

VED GUPTA

v.

APSARA THEATRES

August 11, 1983

[D.A. DESAI AND V. BALAKRISHNA ERADI, JJ.]

Jammu and Kashmir (Cinematograph) Act, 1989 (1933 A.D.)—Licence for exhibition of cinematograph films in a theatre—Whether it constitutes an interest attached to the premises in which cinematograph is installed?—When premises and cinematograph are owned by a partnership and the licence is held by a partner in his individual capacity, whether the partnership firm acquires any interest in the licence?—Whether s.6F lends support to such a view?

The appellant, purporting to Act on behalf of a partnership consisting of himself, Todar Mal and Krishan Kumar, applied for and obtained permission in his individual capacity to construct a cinema theatre on a plot of land which was taken on lease jointly by all the three of them after the application for the permission was made but before the same was granted. They entered into a partnership along with 11 others for carrying on the business of constructing and running a cinema theatre and the deed of partnership contained a clause that the plot of land as well as the permission obtained for constructing the theatre shall be the property of the firm. On completion of the construction the appellant applied for, in his own name, and obtained in his personal capacity, a licence to exhibit cinematograph films at the Theatre. The partnership was re-constituted on retirement of two partners and the new deed executed by the remaining partners also contained a clause that the firm shall have the right to operate the licence. An application for inclusion of the names of Todar Mal and Krishan Kumar in the licence was rejected by an order of the Licensing Authority who held that the appellant was the sole licensee and the said order became final. Another application for renewal of the licence in the name of the Theatre on the ground that the appellant had been expelled from the partnership was also rejected by an order of the Licensing Authority which was not challenged. Thereafter when, in a suit instituted for a declaration that the licence was the property of the firm, the trial court issued an injunction restraining the appellant from interfering with the possession and running of the Theatre by some of the partners of the firm, the appellant wrote to the Licensing Authority disclaiming responsibility for any acts of commission or omission committed by others in the premises of the Theatre. The Licensing Authority, acting on a report from the police that films were being exhibited in the Theatre by persons other than the licensee, ordered suspension of exhibition of films at the Theatre. A writ petition challenging the validity of this order filed in the name of the Theatre was dismissed by a Single Judge of the High Court. In the Letters Patent Appeal heard by a Division Bench consisting of the Acting Chief Justice another Judge of the High Court the Acting Chief Justice held that the impugned order was void but the other Judge agreed with the view of the Single Judge who had dismissed the petition earlier. In view of

A the divergence of opinion, the matter was referred to the only other Judge available in the High Court, but he having declined to hear the same for good reason, the Division Bench decided under sub-r. (3) of r. 23 of the Jammu and Kashmir High Court Rules, 1975 that the view of the Senior Judge should prevail and accordingly the Letters Patent Appeal was allowed in conformity with the view taken by the Acting Chief Justice. This resulted in the anomalous situation that as against the view concurrently taken by two Judges of the High Court, the opinion of the Acting Chief Justice which was really the minority view was allowed to prevail.

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E The reasons given by the Acting Chief Justice for the view he took were : (i) that a licence under the provisions of the Jammu and Kashmir (Cinematograph) Act is granted for premises permanently equipped for cinematograph exhibition in the name of the owner/manager of the cinematographs used in the premises and hence, where the licensed premises including the cinematograph used therein belongs to a partnership and one of the partners obtains a licence in his separate name, the other partners automatically acquire an interest in the licence and that the privilege granted by the licensing authority "must necessarily follow the title in such building and the cinematograph" and that the provision contained in s. 6F lends support to this conclusion; (ii) that the partnership firm had a legal right in the licence which entitled it to notice and hearing under the Act before the licence was suspended; (iii) that inasmuch as the said procedure was not followed by the Licensing Authority, the impugned order was void and in violation of principles of natural justice; and (iv) that except for the power of revocation of licence embodied in s. 6F and an implied power to suspend a licence pending proceedings for revocation, the Licensing Authority had no power to suspend the licence of the Theatre under any other circumstances.

Allowing the appeal,

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H HELD : The provisions of the Act and the Rules contemplate the grant of a licence to a person in respect of a 'place' where cinematographic apparatus have been installed. Under the Rules and the terms and conditions of the licence, the grantee thereof is the person answerable to the Licensing Authority for breach of the obligations and conditions. A licence granted under the Act is not analogous to a licence in the realm of real property law. It is, therefore, not possible to accept the view that the licence is a grant for the premises and constitutes an interest attached to the premises. The provision contained in s. 6F, far from supporting such a view, goes to show that the holder of a licence may be a person different from the owner or partner of a cinematograph. The object of that section is to empower the Licensing Authority to revoke the licence in the event of commission of an offence under s. 6 or 6E not merely by the licensee but also by any person who may be in actual charge of the cinematograph. [588 H, 589 A-B, G-H, 590 A]

