

HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

WRIT PETITION No.9997 of 2007

ORDER:

Heard Sri S.Sudeep Reddy, learned counsel for the petitioner and learned Assistant Government Pleader for Revenue appearing for the respondents.

2. This Writ Petition is filed challenging the proceedings No.C1/CN/5091/2006-1, dated 13.04.2007, issued by respondent No.1 in exercise of power under Section 10 (2) of the A.P. Cinema (Regulation) Act, 1955 (for short, 'the Act, 1955'), cancelling the No Objection Certificate (NOC), dated 20.06.1994, the construction permission, dated 26.10.1994 and Form-B licence, dated 25.01.1997, issued in favour of the petitioner-theatre.

3. It is the case of the petitioner, represented by its Managing Partner, that he purchased the land to an extent of Ac.0-20 guntas in Survey No.284/3, situated at Bollaram Village, Jinnaram Mandal, Medak District, under a registered Sale Deed, dated 12.01.1994, and thereafter, the petitioner approached respondent No.1 seeking permission for construction of cinema theatre and for grant of Form-B licence and accordingly, the same were granted by respondent No.1. He

further submitted that when construction of cinema theatre was commenced, at that stage, respondent No.1 issued a show-cause notice, dated 29.10.2006, to the petitioner alleging that the petitioner has suppressed the fact of cancellation of Supplementary Sethwar, through which the petitioner is claiming title and whereby the subject property was declared as a Government property and therefore invoked the provisions of Section 10 (2) of the Act, 1955, proposing to revoke the licence and construction permission that were granted in favour of the petitioner. In response to the said show-cause notice, the petitioner has submitted his explanation, dated 25.09.2006 contending that the said Supplementary Sethwar was cancelled after the petitioner obtaining NOC and the construction permission in question and as on the date of submission of application for grant of NOC and construction permission, the said supplementary Sethwar is well in force and therefore, there is no suppression of fact or fraud played by the petitioner in this regard.

4. Thus, it is contended by learned counsel for the petitioner that the impugned show-cause notice, which was issued invoking the provisions of Section 10 (2) of the Act, 1955, is not sustainable under law. The respondents having taken

note of the said explanation submitted by the petitioner, issued the impugned proceedings, dated 13.04.2007, cancelling NOC and construction permission together with Form-B licence issued in favour of the petitioner. Aggrieved by the same, the petitioner approached this Court by filing the present Writ Petition.

5. This Court, while admitting the Writ Petition, granted interim suspension of the impugned proceedings by an order, dated 09.05.2007 and the said interim order is in operation.

6. Respondent No.1 filed counter-affidavit contending that the petitioner has purchased the subject land admeasuring Ac.0-20 guntas in Survey 285/3 for construction of cinema theatre and approached respondent No.1 for issuance of NOC and accordingly, after calling for report from the concerned officers as per the Andhra Pradesh Cinemas (Regulation) Rules, 1970, NOC was issued on 20.06.1994 and thereafter, construction permission was issued on 26.10.1994 after conducting necessary enquiry and after calling for reports from the officers concerned. The relevant paragraph from the counter-affidavit reads as under:

“It is respectfully submitted that the petitioner had purchased an extent of Ac.0-20 guntas of land in Survey No.284/3 for

construction of Cinema Hall and made an application before the concerned officers as per A.P. Cinema (Regn) Rules, 1970 under Rule (A) requesting for issuance of No Objection Certificate. Accordingly, this respondent has called for reports from the concerned officers. Basing on the reports, as per the Rule 8 (B) of A.P. Cinema (Regn) Rules, 1970, No Objection Certificate was issued vide this office Procs.No.D1/398/M/94, dated 20.06.1994 in favour of the petitioner herein.

While the matters stood thus, the petitioner herein had applied for grant of construction permission for construction of Cinema theatre in the name and style of Jyothi theatre based on the No Objection Certificate issued by this office. On receipt of his application, as report was called for from the Inspecting Officers concerned. After careful perusal of the reports placed before this respondent, as per Rule 9 (b) (c) of A.P. Cinema (Regn) Rules, 1970, permission was accorded to the petitioner for construction of Cinema theatre in the name and style of M/s. Jyothi theatre in Survey No.284/3 situated at Bollaram Village through this office Proc.No.D1/1484/M/1994, dated 26.10.1994.”

