

(1981) 09 RAJ CK 0021

Rajasthan High Court (Jaipur Bench)

Case No: Civil Writ Petition No. 1759 of 1980

Smt. Geeta Bajaj and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision: Sept. 29, 1981

Acts Referred:

- Constitution of India, 1950 - Article 226
- Rajasthan Cinemas (Regulation) Act, 1952 - Section 5A, 5A(2)
- Rajasthan Cinemas (Regulation) Rules, 1959 - Rule 16

Citation: AIR 1982 Raj 48

Hon'ble Judges: K.S. Sidhu, J

Bench: Single Bench

Advocate: C.N. Sharma, M.K. Sharma and G.S. Singhvi, G.G. Sharma, for the Appellant;
G.C. Kasliwal and anant Kasliwal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.S. Sidhu, J.

This is a petition under Article 226 of the Constn. of India for issue of appropriate writ, order or direction to the State of Rajasthan, Gyan Devi, Collector, Jaipur and the Improvement Trust Jaipur (respondents 1, 2, 3, and 4 respectively), to prevent Gyan Devi from constructing a cinema building on her plot of land, measuring 3012.13 square yards, situate at Moti Doongri Road, Jaipur. The exact relief claimed against each of the respondents will be mentioned a little later in the context of the restatement of the pleadings of the parties which may be given here as follows.

2. Gyan Devi purchased two adjoining plots of land measuring 3012.13 square yards in all situate at Moti Doongri Road Jaipur, in Nov. 1970. On Dec. 8, 1970, she made an application u/s 5A, Rajasthan Cinemas (Regulation) Act, No. XXX of 1952,

hereinafter to be referred to as the Act for the grant of a "no objection certificate" for the construction of a cinema on the aforementioned land. The Collector, Jaipur (respondent 3), who also happens to be the District Magistrate of the area and as such, the authority empowered to grant licenses under the Act, and who will hereinafter be referred to as the licensing authority, passed an order, dated June 16, 1972, rejecting the said application and consequently refusing to grant the "no objection certificate", applied for. The application was rejected on the grounds that the site proposed for the construction of a cinema building is situate in a thickly populated area close to a children's school.

3. Aggrieved by the decision of the licensing authority. Gyan Devi appealed to the Commissioner for Home Affairs, Rajasthan. By his order dated Oct. 24, 1972, the Commissioner affirmed the order of refusal made by the licensing authority and dismissed Gyan Devi's appeal. She challenged these orders by way of a writ petition (Civil Writ Petn. No. 100 of 1973). By its judgment, dated Feb. 23, 1974, this Court (M.L. Joshi, J.) allowed the writ petition, quashed the impugned orders refusing to grant the "no objection certificate" to Gyan Devi and remanded the case to the licensing authority, directing him to decide the matter afresh in the light of Rule 16 of the Rajasthan Cinemas (Regulation) Rules, 1959, (hereinafter to be referred to as the Rules) and the observations made in that judgment.

4. The licensing authority reheard the matter and reiterated his refusal. He passed a detailed order, dated May 20, 1976. The operative portion of this order reads as under :

The site on which the cinema is proposed to be constructed is situate in a thickly populated area. There are educational institutions situate all around this site. The Master Plan prepared for this town of Jaipur does not permit any cinema being built there. There are three roads around this site; and if a cinema building is allowed to be constructed there, it will create unmanageable traffic and law and order problems. The Chief Town Planner has also objected to grant of the "no objection certificate" as applied for. In the circumstances, I do not consider it proper to grant permission for the construction of a permanent building for a cinema on this land. The application is liable to be and is hereby rejected.

5. Aggrieved by this order, Gyan Devi filed another writ petition (S. B. Civil Writ petition No. 1652 of 1976) which was allowed by this Court (G. M. Lodha, J.) on July 18, 1978. The operative portion of the order passed by Lodha, J. reads as under :--

The writ petition is therefore accepted. The impugned order, dated May 20, 1976, is quashed. The respondent No. 2, Collector and District Magistrate, Jaipur is directed to issue "no objection Certificate" in the form prescribed in Form B attached to the Rajasthan Cinemas (Regulation) Rules after ensuring that conditions of letter dated. 19-8-74 subject to such modification as he may deem proper, are complied with by the petitioner, who has shown his willingness to comply the same in this court. In

doing so, he should further ensure that there is no further inconvenience to public of that locality as rights of society are always more valuable than that of one individual citizen. As the matter has been enough delayed and eight years have already passed, the District Magistrate, Jaipur, should comply with the directions of this Court within a period of eight weeks.

6. The respondents in the writ petition (i. e. the State of Rajasthan and the Collector, Jaipur) filed a special appeal from the aforementioned order of Lodha, J. A Division Bench of this Court, by its judgment, dated. Sept. 13. 1979, affirmed the order of Lodha J. to the extent he had quashed the order of the licensing authority, dated. May 20. 1976. The Division Bench allowed the appeal in part inasmuch as it set aside the directions issued by Lodha J. to the licensing authority. Instead, the Division Bench directed the licensing authority to decide the application of Gyan Devi for a "no objection certificate" objectively by giving detailed reasons for grant or refusal of such application "after taking all relevant facts and circumstances into consideration as required under Rule 16 of the Rules and Section 5A of the Act".

7. Aggrieved by the order of the Division Bench. Gyan Devi made an application under Article 136 of the Constn. of India to the Supreme Court for special leave to appeal from the judgment of the Division Bench. After notice to the State of Rajasthan and the Collector, Jaipur, the Supreme Court disposed of the matter by a short judgment dated, May 9, 1980, which reads as under :

Special leave to appeal granted.

Heard learned counsel for the appellant as well as the respondents. Having regard to the facts and circumstances of the case which have been placed before us, particularly in view of the facts stated in the affidavit of Shri K.K. Sabikhi, Addl. District Magistrate Jaipur City which was filed by the respondents as directed by this Court on previous occasion, we are satisfied that the order passed by Justice Lodha, dated. 18th July. 1978 was perfectly justified. From the materials placed on record, it is difficult to say that any valid objection could be sustained to the grant of "no objection certificate" under Rule 16. No other circumstances were shown by reason of which the "no objection certificate" could be withheld. The impugned order of the Division Bench is therefore set aside and that of Justice Lodha is restored. The "no objection certificate" will be issued within two weeks from today. There will be no order as to costs.