2. (a) In proceedings to which the Licensing Authority was a party, the High Court as well this Court had upheld the order of the Licensing Authority holding the appellant to be the sole licensee and rejecting the case put forward

on behalf of the firm. The firm and its partners are bound by the said decision. It is, therefore, unnecessary to deal with the reasons stated by the Acting Chief Justice of the High Court in support of his conclusion that the licence was granted to the appellant in his individual capacity as representing the partnership. [588 D-E]

(b) The appellant was the sole licensee in respect of the Theatre. By virtue of r. 88 (v) as well as cl. 11 of the licence issued, there was a clear prohibition against the licensee from transferring, assigning, sub-letting or otherwise transferring the licence without the permission of the Licensing Authority and also against his allowing any other person to exhibit films at the licensed place without obtaining such permission. The firm of partners had no right whatever to exhibit cinematograph films at the theatre without a licence. It was the plain duty of the Licensing Authority to ensure that exhibition of films was not conducted in the Theatre by unauthorised persons and the impugned order is obviously one passed by him in the discharge of the said function. The principles of natural justice are not attracted to such a situation. The position would have been different if it was a case of even temporary suspension of the licence without notice to the licensee. [590 D, F, 591 A, 592 A, C-F]

(c) The Licensing Authority had the power to make the impugned order suspending the exhibition of films in the Theatre by persons other than the licensee. The power to control the exhibition of cinematography by grant of licence and the power to administer and enforce the provisions of the Act and the rules included the implied power to take all steps necessary to ensure the due observance of the terms of the statute. The rules and the conditions of licence. The view expressed in the impugned judgment of the High Court that the Licensing Authority had no power to make the impugned order was based on the fallacious assumption that what was done under the impugned order was to suspend the licence while, in fact, what was done was only to suspend the exhibition of films in the Theatre by persons other than the licensee.

[593 D-F, B]

3. Although there are very serious doubts about the correctness of the view taken by the Division Bench of the High Court regarding the applicability of r. 23 (3) of the Jammu and Kashmir High Court Rules, 1975 to the instant case, it is not necessary to consider that question in view of the conclusion arrived at on the merits of the case. [586 F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeals No. 2611 and 2611-A of 1981.

From the Judgment and Order dated the 1st July, 1981 of the High Court of Jammu and Kashmir in L.P.A. No. 1 of 1981 and C.M.P. No. 454 of 1981.

A. K. Sen and G. L. Sanghi, Vineet Kumar and Devinder Gupta for the Appellant.

A *D. D. Thakur, S. N. Kacker and R. P. Bhatt*, for respondent in 2611/81.

Soli. J. Sorabjee, K. K. Venugopal and R. P. Bhatt, for respondent in 2611-A/81.

B *E. C. Agarwala, S. P. Gupta, R. Satish, V. K. Pandita and R.P. Sethi* for respondent in 2611-2611-A.

L. N. Sinha, Attn. Genl. *Altaf Ahmad* and *Irfan Ahmad* for respondent no. 2.

C *S. Ghosh* and *A. K. Nag* for the intervener.

The Judgment of the Court was delivered by

D BALAKRISHNA ERADI, J. When the hearing of these appeals was concluded on November 11, 1982, after elaborate arguments had been addressed by learned counsel appearing on both sides, we announced our decision allowing the appeal (C.A.No. 2611 of 1981) by passing the following order :

E "The appeal is allowed.

F The Judgment and order of the Division Bench of the High Court presided over by learned Acting Chief Justice is set aside and one by learned Single Judge, Dr. A. S. Anand, is restored and consequently the Writ Petition No. 436 of 1980 filed by Respondents in the High Court of Jammu and Kashmir stands dismissed. No order as to costs of hearing in this Court.

G The legal consequence of this order will take effect from November 16, 1982. All interim orders passed by this Court shall stand vacated from the midnight between 15th and 16th November, 1982.

Reasons will follow."

H We now proceed to state in this judgment the reasons in support of our aforesaid conclusion,

In July, 1966, the appellant Ved Gupta decided to embark upon a venture to construct and operate an air-conditioned Cinema in a plot of land which he proposed to take on lease in Gandhi Nagar, Jammu, in Collaboration with two other persons, namely, Todar Mal and Kishan Kúmar. Accordingly, on July 22, 1966, Ved Gupta purporting to act on behalf of a partnership consisting of himself and the two persons aforementioned (as a matter of fact, no partnership had been constituted at all by that date), applied to the District Magistrate, Jammu, under section 3 of the Jammu and Kashmir (Cinematograph) Act, 1989 (1933 A.D.) (herein-after referred to as the Act) for permission to construct a modern Cinema Hall at the proposed site, a detailed description of which was furnished in the plan annexed to the application. Shri Ved Gupta was informed by the District Magistrate, Jammu by his Memo (Annexure-B) that the Government had approved the construction of a Cinema Hall at the proposed site and had granted the requisite permission in his favour as per letter dated September 11, 1967, issued by the Secretary to Government, General Department. From Annexure-B, it would appear that the permission so granted was in favour of Ved Ved Gupta in his individual capacity and not as the representative of any firm. In the meantime, by a deed dated December 7, 1966, which was registered on December 24, 1966, the plot in question was taken on lease jointly by Ved Gupta, Todar Mal and Krishan Kumar for a period of 40 years on the terms and conditions set out therein. Thereafter, under a deed dated July 15, 1969, the aforesaid three persons entered into a partnership along with 11 others under the name and style "Metro Theatres" for carrying on the business of constructing and running a modern air-conditioned Cinema in the site covered by the permission granted by the Government. Clause 15 of the said deed provided that the site for construction of a Cinema which had been obtained on lease by Ved Gupta, Todar Mal and Krishan Kumar in their own names shall not be their personal property, but shall be the property of the partnership, and that the permission which Ved Gupta had obtained from the Government for construction of the Theatre in the said plot shall be treated as the property of the partnership. By a subsequent agreement executed by the 14 partners on February 22, 1969, the name of the Cinema business was changed from 'Metro Theatre' to 'Apsara Theatre.'

