Karnataka Cinema Regulations (Amendment) Rules 1991. The amended Rule 109(4) provides that temporary cinema building shall be constructed with bricks, mud, jungle wood, bamboos, light roofing sheets (bitumen sheets) etc., and also the height of on all the four sides shall have a minimum of 2.5 meters, with the distance between the auditorium walls and the compound walls being a minimum of 5 meters on all the sides.

10. Rule 109(1) provides that a person who had obtained No Objection Certificate under Rule 105(1) for conversion of a touring cinema into a semi-permanent cinema (and has not yet obtained the necessary semi-permanent cinema licence) in pursuance thereof before the commencement of the Karnataka Cinema (Regulation) (Amendment) Rules, 1990, desires to convert such a touring cinema into a temporary cinema, may within sixty days from the date of commencement of the Karnataka Cinemas (Regulation) (Amendment) Rules 1990, apply in writing to the Licensing Authority for grant of No Objection Certificate. The 1991 Rules introduced Rule 109(1 A) which provided that any person having a touring cinema licence, immediately prior to the commencement of 1987 Rules, who desires to

convert such touring cinema into a temporary cinema may within sixty days from the date of commencement of 1991 Rules, apply in writing to the Licensing Authority for grant of No Objection Certificate. Rule 109(2) provides that on receipt of an application under Rule 109(1) or 109(1A), the Licencing Authority shall grant No objection Certificate for conversion of touring cinema into a temporary cinema. The No Objection Certificate dated 12.10.1990 and the impugned No Objection Certificate dated 29.4.1992 have been granted under Rule 109(2) of the Rules.

11. Rule 109(5) provides that construction of a temporary Cinema shall be completed within a period of nine months from the date of issue of a No Objection Certificate. Rule 109(6) provides that the Licencing Authority shall grant a licence for exhibition of films to the No Objection Certificate Holder on completion of the construction of the temporary Cinema Building. Thus the NOC holder becomes entitled to put up a structure suitable for temporary cinema, by virtue of the No Objection Certificate and once the structure is put up, on obtaining a certificate from the concerned Assistant Executive Engineer of the P.W.D. to the effect that the cinema Building has been constructed in accordance with the Rules, becomes entitled to a licence for exhibition of films.

12. The question is whether respondents 2 to 4 are entitled to a No Objection Certificate under Rule 109(2) enabling them to construct a building to house and run a 'temporary cinema' without the consent of the owner. It is admitted that the old structure where the touring cinema was being sun was burnt in a fire accident. A new structure will have to be constructed to run a 'temporary cinema'. The structure will have to be constructed with bricks, mud, junglewood, bamboos, light roofing sheets etc., with provision for Projection Room, Ticket Booth, Main Hall, Water closets, urinals, etc., with electrical and water connections.

13. A 'temporary cinema' under the said Rules is not synonymous with a 'temporary structure' under the laws relating to leases or tenancies. While what is temporary cinema is defined under Rule 106 of the said Rules, whether a structure is a 'temporary structure' or a 'permanent structure' depends on two important factors, namely, the nature of the structure and the intention with which it is erected. If the structure is intended to be used permanently, that is, for a long time

or as long as the tenant expects to remain in the property, it will be regarded as a permanent structure; that a structure can be dismantled easily or that it is intended to be used for running 'temporary cinema' does not make the structure a temporary one. In this case the structure is intended to be used for a long time. The licence itself is for one year renewable upto five years. It is not intended for temporary use. The nature of construction also shows that the structure cannot be called as temporary'. Applying these tests, there can be no doubt that what is intended to be put by respondents 2 to 4 is a permanent structure and not a temporary structure.

14. The fact that respondents 2 to 4 are in lawful possession of the premises by virtue of the protection extended by the provisions of the Karnataka Rent Control Act does not entitle them to put up any permanent structure in the premises without the written consent of the owner. Section 21 (1) Proviso (c) of the Karnataka Rent Control Act makes it clear that a tenant cannot erect on the premises any permanent structure without the landlord's consent in writing; in this case, such a consent has not been given. On the other hand, the landlord has filed objections before the first respondent objecting to grant of any No Objection Certificate/Licence.

