

ANDHRA PRADESH HIGH COURT

Y. Anasuya

Vs

Government of Andhra Pradesh

(A.L Rao, CJ. P Sarma and P.Venkatarama Reddi, JJ.)

26.03.1993

JUDGMENT

P.Venkatarama Reddi, J.

1. The question which is posed for consideration by the Full Bench is whether, for the purpose of renewal of cinematograph license, it is competent for the licensing authority to go into the question of 'lawful possession' of the cinema building as distinct from mere possession. As the view taken by the Division Bench of this Court in W.A. No. 562 /87 dated 23-4-1987 conflicts with the view expressed in a later judgment reported in Lakshmi Talkies v. State of A.P. ., this matter has been referred to the Full Bench.

2. The writ petitioner took on lease the building owned by the 3rd respondent by means of a registered lease-deed dated 3-9-1976. The lease was for a period of ten years. The lease-deed contemplates extension of lease for a further period of five years at a rent mutually agreed upon. The stipulated rent for the first five years was Rs. 500/- and for the next five years it was Rs. 600/-. The petitioner asked for extension of lease. The lessor demanded higher rent to which the petitioner evidently did not agree. It may be seen that even the extended period of lease as per the lease-deed, had expired in September, 1991. After the expiry of the ten year-lease period, the 3rd respondent sought for revocation of B-Form license issued to the petitioner. The objection of the 3rd respondent was over-ruled by the Joint Collector, Nalgonda (the then licensing authority) by an order dated 9-5-1988 and this order was upheld by the Government in G.O. Rt. 386 (Home) dated 18-2-1991. Thereafter, the Asst. Collector, Bhongir renewed the B-Form license for a period of one year from 1-1-1991 to 31-12-1991. There were representations against the renewal of license and a writ petition - W.P. No. 4308 /91 was filed questioning the order of renewal dt.8-7-1991. Against the order in writ petition, Writ Appeal No. 1110/91 was filed by the petitioner-tenant. The Division Bench of this Court (of which one of us - Lakshmana Rao, J. was a party) took note of the fact that the license was about to expire within a few days and gave a direction that if the appellant (writ petitioner herein) seeks further renewal of B-Form license, the same shall be considered and disposed of by the licensing authority in accordance with law and in the light of the decision of this Court in Lakshmi Talkies case, . The petitioner again applied for renewal of license whereupon the 3rd respondent filed an objection petition before the licensing authority. The licensing authority viz., Revenue Divisional Officer, Bhongir by his order dated 18-4-1992, after hearing both the parties, declined to renew the license on the ground that the

petitioner was not in lawful possession' of the theatre. Against this order, the petitioner filed an appeal before the Government and the Government by its, order in G.O. Rt. 3332, Home (General-A) Dept. dated 16-10-1992, confirmed the order of the licensing authority with an observation that the appellant was at liberty to approach the licensing authority for the grant of temporary license. It is against this order, the present writ petition has been filed. It is not necessary to narrate the details regarding the pendency or disposal of the civil suits or rent control proceedings between the parties as we are not deciding this case finally.

3. When the writ petition came up before our learned brother Eswara Prasad, J. the learned judge referred the matter to the Division Bench noticing "an apparent conflict between the Division Bench decisions of this Court in W.A. No. 562/87 and the decision reported in Lakshini Talkies case (1 supra) with regard to the question as to whether the applicant for renewal of the license under the Cinematograph Act, 1952 should be in lawful possession of the theatre as a condition precedent." The reference to Cinematograph Act seems to be an inadvertent mistake inasmuch as the license is to be granted or renewed under the Andhra Pradesh Cinemas (Regulation) Act and Rules. The Division Bench consisting of the learned Chief Justice and Bhaskar Rao, J. before whom the writ petition was posted, in turn, referred the matter to the Full Bench, while rejecting interim relief. That is how this writ petition was come up before us.

4. The learned Senior Counsel for the petitioner, Mr. M.V. Ramana Reddy has contended that under Rule 12-B of the Andhra Pradesh Cinemas (Regulation) Rules, the applicant need not satisfy the licensing authority about his lawful possession. It is enough, according to the learned Counsel, that the applicant seeking renewal of license is having factual or juridical possession. Relying upon the difference in language between Rule 11-B dealing with initial grant of license and Rule 12-B dealing with renewal, the learned Counsel submits that proof of lawful possession is not a sine qua non for granting renewal. The learned Counsel submits that such requirement which was found in the original rule - Rule 11, is not to be found in the newly introduced Rule 12-B. The Rule-making authority has made a deliberate departure from the pre-existing position so as to dispense with an enquiry into lawful possession at the stage of renewal. The learned Counsel has relied upon the judgment of the learned single Judge in W.P.No. 1848/87 which was confirmed in W.A. 562/87.