The construction of the Cinema Theatre appears to have been completed by the middle of June 1969. On June 17, 1969, Ved Gupta submitted an application to the District Magistrate, Jammu, reporting that the construction of the theatre and the installation of the cinema-

A tograph machinery and equipment had all been completed pursuant to the permission granted by the Government and requesting that the requisite licence for running the Cinema Theatre may be issued to him under the Act and the Rules. Annexure-C is a copy of the said application and it shows that it was filed by Ved Gupta in his personal capacity without any mention whatever therein of the partnership. On July 22, 1969, a licence was issued by the District Magistrate to Ved Gupta under Section 3 of the Act to give public exhibition of cinematograph films at the Apsara Theatre situated at Gandhi Nagar, Jammu.

C Annexure-D is a copy of the said licence and it is expressly stated therein that the said licence has been granted to Shri Ved Gupta and that it shall remain in force until March 31, 1970, provided that Shri Ved Gupta or any person to whom, with the consent of the licensing authority, the licence is transferred, continues to own or manage the cinematographs used in the said Apsara Theatre. A Schedule of conditions imposing various duties and obligations on the licensee is also appended to the said licence.

E On March 31, 1970, two partners—Todar Mal and Sham Kumar—retired from the partnership. Consequent thereon, the firm was reconstituted and a new partnership deed was executed by the remaining partners on April 11, 1970, Clause 18 of the said document contained the following recital :

F “The licence for running the Cinema, by which Apsara Theatre is being run stands in the name of Shri Ved Gupta s/o Shakur Dass, the 9th party. The right to operate the Cinema licence shall be the property of this partnership and changes in the constitution shall make no difference in this respect.”

G Soon thereafter, on December 3, 1975, Todar Mall who had retired from the firm and Krishan Kumar who continued to be a partner jointly issued a notice to the District Magistrate, Jammu, claiming that their names should also be included in the licence issued to Ved Gupta in respect of the Apsara Theatre. Subsequently, on January 26, 1976, Krishan Kumar addressed a communication to the District Magistrate stating that he had not actually signed the notice sent on December 3, 1975, that Todar Mal had unauthorisedly purported to send the notice on his behalf also without his knowledge or consent and the said notice may, therefore, be treated as fictitious. A copy

of the said letter was sent by Krishan Kumar to Ved Gupta also. Strangely, after the expiry of nearly two years thereafter, Krishan Kumar submitted an application to the District Magistrate requesting that the names of himself and of Todar Mal should also be included as licensees in the licence for Apsara Theatre, issued to Ved Gupta. Notice of the said application was issued by the District Magistrate to Shri Ved Gupta and the District Magistrate conducted an enquiry at which both sides were heard through their advocates. After considering the arguments advanced before him by the counsel appearing for the contending parties, the District Magistrate passed a detailed order dated December 29, 1977, rejecting the request of Todar Mal and Krishan Kumar and declaring Shri Ved Gupta to be the sole licensee authorised to run the Apsara Theatre. Thereupon, Todar Mal preferred an appeal against the said order passed by the District Magistrate. Krishan Kumar was impleaded as a second respondent in that appeal. The Minister of State for Revenue and Law, Government of Jammu and Kashmir, heard counsel on both sides and ultimately dismissed Todar Mal's appeal by a detailed order, of which Annexure-G is a copy. Todar Mal did not leave the matter there. He filed a writ petition in the High Court of Jammu and Kashmir, challenging the legality and validity of the orders passed by the District Magistrate and the appellate authority, namely, the State Government. Krishan Kumar was made a party-respondent in the said petition. That writ petition was dismissed *in limine* by the High Court by an order dated April 29, 1978. Thereafter, Todar Mal came up to this Court, praying for the grant of special leave to appeal (S.L.P. Civil No. 3490 of 1978) against the said decision of the High Court. This Court rejected that Special Leave Petition by order dated November 13, 1978. Krishan Kumar was a party-respondent in the Special Leave Petition also.

