

(2001) 11 AP CK 0003

Andhra Pradesh High Court

Case No: Writ Petition No. 21132 of 2001

G. Rajendra Prasad

APPELLANT

Vs

Municipal Commissioner,
Gajuwaka Municipality

RESPONDENT

Date of Decision: Nov. 12, 2001

Acts Referred:

- Andhra Pradesh Cinemas (Regulation) Act, 1955 - Section 11(2), 5, 6
- Andhra Pradesh Cinemas (Regulation) Rules, 1970 - Rule 7A, 7A(2)
- Andhra Pradesh Municipalities Act, 1965 - Section 209, 211, 217

Citation: AIR 2002 AP 155 : (2002) 1 ALD 559 Supp

Hon'ble Judges: A. Gopal Reddy, J

Bench: Single Bench

Advocate: K. Durga Prasad, for the Appellant; E. Sambasiva Pratap, S.C. for Municipalities in Andhra Area, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A. Gopal Reddy, J.

The petitioner in the instant writ petition assails the action of the respondent in threatening to demolish the three shutters fitted to the existing Sesh Mahal theatre premises, Gajuwaka, Visakhapatnam District without issuing any notice.

2. It is stated by the petitioner that he constructed two cinema theatres, namely, Sesh Mahal and Theatre USSR in Gajuwaka Municipality after obtaining necessary permission from the licensing authority, namely. Joint Collector. Due to heavy losses in the business, he closed the Sesh Mahal theatre in the month of March, 2001 and informed the same to the licensing authority. He also made an application to the licensing authority on 26-2-2001 for using the foir of the theatre by converting it into

three shops under A. P. Cinemas (Regulation) Rules, 1970 (for short "the Cinemas Regulation Rules"). Basing on the said application, the licensing authority called for reports from the various authorities and they have submitted their technical remarks also. It is further stated by the petitioner that he is not making any new construction nor putting any slab at any place, but he simply converting the open space under the foir of the existing Sesh Mahal theatre by putting shutters making the theatre into three shops. Meanwhile, the officials of the respondent Municipality came to the theatre and threatened that they would demolish the unauthorised constructions as the same was made without obtaining any permission. The respondent-Municipality has no right or authority to enter into the premises as the premises is governed by A.P. Cinemas (Regulation) Act, 1955 (for short "the Cinemas Regulation Act") and Rules framed thereunder. Therefore, the petitioner filed the present writ petition stating that in an Identical circumstances, W.P. No. 14773/2001 was filed by the owner of the building and the same was admitted by this Court and also granted interim direction directing the respondent therein not to demolish the construction so made.

3. Learned counsel for the petitioner contends that Section 6 of the Cinemas Regulation Act, which is a special provision, enables grant of permission for construction or reconstruction for the use of the premises by the owner. As per Rule 7-A of the Cinemas Regulation Rules made under the Cinema Regulation Act, and Rules made under the Andhra Pradesh Municipalities Act, 1965 with regard to the matters referred to in Section 6 of the Cinemas Regulation Act shall be made applicable. As per Rule 8(A) any person intending to construct or re-construct the cinema building he is under an obligation to make an application in writing to the licensing authority. The petitioner already made an application to the licensing authority, which is pending. In view of the same, the officials of the respondent-Municipality cannot interfere with the conversion of the open space into three shops by putting shutters and the respondent-Municipality has no jurisdiction to interfere in the matter and that too without issuing any notice.

4. On the other hand, Sri E. Samba Siva Pratap, learned standing counsel for the respondent-Municipality contended that u/s 209 of the A.P. Municipalities Act, 1965 (Act 6 of 1965) (for short "the Municipalities Act") any person who wants to construct or reconstruct a building should make an application in writing for permission to execute the work by complying all formalities. Section 211 prohibits commencement of construction work without obtaining any permission. If any alternation is done, the Commissioner can call upon the petitioner to show cause why the alternation should not be removed. As alternation" falls under "reconstruction" as defined in Section 2(33), the petitioner under an obligation to take permission from the competent authority, and without doing so, he cannot be proceeded with either construction or re-construction or alteration.

5. In view of the above rival contentions, the sole question that arises for consideration is whether the licensing authority i.e. Joint Collector can issue permission for alternation of a cinema theatre into shops within the meaning of Rule 7-A of the Cinemas Regulation Rules and thereby override the provisions of Sections 209, 211 and 217 of the Municipalities Act and Rule 2 of the Building Rules framed thereunder.