8. Now, a few words as to what the petitioners in the writ petition in hand have to say about their standing in the matter. Geeta Bajaj, petitioner 1, claims to be Secretary of Balmandir, Moti Doongri. Govind Marg, Jaipur, Vidya Ratan Bhatnagar, petitioner 2, is a retired Chief Engineer, P.W.D. (B&R)", Rajasthan Government, now residing at Govind Marg, Jaipur. Laxman Dass, petitioner 3, claims to be Honorary Secretary of Dadu Maha Vidyalaya, Moti Doongri Road, Jaipur. Dharam Sindh, petitioner 4, is a Serving Deputy Secretary of the Rajasthan Government, residing at

Govind Marg. Jaipur. Shanti Chand Misra, petitioner 5, is the Head Master of Anandilal Poddar School for Deaf and Dumb, Jaipur. Parmanand. petitioner 6 is Honorary Secretary of R. H. I. T. Centre, Moti Doongri Road, Jaipur. All the six petitioners were allowed by the Division Bench of this Court to intervene on questions of law arising for decision by the Division Bench in the special appeal mentioned above. After the judgment of the Supreme Court, reproduced above, they moved an application, dated Oct. 7, 1980, before the Supreme Court for a re-hearing of the appeal decided by the Supreme Court on May 9, 1980, on the allegations that they are all residing within a radius of one furlong from the site where Gyan Devi proposes to construct a cinema building and that in opposing the construction of the cinema building they are representing, besides their own interest, the public interest as well. They complained that Gyan Devi had not impleaded them as parties to the SLP before the Supreme Court and that they had not been aware of the institution or pendency of the SLP before the Supreme Court. They pleaded that for all practical purposes they had become, as interveners, parties to the litigation and that Gyan Devi ought to have impleaded them as parties to the special leave petition. Counsel for Gyan Devi appeared before the Supreme Court when the petitioner's application for a rehearing of the appeal came up for admission. By its order dated. Oct. 21, 1980, the Supreme Court rejected the petitioners' request for a rehearing in these words :--

Heard Dr. Singhvi for the applicants in CMP No. 12392 of 1980. We are clear in our mind that the order passed by the court on 9-5-1980 in Civil appeal No. 1061 of 1980 does not bind the applicants. It would be open to the applicants to take such steps or adopt such remedies as may be available to them and obtain appropriate orders from appropriate authorities. Since the applicants are not parties to the matter either in the High Court (except as interveners on points of law) or to the aforesaid appeal in this Court, it is difficult to entertain the application made before us. The application is therefore rejected.

We are expressing no opinion on the materials produced in support of the application.

9. This order of the Supreme Court paved the way for the institution of the present writ petition by the six petitioners described above. They pleaded that it was on the basis of the objections filed by them that the licensing authority had refused to issue the "no objection certificate" applied for by Gyan Devi. They averred that they are "seriously affected and aggrieved in the matter of grant of "no objection certificate/license" to Gyan Devi under the Act and the Rules and as such entitled to oppose such grant. Their main objections to the grant of "no objection certificate" to Gyan Devi may be summarised as follows :--

(i) The site where the cinema building is proposed to be constructed is situate in a thickly populated area.

- (ii) A number of educational institutions are situate within a radius of 200 meters from this site.
- (iii) A women's hostel attached to Balmandir is situate close to this site.
- (iv) Anandilal Poddar Institute for Deaf and Dumb, and a trainins school and hostel for physically handicapped is also situate within a radius of 200 meters of this site.
- (v) Government Jaykaylon Hospital for mother and child is situate within a readius of 200 meters of this site.
- (vi) Shiv temple, Vaishnav temple of Gordhanji, a mosque and a mazaar are also situate within a furlong of this site.

The petitioners pleaded that the no objection Certificate as applied for by Gyan Devi cannot be granted consistent with the requirements of Section 5-A of the Act and the Rules, especially Rule 16. They also referred in this connection to the provisions of the Rajasthan Urban Improvement Act, 1959 and the Master Plan for Jaipur approved and published according to Section 7 of the said Act, and Rule 4 of the relevant rules framed under the said Act. According to them the site in question is situate in a residential area earmarked as such in the Master Plan and therefore no cinema building can be allowed to come up in this area.

10. It is on the basis of these averments that the petitioner prayed for an appropriate writ, order or direction restraining the State of Rajasthan and the licensing authority from issuing any "no objection certificate" license or permission under Rule 16 of the Rules in favour of Gyan Devi, and the Urban Improvement Trust Jaipur from sanctioning any plan or scheme for the construction of a cinema building on the site in question. They also prayed for a prohibitory order restraining Gyan Devi from erecting any cinema building on that site.

11. Gyan Devi, respondent 2, contested this petition and filed a lengthy reply to it. The State of Rajasthan, Collector Jaipur and Urban Improvement Trust Jaipur (respondents 1, 3 and 4 respectively) entered appearance through their counsel, but did not file any written reply in answer to this petition. They do not seem to be contesting this petition. Gyan Devi denied that the site in question is situate in a thickly populated area. She admitted that the Master Plan for Jaipur does not make any provision for a cinema building in this locality. She however pleaded that the Master Plan does not make any provision for any cinema building as such in any of the localities indicated in the Master Plan, and that even then after the approval of the Master Plan and its publication in the Gazette, one cinema known as "Ankur" has already been constructed at the Agra Road and four other cinemas are under construction in other areas of the town. She admitted that her application for a "no objection certificate" u/s 5-A had been rejected by the licensing authority on June 16,. 1972, and that her appeal from that order had been rejected by the appellate authority on October, 24, 1972, She admitted that she had filed a writ petition in this

court and obtained an order from it quashing the aforesaid orders, dated. June 16, 1972, and Oct. 24, 1972. She further admitted that even after the remand of the case by this Court to the licensing authority for a fresh decision the licensing authority refused to grant the "no objection certificate" to her. She also admitted that some of the present petitioners had appeared before the licensing authority and filed objections to her application for a "no objection certificate." but added in this context that they had no locus standi in the matter and that therefore she was justified in not impleading them as parties to her writ petition mentioned above. She of course admitted that she had obtained an order from this Court (G.M. Lodha J) on July 18, 1978, directing the licensing authority to issue "no objection certificate" to her in Form B annexed to the Rules and that the said order was restored and affirmed by the Supreme Court who set aside the order of the Division Bench to the contrary. She also admitted that by its order dated Oct. 21, 1980, the Supreme Court had observed that the petitioners are not bound by its order restoring and affirming the order of Lodha J. and that it would be open to the petitioners to take such steps or adopt such remedies as may be available to them and obtain appropriate orders from appropriate authorities.