On April 19, 1979. Krishan Kumar addressed a letter to the District Magistrate, Jammu, requesting that the renewal of the licence may be granted "in the name of the "premises of Apsara Theatre" The District Magistrate rejected the said request by a detailed order dated April 21, 1979. (Annexure-I) Before the said order was passed by the District Magistrate, an elaborate hearing appears to have been given by him to Krishan Kumar and Ved Gupta represented by their Advocates. It is seen from Annexure-I that the contentions advanced before the District Magistrate on behalf of Krishan Kumar were that even though the licence had originally been issued in the name of Ved Gupta, the right of operation of the licence had become the

A property of the firm by virtue of clauses 13 and 18 of the partnership deed and since Ved Gupta had been expelled from the partnership and had thereby ceased to be connected with the firm, he did not have the possession of the premises and he was not entitled to claim a renewal of the licence. These contentions were repelled by the District Magistrate who held that the renewal of the licence could not be made in the name of any party other than the original licensee, namely, Shri Ved Gupta, who had been declared to be the sole licensee in respect of the Apsara Theatre by the proceedings of his predecessor dated December 29, 1977, which was confirmed in appeal by the State Government and which had acquired finality between the parties by reason of the dismissal of the writ petition and the Special Leave Petition by the High Court and Supreme Court, respectively. In March, 1980 the licence for the Theatre was renewed by the District Magistrate in the name of Ved Gupta.

D On April 27, 1979, a suit was instituted against Ved Gupta and seven others by seven of the partners including Krishan Kumar for a declaration that the Cinema licence dated July 22, 1969, issued by the District Magistrate, Jammu (8th defendant) for exhibition of cinematographs in the building known as Apsara Theatre, Gandhi Nagar, Jammu, is the property of the firm Apsara Theatre and for a prohibitory injunction restraining defendants 1 to 7, nameiy, Shri Ved Gupta and six of the partners who were residing with him from interfering with the running of the Cinema by the plaintiffs and also for a prohibitory injunction against the District Magistrate (defendant 8) restraining him from interfering in any manner with the exhibition by the plaintiffs of cinematographs in the premises of Apsara Theatre. On the date of the institution itself, the District Judge, Jammu, issued an order of temporary injunction restraining defendants 1 to 7 from interfering with the possession and the running of the Theatre Apsara by the plaintiffs. On being served with the order of injunction, Ved Gupta wrote to the District Magistrate on September 24, 1980 that it had become impossible for him to operate the Cinema licence in view of the temporary injunction issued by the District Court and since it is only the licensee who is held responsible under the Act and the Rules for due compliance with all the terms and conditions of the licence and answerable to the licensing authority for all commissions and omissions in the Cinema premises, he may be saved from any prosecution or other action under law in the capacity of licensee of the Apsara Theatre in respect of any illegal acts or offences committed by others in the said premises. On

September 26, 1980, the Superintendent of Police, Jammu City, reported to District Magistrate that on verification by the Sub-Inspector deputed for the purpose, it had been found that the cinematographs were being conducted in the Apsara Theatre by persons other than the licensee and the Police had challaned the licensee under Section 6 of the Act. The District Magistrate was requested by the said letter that exhibition of cinematographs in the Theatre may be suspended till the final decision was rendered by the Court in favour of either of the parties. Acting on the aforesaid material brought to his notice, the District Magistrate passed the order (Annexure-J) dated September 26, 1980, directing that exhibition of cinematographic films in Apsara Theatre will remain suspended until further orders. The sole question arising for determination in these appeals concerns the validity of the said order passed by the District Magistrate and hence, it will be convenient at this stage to reproduce the full text of the order. It reads :

“Whereas it has been brought to my notice by Shri Ved Gupta, sole licensee, Apsara Theatre that the District and Sessions Judge, Jammu, has issued a temporary injunction against the exhibition of films by him in the above-said theatre;

And whereas the S.P. City by his letter No. 1/Conf. dt. 16.9.80 has intimated that there was exhibition of films on 25th September, 1980, in Apsara Theatre by persons other than the licensee;

And whereas under the provisions of the Cinematograph Act, read with rules, none other than licensee is permitted to exhibit films during the currency of the licence without permission of the licensing authority;

Now, therefore, I, A. Sahasranaman, District Magistrate, Jammu, hereby order that exhibition of films in Apsara Theatre will remain suspended till further orders.

This order shall come into force with immediate effect.”

On September 29, 1980, a writ petition—Writ Petition No. 436 of 1980—was filed in the High Court of Jammu and Kashmir by