7. It is further stated that during the year 1995 while ascertaining encroachments into various Government lands, it was found that the Supplementary Sethwar obtained in respect of land in Survey No.284/3 was wrongly issued. By conducting necessary enquiry, the Supplementary Sethwar was cancelled on 28.09.1995 by treating the same as Government land. Thus, it is contended that in the light of cancellation of Supplementary Sethwar, the land in question has become part and parcel of Government land and construction of cinema theatre in the Government land by private persons is not permissible under

law. It is further stated that the petitioner has applied for NOC for construction of cinema theatre by keeping the officers in dark and under the guise of Supplementary Sethwar issued by the Assistant Director (S&LRs) illegally. Thus, it is alleged that the petitioner has fraudulently obtained permission for construction of the cinema theatre.

8. As is evident from the counter-affidavit, the petitioner approached respondent No.1 seeking grant of NOC and construction permission and the same were granted on 20.06.1994 and 26.10.1994, respectively, admittedly, after conducting necessary inspection and calling for reports. But, the subject land claimed by the petitioner has become the Government land by virtue of cancellation of Supplementary Sethwar, by virtue of proceedings, dated 28.09.1995 i.e., much subsequent to grant of NOC and the construction permission in favour of the petitioner.

9. It is not as if the petitioner has submitted a forged and fabricated document. Admittedly, the Supplementary Sethwar in question was issued by the Assistant Director of Survey and Land Records and the same was cancelled subsequently i.e., much after grant of NOC and construction permission in favour of the petitioner. If that is the case, the

stand of the respondents that the petitioner has played fraud in obtaining Supplementary Sethwar, cannot be accepted. If at all the respondents are of the view that any of the documents submitted by the petitioner are not genuine or the petitioner has played fraud while obtaining NOC and construction permission, then the respondents shall invoke the provisions of Section 10 (2) of the Act, 1955. Section 10 (2) of the Act, 1955 enables the licencing authority i.e., respondent No.1 if satisfied, either on a reference made to it in this behalf or otherwise that a licence was obtained by misrepresentation or fraud as to an essential fact either to revoke or cancel the licence.

10. In the instant case, it is not even the case of the respondents that the petitioner has made any misrepresentation or played fraud while obtaining NOC and construction permission. But, it is an admitted case of the respondents that subsequent to grant of such NOC and construction permission certain proceedings have taken place at the instance of the House Committee and the Supplementary Sethwar was cancelled on 28.09.1995 and thereby, treating the subject land as Government land.

11. Thus, it is evident that there is no suppression of fact or fraud played by the petitioner while obtaining NOC and

construction permission in question. In the absence of any such allegation of suppression, misrepresentation or fraud, the action of respondent No.1 in invoking Section 10 (2) of the Act, 1955 thereby cancelling licence and construction permission granted in favour of the petitioner, is totally without any jurisdiction and such an action of respondent No.1 also suffers from non-application of mind.

12. Under similar circumstances, the learned Single Judge of this Court also considered the scope and ambit of Section 10 (2) of the Act, 1955 in the case of **K.Seetharami Reddy, Proprietor, Gagan Mohal Talkies, Pamarru, Krishna District v. Government of Andhra Pradesh, rep.by the Secretary, Home (General-A) Department, Hyderabad and another¹**.

13. In the light of above, it is clear that the grounds on which the construction permission, NOC and Form-B licence that were granted in favour of the petitioner, were cancelled by respondent No.1 is not the one which falls within the scope and ambit of Section 10 (2) of the Act, 1955. In view of the above, the impugned order is liable to be set aside and the same is accordingly set aside.

¹ 1998 (3) Andhra Weekly Reporter 20

14. Accordingly, the Writ Petitions is allowed. However, it is made clear that if the respondents have got any claim over the land in question wherein Cinema theatre was constructed, it is always open for them to take appropriate action against the alleged encroachments of Government land or for recovery of possession, in accordance with law. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition shall stand closed.

MUMMINENI SUDHEER KUMAR, J

Date:22.08.2023

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THE HON'BLE SRI JUSTICE MUMMINENI SUDHEER KUMAR

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