12. Gyan Devi further pleaded that the licensing authority had already granted her on May 23, 1980, "no objection certificate" in compliance with the order of the Supreme Court and that on her representation to the licensing authority some of the conditions prescribed in the "no objection certificate" had been modified by the licensing authority vide its order dated Dec. 16, 1980. She denied that there is any educational institution, hospital, womens" hostel, temple Or mosque within a radius of 200 meters of the site in question. She denied that the matter of grant of "no objection certificate" by the licensing authority u/s 5-A of the Act is governed by the provisions of the Rajasthan Urban Improvement Trust Act. 1959 or the Master Plan for Jaipur prepared under the said Act. She referred in this connection to the provisions of Section 5-A of the Act and pleaded that the matter of permission to construct a cinema building is governed by Section 5-A of the Act and the Rules framed under the Act to the exclusion of all local laws including the Rajasthan Urban Improvement Act, 1959.

13. The contesting respondent Gyan Devi further pleaded that after obtaining the "no objection certificate" from the licensing authority on May 23, 1980, she submitted a building plan for the construction of the cinema to the Urban Improvement Trust Jaipur, and that she did so in compliance with the directions of the licensing authority in that behalf. According to her, the said improvement Trust has already approved her building plan and communicated its approval to her vide letter, dated Feb. 5. 1981.

14. The respondent asserted in the end of her reply that since she had already obtained the "no objection certificate" from the licensing authority on May 23, 1980, and that since the Urban Improvement Trust Jaipur had sanctioned her building

plans on Feb. 5, 1981, the petitioners are not entitled to the prohibitory relief as prayed and that the writ petition is liable to be dismissed.

15. The petitioners filed a rejoinder assailing the respondent's assertion that she has complied with all the requirements of Rule 16 of the Rules for the grant of a license in her favour. They pleaded that Rule 16 which deals with licensing of a building for cinematograph exhibitions postulates the existence of a building to attract its application and that since the respondent had admittedly not constructed any building when she made her application for a "no objection certificate" u/s 5-A, there was no question of her having already complied with the provisions of Rule 16. All that the respondent could have applied for at this stage was for a "no objection certificate" for locating a permanent cinema in the land belonging to her and not for permission to construct a cinema building straightway without approval of the site for such construction. The petitioners also averred that at the time of the institution of this writ petition by them they were not aware of the grant of "no objection certificate" dated May 23, 1980, by the licensing authority and its subsequent modifications, dated Dec. 16, 1980, by the said authority. They also pleaded that they did not have any knowledge about the sanction of the building plans of the respondent accorded by the Urban Improvement Trust Jaipur on Feb. 5, 1981. They, therefore, prayed by way of additional relief that the "no objection certificate" granted on May 23, 1980, as modified on Dec 16, 1980, as well as the sanction of the building plan of the Cinema as accorded by the Improvement Trust on Feb. 5, 1981, may be quashed.

16. The controversy requiring adjudication in this writ petition therefore is whether the "no objection certificate" granted by the licensing authority in favour of Gyan Devi on May 23, 1980, and the sanction of her building plan for a permanent cinema accorded by the Urban Improvement Trust Jaipur on Feb. 5, 1981, pass the test of legal validity on the touchstone of the Act and the Rules. It may be mentioned here that the impugned "no objection certificate" as well as the sanction had either not come into being or were not in the knowledge of the petitioners at the time of the institution of the writ petition and therefore could not be and were not challenged in the writ petition itself. As already mentioned in an earlier part of this judgment the application, as originally filed, was for a writ of prohibition, restraining the licensing authority from issuing any "no objection certificate," license or permissions under Rule 16 of the Rules, and for such writ against the Urban Improvement Trust Jaipur restraining it from sanctioning any plan or scheme for the construction of a cinema building on the site in question belonging to Gyan Devi. Since the grounds on which the original relief was prayed remain unchanged and unamended, and since the petitioners have sought the amended relief in the rejoinder, having regard to the disclosures made by Gyan Devi in her return filed in answer to the writ petition that she had already obtained the "no objection certificate" and sanction for the construction of a permanent building for a cinema, it is but proper that this court should deal with the legality and validity of the "no objection certificate" issued on

May 23, 1980, and the sanction accorded on Feb. 5, 1981. This course is intended to avoid multiplicity of proceedings and thus try to cut-short this litigation which has been hanging fire in one form or the other since Dec. 8, 1970 when Gyan Devi made an application under Rule 4 of the Rules.

17. In order to be able to adjudge the validity of the "no objection certificate" granted by the licensing authority, it may be helpful to know what Gyan Devi had really asked for in her application, dated, Dec. 8, 1970. This was on the face of it, an application under Rule 4. The title of the application mentions in so many words that it was an application in Form A annexed to the Rules and prescribed in accordance with Rule 4. This is how the title of the application reads;--

Form (A)

Application

(See rule 4. Part II)

A reference to Rule 4 would show that it bears the marginal heading of "application for license" and lays down that an "application for the grant or renewal of a license shall be in writing and shall be signed by the applicant." So the application in question was in fact an application for the grant of a license under Rule 4 and not for a "no objection certificate" under Rule 16, or for that matter, under any other rule. It will be presently shown with reference to the Act and the Rules that there is no provision made anywhere either in the Act or the Rules for making an application for a "no objection certificate" or for the grant of such a certificate.