5. The learned Senior Counsel for the 3rd respondent Mr. Y. Sivarama Sastry has contended that the conditions laid down in Rule 11-B shall also be read into Rule 12-B because renewal (sic) only a continuation. It is contended that if lawful possession was required for the original license, there is no reason why it should not be insisted upon for renewal also. The learned Counsel also submitted that the possible reason for the omission of lawful possession in Rule 12-B is that by the date of filing an application for renewal i.e., three months before the expiry of the license, the licensee would have been in lawful possession. It is also contended that the license could only be granted *conterminus* with the lease period and if it is granted beyond that period, the license itself would become invalid as pointed out by this Court in *Ch. Ramalinga Raju v. Govt. of A.P.* AIR 1984 A.P. 366. It so, the learned Counsel argues that there is no question of renewing such invalid license based upon the mere possession of theatre. The learned counsel justified the non-renewal of license by the Revenue Divisional Officer and the confirmation of the said order by the State Government which, according to him, are based upon valid grounds. The learned Counsel for the 3rd respondent as well as the learned Govt. Pleader have relied upon the expression 'these rules' occurring in the second proviso to Rule 12-33 and Condition No. 12 of

the B-Form license. They have also placed reliance on the judgment of this Court in Lakshmi Talkies case (1) (supra) and the order of this Court in W.A. No. 1110/91 in the case of the very same parties.

6. Before we take up the crucial issue arising for consideration, we shall refer to the relevant provisions of the Andhra Pradesh Cinemas (Regulation) Act, 1955 (hereinafter referred to as 'the Act') and the Andhra Pradesh Cinemas (Regulation) Rules, 1970 (hereinafter referred to as 'the Rules'). Section 5 of the Act lays down that the licensing authority shall not grant a license under the Act, unless it is satisfied that-

- (a) the rules made under this Act have been substantially complied with, and
- (b) adequate precautions have been taken in the place, in respect of which the license is to be given, to provide for the safety of the persons attending the exhibitions therein.

Except placing these restrictions on the power of the licensing authority, the Act itself does not envisage any procedure or criteria subject to which the licenses have to be granted. Obviously, these matters are left to be dealt with by the rules framed by the State Government. Sub-section (2) of Section 6 provides that 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 of the authority concerned, may, for the reasons to be recorded either grant or refuse to grant the license or permission applied for. The grant of permission referred to in sub-section (2) is in relation to (i) construction or re-construction of a building and (ii) installation of machinery in any place or building. The license mentioned therein relates to the use of any place or building for the purpose of cinematograph exhibition. Section 11 empowers the Government in exercise of its rule-making power to lay down the terms and conditions and restrictions subject to which licenses and permissions may be granted under the Act, Section 10 provides for revocation or suspension of license under certain circumstances. The license is liable to be revoked or suspended if the licensing authority is satisfied that the license has been obtained by (a) misrepresentation or fraud as to an essential condition; (b) the licensee has without reasonable cause failed to comply with any of the provisions of the Act or Rule or any of the conditions or restrictions subject to which the license has been granted.

7. The A.P. Cinemas (Regulation) Rules, 1970 underwent certain changes from time to time. Chapter-II of the Rules deals with the subject of "Permission for the Construction or Reconstruction of a Cinema building and Installation of Machinery." Rule 8 as it originally stood dealt with the application for permission to construct a cinema building and Rule 9 dealt with the grant of permission to construct a cinema building. These Rules in Chapter II were substituted by new Rules, by G.O.Ms.No. 620 Home (General-A) dated 31st December, 1983. Rules 8(A) and 8(B) were introduced in the place of old Rule-8 and Rules 9(A) and 9(B) were introduced in the place of Old Rule 9. Rules 8(A) and 8(B) provide for application for and grant of no objection certificate to construct a cinema building. Rules 9(A) and 9(B) provide for application for and grant of permission to construct a cinema building. Chapter III deals with the subject of licenses and certificates. Amongst the Rules contained in this Chapter, Rule-II dealt with the application for grant or renewal of licenses, and Rule 12 with the grant of licenses to cinema buildings. These two Rules have been split up into four Rules now by the aforementioned G.O. dated 31-12-1983. Rule 11-A pertains to application for grant of license and Rule 11-B deals with 'grant of licenses to Cinema Buildings'. Rule 12-A relates to application for the renewal of license to Cinema Buildings. Thus, in the place of Rules 11 and 12 dealing with the procedure for