A M/s Apsara Theatre, seeking to quash the aforesaid order passed by
the District Magistrate as being illegal, ultra vires and void. It was
contended inter alia by the petitioner that there had been a gross
violation of the principles of natural justice inasmuch as the
petitioner-firm and its partners had not been given any notice or
afforded hearing before the impugned order was passed. Another
B ground put forward by the petitioner was that the District Magistrate
had no power to suspend the licence under any of the
provisions of the Act or the Rules and that the only power vested
in the licensing authority was to revoke the licence under Section 6-F
of the Act and that too only if the conditions precedent mentioned
in the said Section were found to exist. The learned Single Judge
C of the High Court (Dr. Anand, J), by a well-considered judgment
rejected the contentions of the petitioners and dismissed the writ petition.
M/s Apsara Theatre represented by Krishan Kumar preferred a
Letters Patent Appeal—L.P.A. No. 1 of 1981 against the judgment
of the learned Single Judge. That appeal was heard by a Division
D Bench consisting of Mufti Baha-ud-din Farooqi, Acting Chief
Justice and Mir, J. The two learned Judges comprising the Division
Bench, however, came to divergent conclusions. Mir, J. agreed
with the view expressed by the learned Single Judge that the District
Magistrate had acted strictly in accordance with law in passing
the impugned order and that the writ petition was devoid of merit.
E But, the Acting Chief Justice was of the view that where the licensed
premises including the cinematographs used therein belonged to
a partnership and one of the partners had obtained a licence in his
separate name, the other partners automatically acquired an interest
in the licence. It was further held by the Acting Chief Justice that
the effect of the licence was that “it renders privilege the building of
F the cinematographs used therein and the privilege must necessarily
follow the title in such building and the cinematograph.” On this
reasoning, it was held by him that the plaintiff-firm had a legal right
in the licence which entitled it to notice and hearing under the Act
before the licence was suspended, and inasmuch as the said procedure
G has not been followed by the District Magistrate, the impugned order
was void and in violation of the principles of natural justice. The
learned Acting Chief Justice has further expressed the view that
except only the power of revocation, embodied in Section 6-F of the
Act and an implied power to suspend a licence pending the proceedings
H for such revocation, the District Magistrate had no jurisdiction
or power to suspend the licence of the Theatre under any other
circumstances. Hence quite apart from the question of natural

justice, the impugned order was also held by the Acting Chief Justice to be one passed without jurisdiction on this ground also.

In view of the difference of opinion between the two learned Judges, the Letters Patent Appeal was referred to Kotwal, J. under Rule 23 (2) of the Jammu and Kashmir High Court Rules, 1975. It may be mentioned at this stage that at that time, the High Court was functioning with a strength of only four Judges, and excluding the learned Single Judge who heard the writ petition and the two members of the Division Bench the Acting Chief Justice and Justice who comprised the Division Bench which heard the Letters Patent Appeal, Kotwal, J. was the only other Judge available in the High Court. Unfortunately, Kotwal, J. expressed his inability to hear the Appeal on the ground that at one stage, he had appeared as an Advocate for M/s Apsara Theatres in the course of the earlier litigations between the parties concerning substantially the same matter. Consequently, it became impossible for the Letters Patent Appeal being heard by a third Judge designated by the Chief Justice, as contemplated by Rule 23 (2). The matter was, therefore, placed before the Division Bench consisting of the Acting Chief Justice and Justice Mir as C.M.P. No. 454 of 1981 for consideration of the question as to what rule of procedure was applicable. The learned Judges took the view that Rule 23 of the Jammu and Kashmir High Court Rules, 1975, squarely covered the situation that had arisen before them. Rule 23 is in the following terms :

“23 (1) In the event of a difference of opinion among the judges composing any bench of the court, the decision shall be in accordance with the opinion of the majority of the Judges.

(2) If the judges composing the bench are equally divided on any point, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges designated for the purpose by the Chief Justice and such point shall be decided according to the opinion of the majority (if any) of the judges who have heard the case (including those who first heard it).

(3) If there is no such majority, then the decision shall be in accordance with the decision of the senior Judge except in the case of an appeal from a decree where such decree shall be confirmed.”

A In the opinion of the Division Bench, the present case was governed by sub-rule (3) of Rule 23, and, consequently, the decision in the case had to be in accordance with the opinion of the senior Judge. Accordingly the Division Bench passed orders in C.M.P. No. 454 of 1981 that the Letters Patent Appeal will stand allowed in conformity with the view taken by the Acting Chief Justice in his judgment. **B** This has resulted in the highly anomalous situation that as against the view concurrently taken by the two Judges of the High Court, viz. Anand, J. and Mir, J. the opinion of the Acting Chief Justice which was really the minority view has been allowed to prevail on the basis of the reasoning that the case was governed by sub-rule (3) of Rule 23.

C Aggrieved by the decision of the High Court, Ved Gupta has filed these appeals after obtaining special leave from this Court. Civil Appeal No. 2611 of 1981 is directed against the judgment of the learned Acting Chief Justice which has been treated as the final judgment in the Letters Patent Appeal and Civil Appeal No. 2611-A **D** of 1981 has been preferred against the order passed by the Division Bench C.M.P. No. 454 of 1981.

E The sole question raised in C.M.P. No. 454 of 1981 relates to the legality and correctness of the procedure adopted by the High Court in allowing the Letter Patent Appeal in the manner indicated above.

F Although we entertain very serious doubts about the correctness of the view taken by the Division Bench of the High Court regarding the applicability of Rule 23 (3) to the instant case, we do not feel called upon to examine the said question in depth or to pronounce upon it in this case in view of the conclusion arrived at by us on the merits of the case that the conclusions recorded by the Acting Chief Justice on the points that arose for decision in the Letters Patent Appeal cannot be legally sustained and that there was no justification for interference by the Division Bench with the judgment of the **G** learned Single Judge, dismissing the writ petition.