18. What the licensing authority eventually did on May 23. 1980, on the basis of the application, dated Dec. 8, 1970, was to issue, not a license for which Gyan Devi had applied but a "no objection certificate" which to say the least is a highly confusing document Let us have a look at this document here. Its first two paragraphs read as under:--

No Objection Certificate

(Under Section 5A of Rajasthan Cinemas (Regulation) Act 1952)

In exercise of the powers conferred upon me by Section 5A (2) of the Rajasthan Cinemas (Regulation) Act, 1952 I, N.K. Verma, District Magistrate of District Jaipur do hereby grant this certificate in pursuance of the directions contained in the judgment dated 9-5-1980 of Hon"ble Supreme Court in Civil Appeal No. 1061/1980 Smt. Gyan Devi v. State of Rajasthan. that there is no objection to Smt. Gyan Devi Anaj Mandi, Johri Bazar, Jaipur for locating a permanent Cinema on the land measuring 3012.13 Sq. Yds. belonging to Smt. Gyan Devi. Anai Mandi. Johari Bazar, Jaipur.

This site where the Cinema is to be located is specified as below:--

North : Govind Marg :

East: Bal Mandir School

South: Land of Naibji ka Baghaa

West: Moti Doongri Road

This "no objection certificate" was issued subject to 17 conditions including the conditions as to surrendering a portion of the area of the site for the widening of Moti Doongri Road, certain specified setbacks on all four sides specified parking facilities and the like. Two of the conditions (Nos. 15 and 16) which deserve special notice may be reproduced here:--

15. Bye-laws and rules in force laid down by the Government of Local authorities will be followed,

16. The drawing of construction will be got approved by the authorities concerned.

It will be seen that this document is a mixed lot which purports to have been issued u/s 5-A (2) of the Act and the directions contained in the judgment, dated May 9, 1980, of the Supreme Court. Obviously, it was issued in response to the request of Gyan Devi contained in her "application for license" made in the form (Form A) prescribed according to Rule 4 and annexed to the Rules. As already stated above, this was an application for a license and not for a "no objection certificate." If it was intended to issue a license on the basis of this application, it could have been issued, but only in the form prescribed under Rule 3, i. e. Form-C annexed to the rules. No such license was issued by the licensing authority. Instead, he issued what he describes as a "no objection certificate" u/s 5-A (2) of the Act and the directions contained in the judgment of the Supreme Court. The form in which the "no objection certificate" has been issued by the licensing authority is based on Form-B annexed to the Rules which reads:--

Form B No Objection Certificate

(rule 4 in Part II)

In exercise of the powers conferred by Section 5-A (2) of the Rajasthan Cinemas (Regulation) Act, 1952, I.....Collector of.....do hereby grant this certificate that there is no objection to Shri son of resident of village Tehsil Dist...locating a permanent/touring cinema in the land belonging to Shri... at village Tehsil District ...

The site where the cinema is to be located is specified below:--

(Please give here the description of the site as in Form A). This "No objection" certificate is valid for a period of two years in the case of permanent Cinema, and six months in the case of touring cinemas from the date hereof and if within this period the proposed cinema is not put up, a fresh "No objection" certificate should be

applied for.

Given under my hand thisday of 19

Collector or

Licensing Authority

19. It will thus be seen that the "no objection certificate" issued by the licensing authority is substantially is Form B annexed to the Rules. It purports to have been issued u/s 5A (2) of the Act to signify the opinion of the licensing authority that he would have no objection to Gyan Devi "locating a permanent cinema" on the site boundaries where of are given in its paragraph 2. As already explained above, this document cannot, by any stretch of construction, be construed as a license granted in accordance with the provisions of Rules 3 and 4 of the Rules. Nor does this document lend itself to being treated as grant of permission to Gyan Devi u/s 5-A (2) of the Act to construct a permanent building for a cinema. Notwithstanding the mention of Section 5A (2) of the Act in the title and in the opening sentence of this "no objection certificate," this document does not concern itself with either the grant or, refusal of permission to construct a building for a cinema within the purview of Section 5-A (2). It merely certifies that the licensing authority has no objection to the applicant, Gyan Devi, "locating a permanent cinema" on the site in question. Gyan Devi had, indeed, not even applied to the licensing authority for a permission to construct a permanent building for a cinema. All that she had applied for was for a license in accordance with the provisions of Rule 4 of the Rules. She submitted with her application a "site plan" and not a "building plan." She asked for a license under Rule 4 in respect of the proposed site which was described in her application and the accompanying site plan with reference to its boundaries and other sites and buildings within a specified distance from it. As for permission to construct a permanent building for a cinema, the licensing authority made it implicitly clear in condition 16 of the "no objection certificate" that it would have nothing to do with such permission. The licensing authority laid it down as a condition (i. e. condition 16) that "the drawings of construction will be got approved by the authorities concerned," meaning thereby that applicant Gyan Devi will have to approach an authority other than the licensing authority for obtaining sanction of her building plan for a cinema. It was in compliance of this condition that Gyan Devi actually submitted a "building plan" for the construction of a cinema house for approval and sanction by the Urban Improvement Trust Jaipur, which she seems to have thought was the "authority concerned" adverted to in condition 16 of the "no objection certificate" mentioned above. She has placed on the record a letter, dated. Feb. 5. 1981, from the said Trust to her address, communicating to her the approval of the Trust of her drawings plan for the construction of a permanent building for a cinema on this site. Thus, the licensing authority as well as Gyan Devi proceeded on the assumption that grant or refusal of permission to construct a permanent building for a cinema is a subject beyond the competency and jurisdiction of the

licensing authority.