submitting the application for grant as well as renewal of license and the disposal thereof, the present Rules deal with the subject of grant and renewal separately. The form of application for grant, as well as the renewal of license is the same i.e. Form A-11. The license for cinematograph exhibition shall be in Form-B. Clause 12 of B-Form license enumerates the conditions of license. It is enjoined therein that the license is granted subject to the provisions of the Act and the Rules and also subject to the terms and conditions specified. Rule 13 lays down that a license granted may from time to time be renewed at the discretion of the licensing authority for a period of five years or one year as the case may be. Sub-rule (6-A) of Rule 13 states that "a renewed license shall be deemed to be a continuation of the original license." Rule 17 deals with the powers and functions of the Licensing Authority and the Inspecting Officers. The specified officers are empowered to make necessary inspections and send their reports as to the desirability of granting permission or license or renewal of license applied for. If any defects are noticed during the inspection, a notice has to be issued to the licensee for rectification of the defects (Vide sub-rule (2) of Rule 17). The inspecting officers are empowered to issue written orders or prescribe such safety measures in addition to the conditions of Form-B as may be necessary for the safety or convenience of the public or for the preservation of order and public peace and require compliance of such orders on pain of suspension or cancellation of the license (vide sub-rule (5) of Rule 17). The licensing authority or an officer deputed by him shall inspect every cinema building, enclosure, cinema to graph apparatus and plan, electrical installations and fire extinguishing equipment when first erected and there after at least once in every year in order to ensure that they are maintained and are functioning in accordance with the rules (Vide sub-rule (4)(a) of Rule 17).

8. For ready reference, it is better to extract some of the Rules to the extent they are relevant. Old Rules 11 and 12 to the extent relevant were as follows:

"11. Application for grant of renewal of a license: Every application to the licensing authority for the grant of renewal of a license under the Act shall be in writing and in Form-A and shall be accompanied by :

(a) to(d)...

(e) necessary records or certified copies thereof relating to his ownership and possession of the site, building and equipment, if he is himself the owner or those relating to his lawful possession thereof if he is not the owner (ee), (f).....

12. Grant of licenses to cinema buildings:-

(1) Within five days of receipt of such application, the licensing authority shall-

(a) if the application is not in accordance with the rules dispose it of in accordance with clause (a) of sub-rule (1) of Rule 9.

(b) if the application is in order, forward a copy of each of the application together with its enclosures, to the Electrical Inspector, the Executive Engineer (Roads & Buildings) (in case of permanent cinema buildings Only), and the Chief Executive Officer of the local authority concerned, asking for their reports and certificates within thirty days from the date of receipt of the copy of the application and obtain their acknowledgment.

Provided.....

(2) On receipt of the reports and certificates referred to in clause (b) of sub-rule (1), or, if the same have not been received in time, on consideration of the certificates referred to in clause (c) of Rule 11 on merits, if the licensing authority is satisfied that the applicant is in lawful possession of the site, building and equipment he shall, within ten days from the date of receipt of the above reports and certificates grant or renew a license in Form-B, with or without adding additional conditions thereto, consistent with the provisions of these rules, as he may deem fit in the interests of the health and safety of the public.

Provided.....

Rule 11-B: Grant of License to Cinema buildings:

(1) Within fifteen days of receipt of such application, the licensing authority shall-

(a) If the application is not in accordance with the rules dispose it of in accordance with clause (a) of Sub-rule 9 (B);

(b) If the application is in order, forward a copy of the application together with the enclosures to the Electrical Inspector and the Executive Engineer (R&B) (in the case of permanent cinema building only) asking for their reports and certificates within thirty days from the date of receipt of the copy of the application and obtain their acknowledgments;

(2) On receipt of the reports and certificates referred to in clause (b) for sub-rule (1) or, if the same have not been received in time, or consideration of the certificates referred to in clause (c) of Rule 11-A on merits, if the licensing authority is satisfied that the applicant is in lawful possession of the site, building and equipment he shall, within ten days from the date of receipt of the above reports and certificates or the due date for the receipt of above reports and certificates, grant a license in Form-B with or without adding additional conditions thereto, consistent with the provisions of these rules, as he may deem fit in the interest of the health and safety of the public: Provided that if the licensing authority is satisfied that the provisions of these rules have not been fulfilled and/or that, in the case of a temporary cinema building the provisions in Appendix-IV are not fulfilled, he may refuse to grant the license applied for and communicate to the applicant the reasons for such refusal. Provided also that the period of validity of a license shall so far it may be correlated with the period validity of electrical and fire certificates granted in accordance with the provisions in Appendix-VI.