6. For proper appreciation of the rival contentions of the partners, it is necessary to refer briefly the statutory provisions :

Section 6 of the A.P. Cinemas (Regulation) Act, 1955 :

6. Special provisions for buildings constructed or reconstructed solely for cinematograph exhibitions:--

(1) Nothing contained in Hyderabad Municipal Corporations Act, 1955 (Act 2 of 1956), or in the Andhra Pradesh (Andhra Area) Places of Public Resorts Act, 1888 (Act 2 of 1988) or in the Andhra Pradesh (Andhra Area) District Municipalities Act, 1920 (Act 5 of 1920), or in the Andhra Pradesh (Andhra Area) Town Planning Act, 1920 (Act 7 of 1920), or in the Andhra Pradesh (Andhra Area) District Board Act, 1920 (Act XIV of 1920) or in the Andhra Pradesh (Andhra Area) Village Panchayats Act, 1950 (Act 10 of 1950) in regard to--(a) the grant of permission for the construction or re-construction of a building, or

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

(c) the grant of permission to install 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 holding of cinematograph exhibitions, and in every such case, an application for licence or permission referred to in any of the Clauses (a) to (c) above shall be made to the licensing authority under this Act, in accordance with the rules made in this behalf under this Act.

(2) Subject to the control of the Government and to any rules made in this behalf, the licensing authority, after making such inquiry as it deems fit and consulting the Chief Executive Officer (by whatever designation he may be known) of the local authority concerned, may, for reasons to be recorded either grant or refuse to grant the licence or permission applied for.

SECTION 7-A OF A.P. CINEMAS (REGULATION) RULES, 1970 :

7-A. Application of rules made under the Acts mentioned in Section 6 of the Act :--

(1) All rules made from time to time, under the Andhra Pradesh (Andhra Area) Places of Public Resort Act, 1818 (Act 1 of 1818), the Andhra Pradesh Municipalities Act, 1965 (Act 6 of 1965), the Hyderabad Municipal Corporations Act, 1955 (Act 2 of

1956), the Andhra Pradesh (Andhra Area) District Boards Act, 1920 (Act XIV of 1920), the Andhra Pradesh (Andhra Area) Town Planning Act, 1920 (Act 7 of 1920), and the Andhra Pradesh Gram Panchayats Act, 1964 (Act 2 of 1964), relating to the matters referred to in Section 6 of the Act and in force immediately before the publication of this Notification in the Andhra Pradesh Gazette, shall so far as may be apply to the matters aforesaid.

(2) All references to a Municipal Council or the Chairman or the executive authority thereof or to the District Board or the president or the executive authority thereof or to the Panchayat or the President or the executive authority in any rule referred to in sub-rule (1) shall be construed as reference to the licensing authority under the Act for the purposes specified in Section 6 and Section 11(2)(a) of the Act.

SECTIONS 209 AND 211 OF THE A.P. MUNICIPALITIES ACT, 1956.

209. Application of Construct or reconstruct buildings :--

(1) If any person intends to construct or re-construct a building other than a hut, he shall send to the Commissioner--

(a) an application in writing for the approval of the site, together with a site plan of the land, and

(b) an application in writing for permission to execute the work together with ground plan, elevations and sections of the building, and specification of the work.

(c) a copy of the title deed of the land duly attested by a Gazetted Officer of the Government together with an urban land ceiling clearance certificate or as the case may be, an affidavit referred to Section 184.

Explanation :-- "Building" in this sub-section shall include a wall or fence of whatever height bounding or abutting on any public street.

(2) Every document furnished under subsection (1) shall contain such particulars and be prepared in such manner as may be required under rules or bye-laws.

211. Prohibition against commencement of work without permission :--

The construction or reconstruction of a building shall not be begun unless and until the Commissioner has granted permission for the execution of the work.

RULE 2 OF THE BUILDING RULES :

2. Application for construction, etc.. of a building :--

(1) Every person who constructs, reconstructs or alters or adds to, a building other than a hut, shall submit an application to the Commissioner for the approval of the site and for permission to execute the work, in the form specified in Appendix "A" to these rules with such variations as circumstances may require.

(2) The application shall be accompanied by-

(1) a site plan (in triplicate) of the land on which the building is to be constructed, reconstructed, or altered or added to drawn or reproduced in a clear and intelligible manner on suitable and durable material as may be notified by the Commissioner and comply with the requirements specified in Appendix "C" to these rules, as far as may be necessary;

(ii) a plan or plans (in triplicate) of the buildings to be constructed, re-constructed or altered or added to, drawn or reproduced in clear and intelligible manner on a suitable and durable material as may be notified by the Commissioner, and showing the ground plan, plan of each floor, elevations and sections of the building and buildings as per the requirements specified in Appendix "D" to these rules; and

(111) a specification (in triplicate) complying with the requirements specified in Appendix "E" to these rules as far as may be necessary.

(3) The application as well as the plans and specifications shall be signed by the owner of the site and building. They shall also be signed by a licensed surveyor, architect or engineer, appointed as per the bye-laws adopted by the council with the approval of the Government.

7. The question is whether the provisions enacted in Rule 7-A of the Cinemas Regulation Rules which saves the application of Ss. 209, 211 and 217 of the Municipalities Act for construction or re-construction of a cinema theatre are valid enabling the authority concerned to grant permission for conversion of a cinema theatre into a commercial complex.