20. After having considered and ascertained above the real nature and scope of Gyan Devi's application, dated. Dec. 8, 1970, and of the "no objection certificate" granted to her on May 23, 1980, on the basis of the said application, we may now proceed to examine the legal validity of the "no objection certificate." A careful study of the Act and the Rules would show that the grant of license under the Act and the Rules is one thing, and grant of permission to construct a cinema thereunder is entirely a different thing. The Act and the Rules deal with these two different subjects differently. To take up the grant of a license first Section 3 of the Act lays down that no person shall give exhibition by means of a cinematograph elsewhere than in a "place" licensed under the Act or otherwise than in compliance with any conditions and restrictions imposed by such license. Section 2 (b) defines "place" to include "a house, building, tent and any description of transport whether by land, water or air." part II of the Rules (i. e. Rules 3 to 15) prescribe the procedure for grant of a license. As explained in Rule 3, a license may either be annual or temporary. Rule 3 further lays down that an annual license may be granted only in respect of a permanent building, while a temporary license may be granted in respect of a temporary building or in respect of any "place" which of course includes a permanent building as well. Rule 4 provides for the making of an application for a license. Such application is required to be made in the prescribed form (i. e., Form A Annexed to the Rules) on a paper bearing a court fee stamp of rupee one and the signatures of the applicant, if the application is for renewal of a license and the license is not renewed before the date of expiry of the license, the licensing authority may, under Rule 8, issue a temporary permit which, as the said rule further provides, shall be deemed to be the license under the Act. An annual license, a temporary license and even a temporary permit under Rule 8 which is deemed to be a license are all required to be issued, as per Rule 3, in the prescribed form (Form C annexed to the Rules). It may be mentioned here that the title of Form C as given by the rule making authority is somewhat misleading inasmuch as it inadvertently mentions "Rule 4 in Part II" instead of "Rule 3 in Part II" as the rule under which the form is prescribed. The rule making authority may look into the matter for necessary correction of the title of Form C as annexed to the Rules.

21. We may now pass on to the subject of grant of permission to construct a cinema building as provided for by the Act and the Rules. Section 5-A of the Act, which was inserted by Section 3 of the Rajasthan Act No. 21 of 1955 makes special provision for cinema buildings and permission to construct such a building. For ready reference, this section may be reproduced here:--

5-A. Special provision for cinema building:--

(1) Nothing contained in any local law in regard to--

(a) the grant of permission for the construction and reconstruction of a building, or

(b) the grant of license for the use of any place or building for any purpose for which such license is required, or

(c) the grant of permission to instal any machinery in any place or building, shall apply to the construction or reconstruction of or the use of, or the installation of any machinery in any place or building to be used exclusively for the purpose of cinematograph exhibitions; and in every such case an application for such license or permission shall be made to the licensing authority under this Act in accordance with the rules, made under this Act.

(2) Subject to the control of the State Government and to any rules made in this behalf, the licensing authority after such enquiry as it deems fit and consulting the local authority concerned may, for reasons to be recorded, either grant or refuse to grant the license or permission applied for.

This section expressly provides, inter alia, that an application for the construction of a cinema building shall be made to and decided by the licensing authority, under the Act and the Rules. It also excludes, in terms the jurisdiction of the local authorities like pan-chayats. Municipalities and Urban improvement trusts under the relevant local laws (e. g., the Rajasthan Panchayat Act, the Rajasthan Municipalities Act and the Rajasthan Urban Improvement Trust Act) in the matter of grant or refusal to grant permission for the construction of a cinema building. Although this interpretation of Section 5-A is quite obvious on the face of it, we may still refer to the "statement of objects and reasons," which necessitated the insertion of this section in 1955, to remove the possibility of doubt, if any, about the interpretation, as given above. Explaining the proposed amendment of the Act inserting Section 5A therein the draftsmen of the amendment introduced the amending bill with the "statement of objects and reasons" which is as under :--

The amendment proposed.....purports to exclude the jurisdiction of the local authorities in respect of buildings constructed for cinema exhibitions. Such jurisdiction is intended to be vested solely in the licensing authority who will consult the local authority concerned before passing any final orders in exercise of the jurisdiction so vested, it may therefore be safely concluded that Section 5A excludes the jurisdiction of the local authorities to grant or refuse to grant permission for the construction of a cinema building and that such jurisdiction has been vested, exclusively in the licensing authority who is, of course, required to consult the local authorities before passing any final orders in the exercise of his jurisdiction.

22. One of the requirements of Section 5A in respect of the construction of a cinema building is that the person desirous of constructing such a building must make an application to the licensing authority for the grant of permission to construct such building and the application must be made "in accordance with the rules made under this Act." Even while dealing with the application, the licensing authority must among other things; comply with the rules and make its decision in accordance with

them. It is a matter of regret that the rule making authority does not seem to have so far taken any notice of and complied with Section 5A of the Act in so far as it postulates the framing of rules in respect of the making of an application for permission to construct a cinema building and in respect of procedure to decide such an application. A perusal of the Rules would show that no rule has so far been made and no form prescribed in respect of either the making of an application for permission to construct a cinema building or of the grant of such permission. This omission becomes even more conspicuous when one realises that express provision is made in the Rules (see Rules 3 and 4 of and Form A and Form C annexed to the Rules) in respect of the making of an application for a license and its grant. This is a very serious omission indeed, having far-reaching consequences for all concerned. This litigation which has been going on in one form or the other for the last 11 years is mainly due to the fact that the rule making authority has not so far attended to the urgent need to frame rules as postulated by Section 5A of the Act.

23. One would be naturally curious to know as to what are the analogous provisions in the various enactments and rules made by the different States in our Union in respect of grant of permission to construct a cinema building. A perusal of such enactments and rules pertaining to the States of Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Kerala, Karnataka, Maharashtra, Madhya Pradesh, Orissa, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal would reveal that only four of them, namely, Andhra Pradesh, Kerala, Karnataka, and Tamil Nadu have enacted provisions similar to the provisions of Section 5-A of the Act. The other ten States namely, Assam, Bihar, Gujarat, Haryana, Maharashtra, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal have not enacted any provision similar to Section 5-A of the Act, with the result that the jurisdiction of the local authorities like municipalities etc. in these ten States under their respective local laws in respect of grant or refusal to grant permission for the construction of a building for a cinema is still intact. As for the States of Andhra Pradesh, Kerala, Karnataka and Tamil Nadu which have enacted provisions similar to Section 5A of the Act, and thus removed the subject of construction of cinema buildings from the jurisdiction of their respective local authorities and instead vested it solely in their respective licensing authorities, it will be seen from the enactments and rules of each of these four States that they have made, unlike the State of Rajasthan, elaborate provisions in their respective enactments and rules in respect of the making of applications for the grant of permission to construct cinema buildings and also in respect of the procedure for dealing with such applications and as to the form in which such permission is to be granted. The relevant Acts passed by the respective legislatures of these four States contain appropriate provisions laying down that while dealing with an application for permission to construct a cinema building, the licensing authority shall apply, as far as may be, the relevant provisions of the Act relating to grant of licenses. The rules framed by these four States contain elaborate provisions in respect of the particulars required to be given in an application for permission to