(3)

Rule 12-A: Application for the Renewal of a License:

(a) Every application for renewal of a license shall be made ninety days before the expiry of license sought to be renewed and it shall be made in Form A-II in triplicate accompanied by the treasury receipt for the payment of fees prescribed in Rule 16, certified or xerox copies of the certificates of longivity of the building issued by the Executive Engineer (R&B) and the certificate of validity of the Electrical and Fire certificate in Form-D issued by the Electrical Inspector; Provided that if any license is co-terminus with the period of validity of the electrical and fire certificate in Form-D the application for its renewal shall also be accompanied by the treasury challan with a certified or xerox copy thereof for payment of fees prescribed in Rule 16 for the renewal of the said certificate.

(b) a letter of consent in writing of the original licensee whenever there is a transfer of possession

of site, building and equipment to the effect that he has no objection to the license being transferred in the name of the transferee. An affidavit may be obtained in the case of transfer of title. Rule 12-B: Renewal of License to Cinema Buildings:

- (1) Within fifteen days of receipt of such application, the licensing authority shall -
 - (a) If the application is not in accordance with the rules, dispose it of in accordance with clause (a) of sub-rule (1) of Rule 9 (B).
 - (b) If the application is in order, the electrical and fire certificate is valid, and if the certificate of longevity of the building initially issued by the concerned Executive Engineer (R&B) is valid for the period for which the renewal of license is applied for; the license may be renewed for the period applied for: Provided further that, in case of an application for renewal of a license (in respect of a permanent cinema building), which is made three months in advance of the expiry of the license, if the authorities concerned do not furnish their reports and certificates in time, the respective certificates shall be deemed to have been renewed. Provided that if the licensing authority is satisfied that the provisions of these rules have not been fulfilled he may refuse to grant the renewal applied for and communicate to the applicant the reasons for such refusal. Provided further that the period of validity of a license shall co-relate with the period of validity of electrical and fire certificates granted in accordance with the provisions in Appendix-VI.

Provided also that in respect of a permanent cinema building if the licensing authority does not either renew or refuse to renew or return for reasons to be recorded in writing before the date of the expiry of the license, he shall grant a temporary permit in Form-C provided that the Electrical Inspector's certificate continues to remain valid or has been deemed to have been renewed under the first proviso to sub-rule (1) or the licensed contractor's certificate furnished by the applicant is accepted, and that the fees prescribed under Rule 16 has been paid and the application has been made three months before the expiry of the Electrical Inspector's Certificate.

- (2) Certificates for renewals are dispensed with- If Electrical and Fire certificate is required it will be obtained by the Licensing Authority within the period prescribed by him. The required fee for such certificate shall be collected from the licensee by the licensing authority.

9. It is to be seen that 'lawful possession' was expressly mentioned as a pre-requisite for license in the earlier Rule 11 and it is also mentioned in the new Rule 11-B (relating to initial grant).

10. before setting out on the task of interpreting Rule 12-B, it is necessary to understand the concept of 'lawful possession'. The Supreme Court in *M.C. Chockalingam v. V. Manickavasagam*, , while interpreting this term occurring in Rule 13 of the Madras Cinemas (Regulation) Rules, observed:

"The fact that after expiry of the lease the tenant will be able to continue in possession of the property by resisting a suit for eviction, does not establish a case in law to answer the requirement of lawful possession of the property within the meaning of Rule 13. Lawful possession cannot be established without the concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of a special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce the recovery of the property in case a person is wrongfully or forcibly dispossessed from it." The Supreme Court then

observed:

"Juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession."

The Supreme Court held that a lessee continuing in possession after the expiry of the lease period cannot be said to be in lawful possession. While reiterating the same principle that litigious possession is not lawful possession, the Supreme Court in *Krishna Kishore Firm v. Govt. of AP.* , observed that the word 'lawful' is wider in connotation than 'legal'.