H In the judgment of the learned Acting Chief Justice, he has opened the discussion of the merits of the case by an elaborate consideration of the question as to whether the licence in respect of the Apsara Theatre had been granted to Shri Ved Gupta in his individual capacity or as representing the partnership. In making this approach to the case, the learned Acting Chief Justice has

wrongly lost sight of certain crucial facts which clinch the issue. Admittedly, the licence in respect of the Apsara Theatre was granted by the District Magistrate in the sole name of Ved Gupta and in all the relevant columns of the document of licence, Ved Gupta has been shown as the licensee and there is no mention at all of the firm or its partners. An application filed by Shri Krishan Kumar for a declaration that the licence was the property of the firm and for inclusion of his name and that of Todar Mal in the said licence as joint licensees, was rejected by the District Magistrate by his order dated December 29, 1977. It was expressly declared in the said order that Ved Gupta was the sole licensee and that the mere fact that a partnership had been entered into for running the cinema business did not mean that the firm was the licensee. The Appeal preferred by Todar Mal against the order of the District Magistrate was dismissed by the concerned Minister of the State Government on April 26, 1978. Krishan Kumar had been joined as a party-respondent in that appeal. The legality of the aforesaid orders was challenged before the High Court of Jammu and Kashmir in Writ Petition No. 74 of 1978 filed by Todar Mal. The District Magistrate and the State Government, whose orders were sought to be quashed, were the main respondents in this writ petition. That writ petition was dismissed by the High Court on May 9, 1978, S.L.P. Civil No. 3490 of 1978 filed by Todar Mal against the High Court's order dismissing his writ petition was rejected by this Court on November 13, 1978. Krishan Kumar was a party to the writ petition in the High Court as well as to the Special Leave Petition in this Court. The declaration made by the District Magistrate that Ved Gupta was the sole licensee and that Krishan Kumar or the firm could not be treated as licensees of the Theatre had thus become final.

Subsequent to the dismissal of the Special Leave Petition by this Court, Krishan Kumar made an application to the District Magistrate on April 19, 1979 for renewal of the licence in the name of the firm Apsara Theatre. That application was dismissed by the District Magistrate as per his order dated April 21, 1979 that the renewal could not be made in the name of any party other than the original licensee, so long as there had not been any transfer of the licence by the original licensee in favour of another with the sanction of the licensing authority. No steps were taken by Krishan Kumar to challenge the said order passed by the District Magistrate.

From the facts set out above, it becomes manifest that rightly or wrongly, the licensing authority had granted the licence in respect

A The order of the licensing authority was confirmed on appeal by the State Government. The challenge raised by Todar Mal against the refusal by the District Magistrate to include the names of himself and Krishan Kumar in the licence was rejected by the High Court as well as by this Court. The renewal of the licence was subsequently given to Ved Gupta after rejecting the prayer of Krishan Kumar as representative of the firm for the grant of the renewal in the name of the firm. Hence the factual situation was that the licence granted by the District Magistrate in favour the Apsara Theatre was in favour of Ved Gupta in his individual capacity and he alone was the licensee. Such being the case, we are, unable to appreciate why the learned Acting Chief Justice has devoted a considerable part of his judgment to a discussion of the aforesaid question as to whether the licence belonged to Ved Gupta alone or whether it was the property of the firm. In the view of the preceding factual history of the case, there was no scope in law for countenancing any contention being advanced on behalf of the firm that Ved Gupta had obtained the licence and had been holding the same for and on behalf of the partnership. In proceedings to which the licensing authority was a party the High Court as well as this Court had upheld its order holding Ved Gupta to be the sole licensee rejecting the case put forward on behalf of the firm and the firm and its partners are bound by the said decision. In this view, we consider it wholly unnecessary to deal with the reasons stated by the learned Acting Chief Justice in support of his conclusion that the licence was granted to Ved Gupta in his individual capacity as representing the partnership. It is sufficient to state that these reasons do not appeal to us as correct or tenable.

F We are also unable to accept as correct the view expressed by the learned Acting Chief Justice that under the Act the licence is granted for *premises* permanently equipped for cinematograph exhibition in the name of the owner/Manager of the Cinematographs used in the premises and hence it necessarily follows that where G the licensed premises including the cinematograph used therein belongs to a partnership and one of the partners obtains a licence in his separate name, the other partners automatically acquire interests in the licence and that the privilege granted by the licensing authority "must necessarily follow the title in such H building and the cinematograph". An examination of the relevant provisions of the Act and the Rules shows beyond doubt that they contemplate the grant of a licence to a person in respect of a "place" where cinematographic apparatus have been

installed. Under the Rules and the terms and conditions of the licence, the grantee thereof is the person answerable to the licensing authority for breach of the obligations and conditions and he is also punishable for contravention of the provisions of the Act and the Rules. We are of the opinion that on a reading of the provisions contained in the Act and the Rules and the explicit terms of the licence itself, it is impossible to sustain the view expressed in the judgment under appeal that the licence is a grant for the premises and constitutes an interest attached to the premises. The analogy drawn by the learned Acting Chief Justice with licence in the realm of real property law is a meaningless exercise for the licence granted under the Act is almost in all respects a completely different concept. It is, therefore, not possible to uphold the view expressed in the impugned judgment that "the effect of the licence is that it renders privileged the building and the cinematograph used therein" and that "the privilege must necessarily follow the title in such building and the cinematograph". Section 6-F has been relied on by the learned Acting Chief Justice as lending support to the aforesaid view expressed by him. That Section is in the following terms :