construct a cinema building and prescribe detailed procedure for dealing with such an application. It is significant to note in this context that the Act (i. e. the Rajasthan Cinemas Regulations Act, 1952) and the rules do not contain any such provision with the result that it is not open to a licensing authority in Rajasthan to apply the provisions of the Act relating to licenses in respect of grant or refusal of permission to construct a cinema building in this State. The Rules themselves do not even indirectly refer to the subject of permission to construct a cinema building. Unlike the rules in the other four States in this category, the Rules do not prescribe any form for making an application for permission to construct a cinema building. If a person chooses to make an application for permission to construct a cinema building, vacuum in the Act and the Rules regarding the form of application notwithstanding, the licensing authority will find himself at sea as he would not know how to proceed about it.

24. This brings me to the question of "no objection certificate". I have scanned the Act and the Rules and find that, except for Form B annexed to the Rules, there is no reference to "no objection certificate", directly or indirectly, anywhere in the Act or the Rules. Form B as annexed to the Rules, purports to derive its sanction, as its title would show, from Rule 4 in part II of the Rules. As already explained, Rule 4 deals with grant of a license and not with a "no objection certificate". The question of grant of a license in respect of a permanent building can arise only after the building has already come UP in accordance with the requirements of law bearing on the construction of a cinema building. Of course, the question of grant of a "no objection certificate" is relevant in the context of a proposal to erect a permanent building for a cinema. In order, however, to be able to issue a "no objection certificate" legally and validly in favour of a person desirous of erecting a cinema building, the licensing authority must show that such person had applied for such a certificate according to law and that the law contains provisions for the grant of such certificate. As already explained Gyan Devi did not make any application for a "no objection certificate". The only application made by her was for a license in respect of a permanent building in accordance with the provisions of Rule 4 which only deals with "application for license" and nothing else. The Act and the Rules do not contain any provision enabling the licensing authority to issue a "no objection certificate". Section 5A (2) of the Act which has been mentioned by the licensing authority in the title of the "no objection certificate" issued by it, and again in the opening sentence of its text, does not deal with this subject at all. All that Section 5A (2) lays down is this and this only that the licensing authority may, after holding such enquiry as it deems fit, and consulting the local authority concerned, for reasons to be recorded, either grant or refuse to grant permission for the construction of a cinema building. Now, as a step in the direction of eventual grant of permission for the construction of a cinema building, the rule-making authority may make a rule prescribing the obtaining of a "no objection certificate" as a condition precedent for such a grant. For example, the States of Assam, Maharashtra, Gujarat, Karnataka,

Madhya Pradesh and Tamil Nadu which perhaps are the only States in the Union to have prescribed, in their respective rules, forms of "no objection certificate" similar to the form given in Form B of the Rules, have all done so in pursuance of the specific requirements in that behalf, as laid down in their rules. The respective rules framed by these States require that a person desirous of constructing a cinema building must first make an application for and obtain a "no objection certificate" from the authority concerned as specified in the respective rules. After obtaining the "no objection certificate" in respect of a site the person concerned is required under the rules to make a formal application to the licensing authority for permission to construct a cinema building on that site. Such application must be accompanied by various documents including the "no objection certificate". In the States like Karnataka and Tamil Nadu which have enacted provision like Section 5A of the Act, the licensing authority is itself competent either to finally grant or refuse to grant permission for the construction of a cinema building. So far as the States of Assam, Maharashtra, Gujarat and Madhya Pradesh are concerned, they have not enacted any provision in their respective enactments similar to Section 5A of the Act, for taking away the jurisdiction of the local authorities in these States to grant or refuse to grant permission for the construction of a cinema building. So, in these four States, the ultimate decision whether to grant or not to grant permission for the construction of a cinema building rests with the local bodies concerned. The rules in these four States specifically lay down that any permission to construct a cinema building granted by the licensing authority shall not dispense with the necessity of obtaining the requisite sanction for the construction of the building from the local body concerned under the respective local laws of these States. The question of obtaining a license to exhibit cinematograph films in a cinema building would arise only after the construction of the building is certified as complete according to rules. All the enactments and rules in various States, including the State of Rajasthan contain detailed provisions regarding the grant of license to exhibit cinematograph films in a permanent building.

25. To sum up the above discussion as to the relevant provisions of the Act and the Rules, in comparison with enactments and rules in some other States, the conclusions which clearly emerge from it may be stated as follows :

(i) In all the enactments of various States and the rules framed by them including the Act made by the legislature of the State of Rajasthan and the Rules framed thereunder, it is made abundantly clear that "grant of a no objection certificate", "grant of a permission to construct a cinema building" and "grant of license to give cinematograph exhibitions" are three different stages, in that order, of, so to say the journey, which a person, desirous of constructing a cinema building on a particular site and of obtaining a license to give cinematograph exhibitions therein, has to cover successfully.

(ii) The Act and the Rules adequately provide for the making of an application for a license and for the grant of a license. No provision is made in the Act or the Rules for making an application for a "no objection certificate" or for the grant of such a certificate.

(iii) Form B annexed to the Rules which bears the caption "no objection certificate" and purports to have been prescribed according to "Rule 4 in part II" is a document without any legal sanction behind it. There is nothing in the Rules, much less in Rule 4 of part II, which may be construed as requiring the obtaining of such a certificate or as conferring a power on the authority concerned to prescribe this form.

(iv) The relevant provisions of the Act and the Rules relating to licenses are not applicable to grant of permission to construct a cinema building, because unlike the legislatures of the four States (i. e. Andhra Pradesh, Kerala, Karnataka and Tamil Nadu) which have enacted provisions similar to Section 5A of the Act, the legislature of the State of Rajasthan has not enacted any provision enabling the licensing authority to deal with an application for permission to construct a cinema building in the same manner, as far as may be, as it would deal with an application for the grant of a license under the Act and the Rules.