11. We shall now take up the crucial question whether the licensing authority can refuse to renew the license in the absence of proof of lawful possession in the sense in which it has been interpreted by the Supreme Court. As already noticed, the argument on behalf of the petitioner is that it is only at the time of grant of license that there could be an enquiry into 'lawful possession' but not at the stage of renewal. The omission of the words 'lawful possession' in the new Rule 12-B in juxtaposition to Rule 11-B is being projected as a clinching factor to support the contention of the petitioner. It is also contended that the Rule-making authority intentionally dispensed with the need to go into the question of lawful possession at the time of renewal.

12. After examining the point at issue from different angles, we are unable to uphold the contention of the learned Counsel for the petitioner. It is no doubt true that the words 'lawful possession' are not found in Rule 12-B whereas they are specifically mentioned in Rule 11-B. It may prima facie lead to an inference that the expression 'lawful possession' is only relevant at the time of grant of license under Rule 11-B but not at the stage of renewal under Rule 12-B. However, on a conspectus of the various Rules, the object and purpose behind the requirement of 'lawful possession' and the consequences that would otherwise follow, we do not think that the prima facie impression reflects the correct legal position.

13. It is to be noted that if the application is in order, that is to say, if it is in accordance with Rule 12-A, and there are valid electrical, fire and longevity certificates covering the period of renewal, the license "may be renewed for the period applied for". That is what Clause (b) of Rule 12-B lays down. The use of the word 'may' in the context of exercise of power normally and prima facie denotes that a discretion is vested with the authority. Unless the word 'may' is read as 'shall', the renewal of license on the fulfilment of the conditions laid down in Clause (b) of Rule 12-B is not compulsive but discretionary. The second proviso contained in the very rule would negative any inference that the renewal is automatic on fulfilment of the conditions specified in sub-rule (b)-. The said proviso is an indicator that Rule 12-B by itself is not exhaustive and the license can be rejected for non-fulfilment of 'these rules' - which expression according to us, should mean not only the Rules contained in Rule 12-A and 12-B, but also various other rules meant to secure public safety, public convenience, public health, etc. We shall deal with this aspect in more detail a little later. At this stage, we would like to say that the expression 'these rules' cannot be given truncated meaning and it should cover rules other than those contained in Rules 12-A and 12-B. If so, it cannot be contended that the mere satisfaction of the conditions specified in Clause (b) would ipso facto entitle the applicant to obtain renewal. Apart from the clue we get from the proviso to Rule 12-B itself, a reference to Rule 13 will make it crystal clear that the renewal of license is only discretionary and the fulfilment of the conditions stipulated in Clause (b) viz., filing of proper application and valid certificates mentioned therein are the minimum that is

required for renewal and that those requirements are not exhaustive. Rule 13 (6-A) categorically lays down that "any license granted may, from time to time, be renewed at the discretion of the licensing authority" for the periods mentioned in Clauses (a) and (b). Naturally, Rule 12- Bhas to be read along with this Rule. If so read, there can be no doubt whatever that the discretion is left to the licensing authority not to renew the license even if the conditions laid down in Clause (b) are satisfied by the applicant. In exercising this discretion, the licensing authority is expected to take into consideration relevant factors. These relevant factors may be expressly set out in the Rules or they may be implicit in the very exercise of the power of renewal or, they may be such considerations as are germane to the exercise of power of renewal of license. The question is whether 'lawful possession' is not one such relevant consideration. In our view, lawful possession is a very relevant factor that could be legitimately taken into account by the licensing authority in the matter of renewal of license. In this context, we will revert back to Rule 13. Sub- rule (6-A) of Rule 13 which was inserted in the year 1976 mandates that "a renewed license shall be deemed to be a continuation of original license." This rule, in express terms embodies the general principle that renewal is virtually a fresh grant. While dealing with the renewal of a mining lease, the Supreme Court in *State of T.N. v. M/s Hind Stone, .*, observed that an application for the renewal of lease is in essence, an application for the grant of lease for a fresh period. When such is the case, there is no reason why the requirement of lawful possession which is relevant for the purpose of initial grant of license should cease to be so in the case of renewal. At both stages, the consideration whether the applicant is in lawful possession could legitimately weigh with the licensing authority; otherwise the idea of continuity of license will make little sense. Incidentally it may be noticed that the Act itself does not spell out any distinction between a grant and renewal of a license. The word 'renewal' is not used anywhere in the Act evidently because the legislature thought that renewal is only a facet of grant and it partakes of the same character as the grant. The rule in express terms reaffirms the same idea by saying that the renewed license is a continuation of the original license. That lawful possession is very much in the forefront of the mind of the rule-making authority at all crucial stages is evident from the fact that proof of lawful possession is insisted upon at the stage of grant of no-objection certificate for construction as well as at the stage of grant of license for exhibition of films. As there is no qualitative difference between grant and renewal, as the Rule (Rule 13 (6-A) itself indicates, it would be consistent with the intention of the rule-maker to infer that lawful possession should also be regarded as a relevant consideration for the purpose of renewal.

