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STATE OF U.P. AND ANR.

v.

PRAMOD KUMAR SHUKLA AND ANR.

(Civil Appeal No. 2094 of 2008)

MARCH 25, 2008

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[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH
PANTA, JJ.]

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U.P. Cinema Regulation Act, 1955 – ss. 7 and 5(3) – Grant of licence to construct permanent cinema hall to power of attorney holder projecting himself to be the owner – Grant-in-aid also sanctioned – Challenge to, on ground of misrepresentation – Grant-in-aid set aside and recovery order passed – Writ petition allowed by High Court – On appeal held: High Court misconstrued the nature of dispute – It could not have decided as regards the fraud practiced in the writ petition – Power to revoke and cancel license is available to the Appropriate Authority u/s 7 – Thus, order of High Court set aside and matter remitted back to it – Grant-in-aid.

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The respondent's grand father was the original owner of a cinema hall which was granted temporary permit. He appointed respondent as the power of attorney holder. Thereafter, the respondent filed an application for construction of cinema hall permanently as the owner of the cinema hall. He suppressed the fact that his grandfather had expired. The District Judge granted the license on the premise that the respondent was the owner of the Cinema hall. The grant-in-aid was sanctioned. The respondent was issued notice alleging that the permission for operating permanent cinema hall was obtained by misrepresenting himself to be owner. The respondent was to show cause as to why grant-in-aid and application for renewal should not be cancelled. The District Magistrate passed an order that the respondent

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was not entitled to the grant-in-aid under the Government Order since he had concealed the facts that he was not the owner. The recovery order was passed and grant-in-aid sanctioned was set aside. Respondent filed application for renewal of licence which was rejected. Respondent then filed writ petition which was allowed. Hence the present appeal.

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Allowing the appeals and remitting the matter, the Court

HELD: The High Court seems to have completely lost sight of the nature of the controversy and the dispute. Whether there was any fraud practiced could not have been decided in the Writ Petition. Under section 7 of the U.P. Cinema Regulation Act, 1955, the power to revoke and cancel the license is available to the appropriate authority. It appears that the High Court has not examined the question as to what is the effect of the death of the appellants' grand father-original owner. It has also not examined the acceptability of the claim of respondent that he was the owner of the Cinema Hall in which capacity he had applied for the permanent licence. These have considerable bearing on the subject matter of dispute. The High Court has come to an abrupt conclusion without analyzing the factual and applicable legal position. Thus, the impugned order of the High Court is set aside and the matter is remitted to it for fresh disposal in accordance with law. [Para 7] [498-F-H; 499-A-B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2094 of 2008.

From the final Judgment and Order dated 22.02.2005 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 33291 of 2004.

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Civil Appeal No. 2095 of 2008.

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A Shail Kr. Dwivedi, AAG., Krishnan Venugopal, Ravindra Kumar, Gunnam Venkateswara Rao, Kuldip Singh, Dhruv Mehta, P.N. Puri, Dhiraj, Reeta Dewan Puri, R.K. Pandey, T.P. Mishra and Kamlendra Misra for the Appearing parties.

B The Judgment of the Court was delivered by
DR. ARIJIT PASAYAT, J. 1. Leave granted.

C 2. These two appeals arise out of a common judgment of the Allahabad High Court allowing the Writ Petition (Civil Misc. Writ Petition No.33291/2004) and holding that no further order need be passed in the connected Writ Petition (Civil Misc.W.P.37610/2004) in view of the order of the former case.

D 3. Challenge in the first writ petition was to the order passed by the District Magistrate, Allahabad dated 2.8.2004 holding that respondent-Pramod Kumar Shukla had received grant in aid to the tune of Rs.21,27,551.13 between 2.4.1990 to 1.4.1995 under Government Order dated 21.7.1986 by concealing facts and by practicing fraud. It was pointed out that he had concealed the fact that he was not the owner and was not, therefore, entitled to receive the grant in aid. Therefore, in exercise of powers conferred under Section 5(3) of the U.P. Cinema Regulation Act, 1955 (in short the 'Cinema Act') order of recovery was given and grant in aid sanctioned to him vide office order No.299 dated 10.4.1990 was set aside. Application for renewal dated 1.7.1994 submitted by said Pramod Kumar Shukla was rejected
E in exercise of powers conferred under Section 21 of the U.P. General Clauses Act, 1904 (in short 'General Clauses Act').
F Further order was passed under Section 12(1) of the U.P. Entertainment Tax Act, 1979 (in short 'Entertainment Act') directing him to deposit the amount of entertainment tax collected
G by such cheating and fraud during 2.4.1990 and 1.4.1995 amounting to Rs.21,27,551.13.