"6-F. *Power to revoke licence*—Where the holder of a licence or a person in charge of a cinematography, or management thereof or an owner or partner thereof or an employee thereof, has been convicted of an offence under Section 6 or Section 6-E of this Act, or under Section 15 of the Jammu and Kashmir Entertainments Duty Act, 1959, the licence may be revoked by the licensing authority."

On a careful reading of this Section, it will be seen that far from supporting the view taken by the learned Acting Chief Justice, this provision goes to show that the holder of a licence may be a person different from the owner of the cinematograph or a partner of the cinematography. The object and purpose of this Section obviously is to empower the licensing authority to revoke the licence in the event of the commission of an offence under Section 6 or Section 6-E of the Act, not merely by the licensee but also by any person who may be in actual charge of a cinematography or management of the cinematograph. In other words, a licence is liable to be revoked not merely when the licensee is convicted of an offence under Section 6 or Section 6-E of the Act but also in the event of conviction of such offence of any person belonging to the class of persons other

A than the licensee enumerated therein. The provisions of the Section contain a clear indication that the holder of the licence (licensee) may be a person different from the owner or manager or partner of the cinematograph.

B In the light of the foregoing discussion, we have no hesitation to hold that the view expressed by the learned Single Judge that Ved Gupta was a sole licensee and that the firm had no interest in the licence was perfectly correct and sound and the contrary view taken by the learned Chief Justice is erroneous.

C The next ground stated in the impugned judgment for quashing the order passed by the District Magistrate is that the said order was violative of the principles of natural justice in as much as no notice or hearing had been given to the partnership-firm before the order was passed. This finding is based largely, if not wholly, on the premise that the firm of partners had derived a "right and interest in the licence" and that "the revocation or suspension of the licence has the potential of seriously affecting the proprietary and business interests of the partnership". We have already recorded our conclusion that Ved Gupta was the sole licensee in respect of the Theatre and that the firm of partnership could not be regarded either as licensees or persons having an interest in the licence. Hence, it becomes obvious that the basic premise on which the learned Acting Chief Justice has founded his reasoning cannot be accepted as correct or sound. While the firm and the partners may have a right to share in the profits of the business which may be conducted in the Theatre on the strength of licence issued to Ved Gupta, they have no right or interest in the licence which was granted to Ved Gupta in his personal and individual capacity. In this connection, it is relevant to refer to Rule 88(v). That Rule reads :

G "88(v). The licensee shall not, without the permission of the licensing authority, assign, sublet or otherwise transfer the licence or the licensed place or the cinematograph nor shall the licensee, without permission as aforesaid, allow any other person during the period of currency of the licence to exhibit the films in the licensed place."

H Clause 11 of the licence issued to Ved Gupta (in Form A prescribed under the Rules) incorporates in identical language the provision aforementioned contained in Rule 88(v) as one of the conditions subject to which the licence was granted. There was, thus, a clear

prohibition against the licensee from transferring, assigning, subletting or otherwise transferring the licence without the permission of the licensing authority and also against his allowing any other person to exhibit films in the licensed place without obtaining such permission. Thus, the right to conduct the exhibition of the cinematograph films in the Theatre was vested solely in Ved Gupta, Gupta, the licensee. It is now relevant to recall that what has happened in this case is that in a suit filed by Krishan Kumar along with 11 other partners, an order of temporary injunction was issued on September 23, 1980, restraining Ved Gupta from interfering in any manner with the running of the Theatre by the plaintiffs. The effect of the order was that Ved Gupta had no longer possession or control over the Theatre premises or the cinematograph apparatus installed therein despite the fact that he was the licensee responsible to the authorities under the statute for the due discharge of the obligations contained in the Rules and in the conditions appended to the licence. Quite understandably, Ved Gupta, on receipt of the order of temporary injunction, informed the District Magistrate by his letter dated September 24, 1980, that as a result of the order of temporary injunction, it had become impossible for him, for the time being, to operate the cinema licence with effect from the date of the said letter and that he may be absolved from any liability for prosecution or any other action in law in the capacity of the licensee of the Theatre in the event of any illegal act or offence being committed by others in the Cinema premises. On September 26, 1980, the Superintendent of Police, Jammu, reported to the District District Magistrate that cinema exhibition in Apsara Theatre was being conducted by some persons other than the licensee, and, hence the licensee had been challenged by him under Section 6 of the Act. The District Magistrate was requested by the said letter that orders may be passed suspending the exhibition of films in the Cinema till the final decision of the court is made in favour of either of the parties. It was in the context of these developments that the District Magistrate passed the impugned order dated September, 26, 1980. A mere reading of the District Magistrate's order is sufficient to show that what was done thereunder was not to suspend or revoke even temporarily the licence granted in respect of the Theatre. What was done by the District Magistrate was only to suspend the exhibition of cinematograph films in Apsara Theatre by persons who are not licensees and who had no authority in law to conduct such exhibition of films. There was no suspension of the licence issued to Ved Gupta in respect of the Theatre. Hence, the assumption made by the learned Acting Chief that this was a case of temporary sus-