14. Again, if we take into account the purpose and objective behind the rule as to 'lawful possession' as indicated by the Supreme Court in Chockalingam Case (3 supra), it would be clear that lawful possession is as much a relevant consideration for renewal as for the grant. The following observations of the Supreme Court in paragraph 16 are apposite:

"Law in general prescribes and insists upon a specified conduct in human relationship or even otherwise. Within the limits of the law, courts strive to take note of the moral fabric of the law. In the instant case, under the terms of the lease, the property had to be handed over to the lessor. Besides under Section 108 (q) of the Transfer of property Act, on the determination of the lease, the lessee is bound to put the lessor into possession of the property. Since the landlord has not assented to the lessee's continuance in possession of the property, the lessee will be liable to mesne profits which can again be recovered only in terms of his wrongful possession. Under Section 5 (1). of the Act, the licensing authority in deciding whether to grant or refuse a license has regard, amongst others, to the interest of the public generally. Public interest is, therefore, also involved in granting or refusing a license. That being the position, the expression 'Lawful

possession" in Rule 13 assumes a peculiar significance of its own in the context of the provisions of the Act. Hence, in any view of the matter, possession of the respondents on the expiry of the lease is not lawful possession within the meaning of Rule 13."In effect, these observations mean that a Court of law shall not as far as possible countenance an immoral conduct on the part of the lessee and secondly the considerations of public interest are also involved in insisting upon lawful possession. After due expiry of lease, the lessee's possession not backed by any statutory protection, is both unauthorised and precarious. He is liable to be removed from the premises, of course, subject to due process of law. While eviction proceedings are pending, the disputes between the landlord and the tenant remaining in unauthorised possession, may at times, take ugly turn and it may have the effect of dislocating the cinema shows. All these considerations obviously weighed with the rule-making authority in insisting upon the lawful possession as a condition for the grant of license. If in relation to renewal, the rule-making authority wanted to dispense with this requirement-which obviously is founded on considerations of morality and public interest, we, would have expected the rule-making authority to manifest its intention in clear and express terms rather than by omitting the term 'lawful possession' in Rule 12-B. The State Government could have used the word 'possession' instead of 'lawful possession' in Rule 12-B if it were their intention that the licensing authority should be debarred from going into the question of lawful possession at the time of renewal. If the contention of the petitioner is to be accepted, a renewal can be demanded by a lessee who has already suffered a decree for eviction and a person who would have given an undertaking to the landlord to vacate by an agreed date. That would lead to absurd and unjust consequences apart from failing to achieve the objectives of the rule as indicated by the Supreme Court.

15. It is suggested that the intention of the State Government in recasting the Rule is otherwise. Relying upon the observations made in W.P.1848/87 (which judgment was confirmed in W. A.No. 562/87) it is contended that the intention was to relieve the licensee who came into lawful possession initially, of the hardship in again establishing lawful possession at the stage of renewal. Again, relying upon the observations in the said judgment, it is submitted that an enquiry into lawful possession at the stage of renewal encourages needless litigation and gives a handle to the landlord to "extract unconscionable bargain". We do not find any basis for these presumed intentions of the rule-making authority. We do not think that the rule-making authority wanted to come to the rescue of recalcitrant lessees who do not wish to honour their commitments. We do not also think that the intention of the rule-making authority was to disregard the contractual terms and to preserve the possession of the lessee until such time as he is forcibly evicted. We do not also see any basis for the assumption that non-renewal of license on the ground that the applicant did not have lawful possession, would encourage needless litigation. While we do not rule out the scope for litigation, we can only say that the possibility of litigation is perhaps more if mere possession is taken as the basis for renewal.

16. It is further contended by the learned Counsel for the petitioner that the condition as to lawful possession was purposefully omitted as a sequel to the judgment of this Court in Ch. Ramalinga Raju's Case (2 supra). In that case, the Division Bench while interpreting the old Rule 11, observed that the licensing authority had no jurisdiction to renew the license subsequent to the expiry of the lease period. According to the learned Counsel, the rule making authority, when it recast the Rules in the year 1984, obviously intended to neutralise the effect of this judgment on renewals. As we have already observed, if that be the intention of the rule-making authority, we would expect that intention to be reflected more clearly and more specifically in Rule 12-B.