(v) Section 5A of the Act which makes special provision for cinema buildings suffers from a serious hiatus. While laying down that an application for permission to construct a cinema building "shall be made to the licensing authority under the Act in accordance with the rules made under this Act" no such rules have been made so far providing for the form of the application and the particulars which are required to be given therein. The absence of the rules in that behalf would not have been so acutely felt, if the legislature had, like the legislature of States of Tamil Nadu, Kerala and Karnataka, added another sub-section to Section 5A of the Act to the effect that "the licensing authority shall thereupon grant or refuse permission, and the provisions of the Act relating to license shall as far as may be, apply to permission under the Act."

26. It will thus be seen that the only provision in the Act which deals with the question of construction of a cinema building is Section 5A and the same does not go beyond enacting that an application for construction of a cinema building shall be made to the licensing authority under this Act in accordance with the rules made under this Act, and that the licensing authority may thereupon subject to the control of the State Government and to any rules made in this behalf and after such enquiry as it deems fit and consulting the local authority, either grant or refuse to grant the permission applied for. As already pointed out, no rules have been framed in respect of the application to be made for such permission; and the rules relating to licenses are not applicable to such application. A person desirous of constructing a cinema building is thus free to make an application for the purpose in any form he likes giving such particulars therein as he chooses to give, what is however of crucial importance in this section is that in order to decide the application one way or the

other, the licensing authority must (i) hold an enquiry (ii) consult the local authority concerned and (iii) comply with "any rules made in this behalf." Moreover, he is also required to record reasons for his decision. The "enquiry" envisaged by Section 5A (2) of the Act would necessarily involve members of the public, especially the residents of the area in which the proposed site for the construction of a cinema building may be situated, who might feel personally aggrieved in the event of the permission applied for being granted. The only reasonable way to hold such enquiry, even the bare minimal of enquiry as deemed fit by the licensing authority, would require notifying the public by displaying a notice prominently at the proposed site and by publication in the newspapers or otherwise that the applicant desires to put up a cinema building at that site and that objections to the proposal may be filed with the licensing authority in that behalf. This interpretation as to the minimum scope of enquiry is implicit in the very requirement of holding of enquiry and in the further requirement that the licensing authority must record reasons for its decision either to grant or refuse to grant the permission applied for. A study of the rules framed by other States (see for example the rules promulgated by the States of Maharashtra, Gujarat, Karnataka, Madhya Pradesh, Kerala and Tamil Nadu) would also reveal that they have all made rules for notifying the application to and inviting objections from the public to the application for permission to construct a cinema building at the proposed site. This is indeed the only way to give some meaning as to the two requirements in Section 5A (2) regarding the holding of enquiry and the recording of reasons for the decision. Section 5A (2) would not be workable without reading it in this manner.

27. It may also be helpful, in the context of interpretation of Section 5A (2) of the Act, to refer to Rule 16 of the Rules. This rule deals with the grant of license in respect of a permanent building and may, therefore, at first blush, sound somewhat out of place in the context of an application for permission to construct a cinema building. A close study of this rule would reveal that it is relevant even at the stage of considering an application for permission to construct a cinema building. The rule reads as under :--

16. Situation, (1) No permanent building except that already licensed at the commencement of these rules shall be licensed for cinematograph exhibitions if it is situated :--

(a) within a radius of one furlong from :--

(i) any residential institution attached to recognised educational institution such as college, a high school or girl's school: or

(ii) a public hospital with a large indoor patient ward; or

(iii) an orphanage containing one hundred or more inmates, or

(b) in any thickly populated residential area which is either exclusively residential or reserved or used generally for residential as distinguished from business purposes.

(2)

Bearing in mind the fact that in the situation as specified in Clauses (a) and (b) above, the licensing authority is prohibited from granting any license in respect of a cinema building which has already come up, it is reasonable to assume that while dealing with an application for permission to construct a cinema building filed u/s 5A of the Act, the licensing authority shall have due regard to the provisions of Rule 16, for if he were to grant such application and permit a cinema building to come up without taking into consideration the provisions of Rule 16, he would discover later that the building in question cannot be licensed for cinematograph exhibition without compliance with the provisions of this rule and that therefore the entire expenditure of money on the construction of the building was a sheer waste. It is therefore reasonable to hold that Rule 16 is relevant even in the context of an application for permission to construct a cinema building, more so because the rule making authority in Rajasthan has not so far made any rules to give effect to the provisions of Section 5A of the Act. The only way to let this rule have some meaning at the stage of consideration of an application for permission to construct a cinema building is to notify the said application to the public and invite objections on the basis of this rule and decide them before granting the permission applied for. This rule also therefore confirms the correctness of the interpretation of Section 5A (2) of the Act to the effect that the enquiry contemplated by that section will not be feasible without inviting objections from the public to the proposal to construct a cinema building on a particular site and deciding those objections in the light of Rule 16 and other relevant provisions of the Rules.

28. It may again be mentioned here that Gyan Devi has not so far, made any application to the licensing authority u/s 5A of the Act for grant of permission to construct a cinema building. The only application made by her to the licensing authority was under Rule 4 of the Rules for the grant of a license. No enquiry could therefore be or was held by the licensing authority as contemplated by Section 5A (2) of the Act and explained above for the grant of permission to Gyan Devi to construct a cinema building, or even for granting a no objection certificate regarding the site. Instead, the licensing authority seems to be labouring under the erroneous impression that the eventual grant or refusal of such permission is a matter lying exclusively within the jurisdiction of the local authority concerned, i. e. the Urban Improvement Trust Jaipur. The so-called no objection certificate Granted by the licensing authority on May 23. 1980 even if it be assumed that such a no objection certificate could have been validly granted u/s 5A (2) of the Act is not valid for the simple reason that Gyan Devi had not even applied for such a document u/s 5A (2), and then no enquiry as contemplated by Section 5A (2). as interpreted in an earlier part of this judgment, was ever held by the licensing authority. The

impugned no objection certificate is therefore held to be invalid and inoperative in the eye of law.