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A pension of the licence issued for the Theatre is manifestly erroneous. The firm of partners had no right whatever to exhibit cinematograph films in the Theatre without a licence. If Ved Gupta, the licensee, had been expelled from the partnership, the proper course to be adopted by the firm and its partners was to move the authorities for the grant of a licence and to run the Theatre only after obtaining such licence. So long as they did not have a licence—we have already found that the licence had been granted to Ved Gupta only in his individual and personal capacity and not as a representative of the firm—the firm and the partners had no legal right whatever to operate the cinema. Any such operation by them would have been in clear and gross contravention of the law embodied in the relevant provisions of the Act and the Rules. It was the plain duty of the District Magistrate as the statutory authority charged with the enforcement of the provisions of the Act to ensure that exhibition of films was not conducted in the Theatre by unauthorised persons in violation of the law. The impugned Order is obviously one passed by him in the discharge of the said function. No legal right or legitimate expectation of the firm or its partners can be said to have been affected by the said order passed by the District Magistrate, for the simple reason that no person can be recognised as having a right to contravene the provisions of the statute prohibiting exhibition of cinematograph films in public by any one other than the licensee or his authorised representative. The principles of natural justice are not attracted to such a situation and there was no obligation on the part of the District Magistrate to give a notice or hearing to the firm or its partners before he passed the impugned order. The position would, of course, have been different if it was a case of even temporary suspension of the licence without notice to the licensee. However, as we have explained, this is not a case of suspension of the licence and the complainant before the court is not the licensee. The writ-petitioners before the High Court were some of the partners of the firm who wanted to run the Theatre without a licence in contravention of the provisions of the Act and the Rules. The impugned order passed by the District Magistrate directing the suspension of cinema shows in the Theatre cannot be said to have visited the writ-petitioners with any adverse civil consequences. They had no legal right whatever to conduct the cinema shows in the Theatre without a licence in contravention of the law. The writ-petitioners could not also have any legitimate expectation that they will be allowed to run the Theatre without a licence in violation of the law. In the absence of any legal right or legitimate expectation being

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available to the petitioners, there was no obligation on the part of the District Magistrate to afford them a hearing before passing the impugned order. We are, therefore, unable to uphold the view taken by the High Court that the impugned order was violative of principles of natural justice. A

The only other reason stated by the High Court for quashing the District Magistrate's order is that the District Magistrate had no power under the Act or the Rules to make such an order. This conclusion is again based on the fallacious assumption that what was done by the District Magistrate under the impugned order was to suspend the licence. Proceeding on that premise, the learned Acting Chief Justice has said that under the provisions of the Act the power to suspend a licence is conferred only by Section 6-F of the Act as one implicit in the larger power of revocation and unless the conditions precedent mentioned in the said Section are present, the licensing authority had no jurisdiction to suspend the licence. As already observed by us, the impugned order is not one suspending the licence issued in respect of the Theatre. What was done thereunder is to suspend the exhibition cinematograph films in the Theatre by persons other than the licensee. The power to control the exhibition of cinematography by grant of licence and the power to administer and enforce the provisions of the Act and the Rules clearly include the power to take all steps necessary to ensure the due observance of the terms of the statute, the rules and the conditions of the licence as otherwise the competent authority under the Act would have to be a helpless spectator when cinematograph films are publicly exhibited by persons other than the licensee. The impugned order is one obviously passed by the District Magistrate in the exercise of his function of administering the provision of the Act and the Rules and the aforesaid implied power to take all incidental steps necessary for effective enforcement of the statute. We fail to see how it can be said on the facts and circumstances of the case that the District Magistrate had no jurisdiction to pass the impugned order. B
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It thus becomes manifest that all the grounds stated by the Division Bench of the High Court for upsetting the judgment of the learned Single Judge, dismissing the writ petition, are incorrect and unsustainable in law. Hence it was that we passed the Order dated November 11, 1982, allowing Civil Appeal No. 2611 of 1981 and setting aside the judgment of the Division Bench. G
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Civil Appeal No. 2611-A of 1981, which is directed against the order passed in C.M.P. No. 454 of 1981, is disposed of as infructuous

A in view of our having set aside the judgment of the Division Bench on the merits.

B We make it clear that the *inter se* rights and claims of Shri Ved Gupta on the one hand and the firm and its partners on the other in respect of the Apsara Theatre are left open to be decided in the civil suit that is said to be pending.

H.L.C.

Appeal allowed.