Nothing could have been easier than to say that it is enough if the licensing authority is satisfied with the actual possession of the applicant. We therefore negative this contention.

17. The learned Counsel for the 3rd respondent Mr. Sivarama Sastry, relying upon the judgment in Ch. Ramalingaraju Case (2 supra), contends that the license itself became invalid after the expiry of the lease period as the license would be co-terminus with the lease period. However, we are not prepared to go to the extent of declaring that a license becomes automatically ineffective or invalid on the expiry of the lease period. When once the order granting license has become final, it is difficult to envisage the termination of license otherwise than by way of revocation or suspension thereof. It may be that the licensing authority is expected to give the license co-terminus with the lease period unless there are other circumstances such as statutory protection of tenancy. But if the licensing authority did not limit the period of lease and the licensee did not object to the same, it does not follow that the license itself comes to an end automatically with the expiry of the lease period and the licensee shall stop exhibiting the films. In fact, the effect of the broad observations made in paragraph 5 of the said judgment stand diluted by the following observations made in para 6 to which no exception can be taken:

"This ruling of the Supreme Court, therefore, makes it clear that Rule 11 (e) of the Rules requires the applicant to satisfy the licensing authority that he is in lawful possession of the site, building and equipment and a lessee after the expiry of the lease period cannot be held to be in lawful possession and the licensing authority has no jurisdiction to grant license if the applicant ceased to be the tenant after the expiry of the lease period since lawful possession of the site and the building is co-terminus with the subsistence of the lease."

18. We shall now make a brief reference to the decisions relied upon by the learned Counsel for the petitioner. The first one is the judgment in W.P No. 1848/87 dated 11-3-1987. The said judgment was affirmed in Writ Appeal No. 562/87 by the Division Bench consisting of Bhaskaran C.J. and Anjaneyulu, J., presumably at the stage of admission. We have already adverted to the reasoning given by the learned single Judge and disapproved of the same. The Division Bench did not give any additional reasons. The only point dealt with by the Division Bench was whether, as contended by the landlord, the second proviso to Rule 12-B (b) which provides for rejection of renewal on the ground of non-fulfilment of other rules would apply. The Division Bench rightly held that the proviso has no application for the reason that the licensee entered into possession lawfully and obtained the license initially on that basis. However, the Division Bench did not specifically consider whether de hors the second proviso, lawful possession is a relevant aspect to be taken into account by the authority concerned while granting renewal. We are therefore, not in a position to agree with the conclusion reached by the learned Judges. With great respect, we overrule the judgment in W.A. No. 562/87 affirming the decision of the learned single Judge in W.P? No. 1848/87.

19. There are two more decisions rendered by the learned single Judges on which the petitioner's Counsel, Mr. M.V. Ramana Reddy has placed reliance. They are the judgments in W.P.No. 9676/87 dt.17-9-1989 and W.P. No. 4218/85 dated 19-9-1986. In both these cases, the learned Judges relied upon the difference in language between Rule 11-B and Rule 12-B i.e., omission of 'lawful possession' in the latter Rule. The learned Judges also proceeded on the basis that Rules 12-A and 12-B dealing with renewal, are exhaustive in themselves and that the production of the

valid certificates mentioned in Rule 12-B would suffice for the renewal of license. With respect, we cannot endorse the view taken by the learned Judges. We therefore over-rule these judgments. It may be mentioned that the view taken in W.P.No. 4218/85 was disapproved by the Division Bench in Lakshmi Talkies Case (1) (supra).

20. We shall now refer to the latest judgment of the Division Bench in Lakshmi Talkies Case (1 supra), on the very same point. The Division Bench consisting of Ramanujulu Naidu and N.D. Patnaik, JJ. relied upon the second proviso to Rule 12-B (b) and came to the conclusion that the requirement of lawful possession should be read into Rule 12-B also. The learned Judges took the view that 'these rules' occurring in the said proviso cannot be interpreted in a narrow sense so as to cover only the Rules contained in Rule 12-B. While we agree with the conclusion reached by the Division Bench and the view expressed therein regarding the interpretation of the term 'these rules', we find ourselves unable to affirm the view of the learned Judges in regard to the applicability of the second proviso to Rule 12-B. The proviso says that the renewal of license can be rejected if the provisions of 'these rules have not been fulfilled. No doubt, as we have already said, the expression 'these rules' does not mean the Rules contained in Rule 12-A and 12-B alone and it is open to the licensing authority to travel beyond these two Rules in order to see whether there is noncompliance with the Rules. For instance, if the condition of the building is not safe, the electrical installations and fire equipment are not functioning properly or if there is persistent default in payment of entertainment tax or if the orders issued in terms of Rule 17 by the inspecting officers in the interests of public safety and convenience are not complied with, the licensing authority is not obliged to renew the license, merely because the certificates specified in Rule 12-B (a) are produced.