8. It is an admitted fact that the petitioner has closed the Sesh Mahal theatre due to losses and he wanted to use the said theatre by converting the same into three shops. Section 6 of the Cinemas Regulation Act will be applicable only to the buildings constructed or re-constructed and used exclusively for cinematograph exhibitions and only in such cases, an application for license or permission referred to in any of the Clauses (a) to (c) of Section 6 are made application for granting of a license in accordance with rules. Similarly, Rule 8-A deals with submission of application for issuance of No Objection Certificate for construction or reconstruction of the building, or to use the building exclusively for cinematograph exhibition. It is an admitted fact that the petitioner made an application to the licensing authority on 26-2-2001 for converting the cinema theatre into three shops, which cannot be said that the building is new after completion it will be used exclusively for cinematograph exhibition. The contention put forward by Mr. Durga Prasad was that in view of the petitioner obtaining permission for construction of cinema theatre as contemplated u/s 6 of the Cinemas Regulation Act and as per Rule 7-A of the Cinemas Regulation Rules he is not under an obligation to obtain permission for alteration and conversion of fair into three shops from the respondent-Municipality as Cinemas Regulation Act overrides the Municipalities Act.

I am unable to agree with this argument. In the first place Integrated Municipalities Act was passed in 1965 and came into force on 2-4-1965 which repealed A.P. (Andhra Area) District Municipalities Act, 1920 that is to say long after Cinemas Regulation Act, 1955. It is well settled that in spite of the provision or Act mentioned in the non obstante clause the enactment that following it will have its full operation or that provisions embraced in the non obstante clause will not be an impediment for the operation of the subsequent enactment. Admittedly, on repeal of A.P. (Andhra Area) District Municipalities Act, 1920, there is no amendment to Section 6 of the Cinemas Regulation Act incorporating A.P. Municipalities Act, 1965 in place of A.P. (Andhra Area) District Municipalities Act, 1920. Unless Section 6 of Cinemas Regulation Act is amended suitably including Municipalities Act, Rule 7-A will not empower the Joint Collector to issue permission for alteration of cinema theatre or any part thereof into a commercial use. It is well recognised principle of statute that conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of Act or which is inconsistent therewith. Though Sub-rule (2) of Rule 7-A enables the licensing authority under the Cinemas Regulation Act to exercise the powers of Municipal Council or the Chairman or the Executive Authority as per rules under the Municipalities Act for the purpose specified in Sections 6 and 11(2)(a) of Cinemas Regulation Act to grant permission for the construction of a building including cinema theatre which saves the applicability of the rules made under the Municipalities Act the same will not be of any effect, as it cannot be allowed to override the provisions of Municipalities Act, as the same is in excess of the width of authority laid down u/s 6 of the Cinemas Regulation Act. For the reasons aforementioned, the contention put forth by the learned counsel for the petitioner is devoid of substance.

9. This Court in Gram Panchayat Atmakur through its Sarpanch v. Balaram Goud (1986) 2 ALT 113 (sic) after considering the amendment of A.P. Gram Panchayat Act, 1964 vis-a-vis Rule 7-A held that construction made by the owner of a cinema theatre as per the permission granted by the Joint Collector dated 16-12-1985 i.e., after the amendment of A.P. Gram Panchayat Act, 1964 is of no effect and avail and the construction so made under the above permission cannot be said to be valid in view of the fact that Section 6 of the Cinemas Regulation Act was not amended suitably subsequent to A. P. Gram Panchayat Act (Act 2/64) which repeals A.P. (Andhra Area) Village Panchayats Act, 1950. In the absence of the same, permission granted by the Joint Collector is not valid.

10. Even otherwise Rule 7-A and Section 6 operates in a very limited field. It applies only to a limited nature of premises exclusively used for cinematograph exhibitions and only in such cases an application for license or permission referred in Clauses (a) to (c) of Section 6 shall be made to the licensing authority under the Cinemas Regulation Act and Rules made thereunder. Admittedly in the present case as per the petitioner's own saying he made an application for conversion of theatre into

shops, which cannot be said the same is for the purpose of exhibition of films. It is well settled that in construing the provisions of a statute the same cannot be extended beyond the purpose for which the provisions so enacted.

11. Learned counsel lastly contends that without issuing any notice the respondent-Municipality cannot proceed to demolish the unauthorised construction/conversion, if any. No doubt u/s 217 of the Municipalities Act the respondent has to make a provisional order requiring the owner or the builder to demolish the work which has been unlawfully executed and serve the copy of the same on the owner together with notice requiring him to show cause why the unauthorised construction should not be demolished. In view of the same. It is open for the respondent-Municipality to proceed in accordance with law in the event it finds alterations or the alterations so made is not in conformity with the A. P. Municipalities Act or the Rules framed thereunder.

12. For the aforesaid reasons, I find no merit in the writ petition.

13. The writ petition is accordingly dismissed at the stage of admission. There will be no order as to costs.