29. This brings me to the question of the sanction accorded by the Urban Improvement Trust Jaipur to the drawings and plans of Gyan Devi for the construction of a permanent building for a cinema at the site in question. It has already been held that the jurisdiction to grant such sanction under the Act solely vests in the licensing authority. The only role assigned to a local authority like the Urban Improvement Trust in the matter of sanction of a building plan for a cinema is that of a consultee on a reference made to it by the con-sutor, i. e. the licensing authority, seeking its advice in the matter. The Urban Improvement Trust has no jurisdiction either to entertain an application from the party concerned for permission to construct a cinema building or to accord such permission by itself. That being so, the sanction by the Urban Improvement Trust Jaipur of Gyan Devi's plan for constructing a cinema building on the proposed site as communicated to her, vide the letter of the said Trust, dated, Feb. 5, 1981, is also invalid and inoperative,

30. Before parting with the discussion regarding the twin issues of the validity or otherwise of the "no objection certificate" issued by the licensing authority on May 23, 1980, and of the sanction of Gyan Devi's plan for the construction of a cinema on the proposed site as accorded by the Urban Improvement Trust, Jaipur, and communicated to her vide letter, dated, Feb. 5, 1981, it may be mentioned here that lengthy arguments were addressed by Mr. C.N. Sharma, learned counsel for the petitioners in support of his contention that the impugned "no objection certificate" could not have been validly granted by the licensing authority without strict compliance with the provisions of Sections 72 and 73, Rajasthan Urban Improvement Act. 1959, and that since according to the master plan sanctioned and published for the town of Jaipur in accordance with the provisions of the said Act, the area in which the proposed cinema site in dispute is situate is a residential area the site in dispute cannot be legally approved for the construction of a permanent building for a cinema. Mr. Sharma further argued that the site in dispute is situate in a thickly populated area and within a radius of 200 meters from a number of educational institutions and a women's hostel attached in a Balmandir. He referred to a number of documents on the file in support of this argument. Mr. G.C. Kasliwal learned counsel for respondent Gyan Devi, argued equally vehemently with reference to the documents on record that there is no recognised educational institution situate within a radius of 200 meters of the site in dispute and that there is no women's hostel attached to any such institution. He also argued that the area in which this site is situated is not a thickly populated area and that there is nothing in the master plan which might be construed as a prohibition against the approval of the site for the construction of a cinema building on it,

31. I need not dilate on the rival arguments mentioned above in view of my opinion recorded earlier in this judgment, with reasons, that Section 5A of the Act expressly excludes the application of all local laws including the Rajasthan Urban Improvement Act, 1959, in regard to the grant of permission for the construction and reconstruction of a cinema building. Of course, the views of the Urban Improvement Trust, as a consul-tee of the licensing authority u/s 5A (2) will have to be, as discussed earlier, given due weight by the licensing authority while deciding the question of grant or refusal of permission for the construction of such a building. But that is not the same thing as the argument that the licensing authority must himself apply the provision of the Rajasthan Urban Improvement Trust Act, 1959, in regard to the grant of permission for the construction of a cinema building. Similarly, in view of my opinion that Gyan Devi has not so far applied to the licensing authority either for permission to construct a cinema building or a no objection certificate for the construction of such a building, and that since no enquiry, as contemplated by Section 5A (2) of the Act as interpreted herein, has so far been held by the licensing authority, no valid "no objection certificate" or permission could possibly be granted by the licensing authority u/s 5A (2) of the Act, it is not necessary to deal with the controversy as to whether the site in dispute comes within the mischief of Rule 16 of the Rules or not. This is a matter which had better been left for derision by the licensing authority on the basis of such evidence and material as may be produced before him by the interested parties in the course of enquiry u/s 5A (2) of the Act arising out of such application as might be made to him under that section by Gyan Devi in respect of the site in dispute.

32. Turning now to the locus standi of the petitioners to file this application for certiorari and prohibition under Article 226 of the Constn. it may be mentioned here that they are all residents of the locality in which the proposed cinema site in dispute is situate and they complain that if a cinema building is allowed to come up at this site, it would adversely and prejudicially affect their proprietary and other interests as residents of the locality. They were earlier allowed by a Division Bench of this Court to intervene in the appeal arising out of the writ petition filed by Gyan Devi in respect of this site. Even the order passed by the Supreme Court on their application for review on Oct. 21, 1980, and reproduced in an earlier part of this judgment would indicate that their locus standi to file this writ petition can hardly be questioned.

33. It is true that none of the petitioners was, strictly speaking, a party to the proceedings either before the licensing authority who granted the impugned "no objection certificate" or before the Urban Improvement Trust who granted sanction of the building plan for a cinema at the site in dispute. But, as pointed out by the authors of the celebrated treatise "AIR Commentaries on the Constitution of India, Vol. III, 2nd (1971) Edn.", p. 631, the only difference between an application for certiorari or prohibition by a party and such an application by a stranger is this that while in the former case, on its being shown that a court or quasi judicial tribunal

has clearly acted without jurisdiction, a writ will issue ex debito justitiae, while in the case of an application by a stranger the writ will not issue ex debito justitiae but only in the discretion of the Court. This view is supported by authority. In [Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others](#), their Lordships held that in exceptional cases, a stranger having no proprietary or even fiduciary interest in the subject matter of the dispute may be granted certiorari or prohibition on his showing that the court or tribunal concerned has acted without jurisdiction and that the act or omission of that court or tribunal has affected him prejudicially. It is obvious that the petitioners, as residents of the locality are possessed of such a standing, in respect of Gyan Devi's scheme to put up a cinema building in that locality, which entitles them on their showing lack of jurisdiction in the authorities concerned, to the grant of writs in the nature of certiorari and prohibition as prayed.

34. For all these reasons, I allow this writ petition and quash both the "no objection certificate" granted by the licensing authority on May 23, 1980, as well as sanction of her buildings plan to construct a cinema, as communicated to her by the Urban Improvement Trust, Jaipur, vide their letter, dated, Feb. 5, 1981. It may however, be added here that Gyan Devi will still be free to make an application to the licensing authority u/s 5A of the Act for permission to construct a cinema building on the site in dispute and, if such an application is made, the licensing authority shall have to decide it according to law. It is earnestly hoped that the legislature and the rule-making authority concerned will in the meantime amend the Act and the Rules to fill in the gaps therein and remove the defects and ambiguities therefrom as pointed out at different places in this judgment.

35. In the facts and circumstances of the case, the parties are left to bear their own costs.