21. Thus, although we are inclined to give broad interpretation to the expression 'these rules' in Rule 12-B, we cannot hold that by virtue of the operation of the second proviso, the element of lawful possession has to be read into that Rule. Before rejecting the renewal of license on the basis of the second proviso, it must be established that certain rules have not been fulfilled. In the instant case, can it be said that any rule as to lawful possession remains unfulfilled? That naturally takes us to the question whether there is noncompliance of Rule 11-B. It is impossible to say that there is non-fulfilment of Rule 11-B, having regard to the fact that the petitioner obtained license initially only on satisfying the licensing authority that he was in lawful possession of the building and equipment. Otherwise, the license would not have been granted to him. We cannot stretch the language of the second proviso to the extent of holding that the criteria of lawful possession must be bodily lifted and read into Rule 12-B. Such interpretation is clearly un-warranted and impermissible in law. We are not in a position to say that there is, in the instant case, a non-fulfilment of any particular rule regarding lawful possession. As we have already expressed, the correct legal position is that lawful possession is a relevant consideration that could be kept in view by the licensing authority while exercising his discretionary power to grant renewal. We come to this conclusion not because the second proviso to Rule 12-B (b), in terms, applies but for the other reasons which we have stated supra.

22. At the same time, we are inclined to think that the omission of 'lawful possession' in Rule 12-B is not without purpose. It appears to us that the rulemaking authority wanted to dispense with the obligation on the part of the licensing authority to specifically and on his own, address himself to the question of lawful possession at the time of renewal though lawful possession is, as we have already pointed out, a relevant consideration vis-a-vis renewal of license. The

licensing authority would have already applied his mind to that question and satisfied himself that the applicant would remain in lawful possession during the period of license in terms of sub-rule (2) of Rule 11-B or the old Rule 12. The person remaining in possession just before or after the expiry of the license period could be presumed to be in lawful possession, may be, with the consent-express or implied of the landlord. This presumption could, of course, be rebutted by the landlord by filing objections and relevant material before the licensing authority. But so long as the landlord does not take any objection to the renewal of lease, the renewal could be granted on the footing that the applicant continues to be in lawful possession. The licensing authority need not specifically record his satisfaction regarding lawful possession, not because lawful possession is not a relevant consideration for renewal but because the presumption in favour of lawful possession will operate and the landlord has not come forward to object to the renewal on the ground that the applicant is in unauthorised possession. That seems to be the reason for omitting the words requiring satisfaction as to legal possession. If the landlord objects to the renewal contending that the lease has come to an end, it then becomes necessary for the licensing authority to enquire into the question whether the applicant is in lawful possession of the theatre and the equipment. That is what has been done now pursuant to the directions issued in W.A.No. 1110/91. Incidentally, we may observe that this is the view expressed by the Division Bench in Lakshmi Talkies Case (1) (supra) and to this extent, the said judgment lays down the correct legal position.

23. The learned Counsel for the petitioner has commended for our acceptance the rule of interpretation of statutes as laid down in *Hiralal Ratanlal v. S.T.O., S.III, Kanput*, . The Supreme Court observed:

"If the provision is unambiguous and if from that provision, the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear."

The learned Counsel has also relied upon the principle of interpretation reiterated by the Supreme Court in *R.L Arora v. State of U.P.* ., that "the Court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal meaning of the words used". We do not think that we have adopted any different approach to the problem. The passages above cited, far from helping the petitioner, actually go against him.

24. We therefore answer the question posed for our consideration against the petitioner. We hold that the licensing authority while renewing the license can legitimately enquire into the question of lawful possession and he is by duty bound to do so when an objection is raised by the landlord in that regard. Having answered the question thus, we remit the case back to the Division Bench for consideration of the other questions, viz., whether the petitioner can be said to be in lawful possession within the meaning of that expression given by the Supreme Court in *Chockalingam Case (3 supra)* and whether the finding in the impugned G.O. that the petitioner is not in lawful possession is erroneous in law.

25. The reference is accordingly disposed of. There will be no order as to costs.