15. Respondents 2 to 4 contended that earlier there was a structure in existence in the premises which was being used for running cinema shows and the said structure having been destroyed in a fire, they are entitled to reconstruct the building. As noticed earlier, the Karnataka Rent Control Act prohibits putting up of a new permanent structure by a tenant without the consent of the landlord. No exception is made in regard to cases where an existing structure is destroyed by fire or any other cause. Though there is a specific provision (Section 44) in the Karnataka Rent Control Act, enabling the tenant to effect repairs and improvements in the event of the landlord failing to keep the property in good repairs, there is no provision in the Rent Control Act, enabling the tenant to construct or reconstruct a building destroyed by fire or other cause.

16. Where the Rent Control Act does not specifically cover or provide for a particular right or obligation of the tenant, it is permissible to refer to the provisions

of the Transfer of Property Act to find out the nature of such right or obligation. A Full Bench of this Court in SRI RAMAKRISHNA THEATRES LTD. v. GENERAL INVESTMENTS & COMMERCIAL CORPORATION LTD., : AIR1993 Kant90 relying on the observations of the Supreme Court in K.K. KRISHNAN v. M.K. VIJAYARAGHAVAN, : [1981]1SCR139 held:

'....Some of the rights conferred on the landlord and tenant by Section 108 and other provisions of the Transfer of Property Act may have been left intact and to the extent a subject is specifically covered by the Rent Act, it will displace the operation of the Transfer of Property Act.'

As the Rent Control Act does not provide for consequences of destruction of the tenanted structure, reference to the relevant provision of the Transfer of Property Act may be necessary. The only provision which is relevant is Section 108(e) which is extracted below:

'in the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:

xxxxx B. Rights and Liabilities of the lessee:

(e) if by fire, tempest or flood, or violence of an army or of a mob or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purpose for which it was let, the lease shall, at the option of the lease, be void:

Provided that if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision.'

It is seen from the said provision that in the event of the structure being destroyed, the tenant has only two options : (a) to continue the tenancy without any reduction in rent or (b) to terminate the tenancy, The tenant does not get a right to put up a structure in the place of the structure which has been destroyed. This position is clear from the Decision of the Calcutta High Court in KSHITISH CHANDRA

17. Thus, lawful possession of the premises, held by the tenant does not entitle him to put up a structure suitable for exhibition of Cinematograph films. The Licensing Authority should necessarily examine whether a tenant is in lawful possession of a premises and if there is no structure, whether the tenant is authorised or permitted to construct a structure. It is obvious that the first respondent has not examined this aspect of the matter before issuing the impugned 'No Objection Certificate'. Consequently, respondents 2 to 4 are not entitled to a No Objection Certificate under Rule 109(2) of the Rules for converting a touring cinema into a temporary cinema. The position would be different if the structure for housing a temporary cinema was in existence or if the landlord had consented for putting up a structure or for making alterations to an existing structure, to make it suitable for running a temporary cinema. In this case, it has to be reiterated that there is no structure which can be used for running a temporary cinema and a new structure will have to be erected for that purpose; that the tenant cannot do without the consent of the landlord. In the absence of such consent the mere fact that the tenants are in lawful possession of the premises does not entitle them to a No Objection Certificate or Licence under the Rules.

18. Under Rule 6, the tenant should be in lawful possession of not only the site, but also the building. If a tenant puts up a structure, without the consent of the landlord or in violation of the laws governing tenancies, he cannot be said to be in lawful possession of the building. Hence the impugned No Objection Certificate under Rule 109(2) issued by the Licensing Authority (first respondent) to respondent No. 4 to convert a (non-existing) touring cinema into a temporary cinema, which necessarily implies grant of permission for construction of a new structure which is permanent in nature, cannot be sustained and is liable to be quashed being contrary to law and the Rules. Respondents 2 to 4 contended that the impugned certificate only confirms that the Licensing Authority has no objection for conversion of touring cinema into a temporary cinema and cannot be construed as a licence to construct a structure or as licence to run temporary cinema and therefore, the impugned certificate does not deserve to be quashed. But once the No Objection Certificate is issued under Rule 109(2), subject to

construction of a structure suitable for a temporary cinema and approval thereof by the Assistant Executive Engineer of PWD, grant of licence for exhibition of films is obligatory under Rule 109(6). Hence the Licensing Authority should examine the right of the applicant to construct a structure, at the stage of issue of No Objection Certificate itself, under Rule 109(2).

19. For the aforesaid reasons, the impugned No Objection Certificate dated 29.4.1992 is hereby quashed. Rule issued is made absolute.

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