4. Background facts which are almost undisputed run as follows:

H Respondent-Pramod Kumar Shukla is the son of Shri

Satya Prakash Shukla who is the appellant in appeal arising out of SLP (C) No.11752/2006. A Cinema Hall named "Girija Chitralaya" was granted temporary permit for six months. Undisputedly, on 10.11.1986 the original owner Shri Girija Shankar Shukla had executed a Power of Attorney appointing his grandson Pramod Kumar Shukla as the Power of Attorney holder. The said Power of Attorney was executed on 10.11.1986 and was registered with the Sub-Registrar, Farukkhabad on 14.11.1986. On 31.10.1988 permission was granted to construct a permanent cinema hall. Pramod kumar Shukla had made an application on 6.9.1988 suppressing the fact that Girija Shankar Shukla had expired on 31.3.1987. In the application filed, Pramod Kumar Shukla described himself as the owner of Cinema Hall and indicated in the application that he was running a temporary cinema hall and wanted to construct a permanent cinema building on the concerned plot of land. Interestingly, he did not apply as a Power of Attorney holder but stated that he was the owner. Permission was granted on certain conditions by the District Magistrate, Allahabad.

It is the stand of the appellants that Pramod Kumar Shukla falsely represented himself as the owner and the licence was granted on the premises that Pramod Kumar Shukla was the owner of the Cinema Hall. His father Satya Prakash Shukla made a representation and, therefore, there was no renewal of the licence which operated from 30.3.1990 to 31.3.1993 both days inclusive. A show cause notice was issued on 19.6.2004 alleging that the permission granted for operating the permanent Cinema Hall was obtained by suppressing the factual position by Pramod Kumar Shukla mis-representing himself to be the owner. Notice was given to show cause as to why the amount of grant in aid which was obtained by fraud and by concealing the facts shall not be recovered under Section 12(1) of the Entertainment Act and the grant in aid sanctioned by order No.299 dated 10.4.90 should not be cancelled and the application for renewal of licence should not be rejected.

In grant in aid order dated 10.4.1990, Pramod Kumar

A Shukla was indicated to be the licensee. The order passed by the District Magistrate was challenged in the Writ Petitions. The High Court after referring to the factual scenario came to hold that the order was passed without applying mind and with undue haste. It was noted that the authorities should have taken appropriate legal help to understand how far such executive authority can go to determine the issue. It was not a case of fraud between an individual and the State by which the revenue exchequer would suffer but was a dispute between the father and the son and without ascertaining the position either by Civil Court having appropriate jurisdiction in respect of right, title and interest of the property and accounts or by Criminal Court as regards proof of fraud and determination in respect of forgery taking help of appropriate mechanism, the order impugned was passed which was illegal.

D 5. Learned counsel for the appellants has submitted that the High Court completely mis-construed the nature of the dispute. It lost sight of the fact that Pramod Kumar Shukla had fraudulently projected himself to be the owner which admittedly he was not. The fact that the executor of the Power of Attorney had died in 1987 much before the application for renewal and/or application for permanent Cinema Hall was filed was not disputed.

F 6. Learned counsel for the respondent-Pramod Kumar Shukla on the other hand supported the judgment of the High Court stating that in a case of this nature the Collector should not have passed the impugned order. His claim was that there was a family settlement and certain documents executed by his father Satya Prakash Shukla clearly established that he was the owner of the Cinema Hall.

G 7. The High Court seems to have completely lost sight of the nature of the controversy and the dispute. Whether there was any fraud practiced could not have been decided in the Writ Petition. Under Section 7 of the Cinema Act the power to revoke and cancel the license is available to the appropriate

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authority. It appears that the High Court has not examined the question as to what is the effect of Girija' death. It has also not examined the acceptability of the claim of Pramod kumar Shukla that he was the owner of the Cinema Hall in which capacity he had applied for the permanent licence. These have considerable bearing on the subject matter of dispute. The High Court has come to an abrupt conclusion without analyzing the factual and applicable legal position. That being so, we set aside the impugned order of the High Court and remit the matter to it for fresh disposal in accordance with law. We request the High Court to dispose of the matter within 4 months from today.

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8. The appeals are allowed to the aforesaid extent with no order as to costs.

N.J.

Appeals allowed.