

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Pronounced on: January 04, 2016

+ **W.P.(C) 4414 of 2012**

NITU AND ORS.

..... Petitioner

Through: Mr.Anand Grover, Sr.Adv. along
with Ms.Tripti Tandon, Ms.Amritanaanda,
Ms.Astha Dhanda and Ms.Liyi Marli Noshi, Adv.

Versus

THE GOVT. OF NATIONAL CAPITAL TERRITORY
OF DELHI AND ORS.

..... Respondents

Through: Ms.Ferida Satarwala, Adv. for
GNCTD.
Mr.Sanjay Jain, ASG along with Mr.Vikram
Jetley, CGSC and Ms.Rajul Jain, Adv. for UOI.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

: **Ms.G.ROHINI, CHIEF JUSTICE**

1. This writ petition is filed praying *inter alia* to declare Section 18 of Immoral Traffic (Prevention) Act, 1956 (for short 'the Act') as void, unconstitutional and *ultra vires* and further to quash the four orders of the Sub-Divisional Magistrate (SDM), Paharganj, Delhi dated 21.07.2012 passed under Section 18 of the Act in respect of four premises, viz., (i)

Kotha No.56, 2nd Floor; ii) Kotha No.42, 2nd Floor; iii) Kotha No.59, 2nd Floor & (iv) Kotha No.5211, 1st Floor of G.B. Road, Delhi.

2. The impugned orders dated 21.07.2012 are identical and a perusal of the same shows that the Station House Officer (SHO), Kamla Market filed applications dated 10.05.2012 and 14.05.2012 under Section 18(1) of the Act before the Sub-Divisional Magistrate (SDM), Paharganj, Delhi seeking closure of the four *kothas* mentioned above. It was alleged by the SHO that on study of the cases of the last three years registered under various Sections of the Act, it was found that several FIRs were registered with respect to the premises in question. The particulars of the said FIRs were also furnished by SHO. Pursuant thereto, the SDM issued notices dated 13.06.2012 to the owner/Manager of the premises in question calling upon to show cause as to why the same should not be attached for improper use and as to why action should not be taken for their eviction from the said premises. In response to the same, one Smt.Shamshad, claiming to be the owner/Manager of *Kotha* No.56 appeared before the learned SDM on 20.06.2012. So far as *Kotha* Nos.42, 59 & 5211 are concerned, Smt. Sujata, Smt.Sunita Devi and Smt.Baby had appeared before SDM claiming that they are the lessees of the respective premises. On a request made by them, the copies of the documents filed by SHO along with his applications under Section 18(1) of the Act were furnished and on 30.06.2012 replies were filed by them through their counsel. On 16.07.2012, the learned SDM heard them as well as the Government counsel appeared for the SHO. Thereafter, the impugned orders dated 21.07.2012 came to be passed by the learned SDM holding that the premises in question, which are within the distance of 200 meters of a

school, are being used as brothel and therefore, the same require closure and eviction of the occupants in terms of Section 18(1) of the Act within seven days. There was also a direction that the owner/lessor/landlord or the agent of the owner/lessor/landlord will not let out the premises without the prior approval of SDM within three years of the said orders.

3. It is pleaded in the writ petition that the petitioners, four in number, are the occupants/residents of the premises in question and that they are mostly engaged in the profession of singing and dancing called 'mujra', which is traditional art form practiced by the courtesans in North India since centuries. It is further pleaded that though the petitioners also engage in transactional sex, i.e. sex for money, none of them carry out prostitution as defined under the Act. It is also stated that the present petition is filed in a representative capacity representing the other residents of each of the *kothas* in question.

4. The impugned orders of SDM dated 21.07.2012 are assailed in the petition primarily on the ground that the said orders were passed without notice to the petitioners. The petitioners have also questioned the *vires* of Section 18(1) of the Act contending that the said provision which empowers SDM to pass a blanket order of eviction of all the occupants of the premises irrespective of their involvement in the improper use is arbitrary, unreasonable and violative of Article 14 of the Constitution of India. It is also contended that Section 18(1) allows the Police to exercise unguided power and discretion to pick and choose persons and take action either under sub-Section (1) of Section 18 or to initiate prosecution under Section 3/7 of the Act or under both. Since such unguided powers would result in arbitrary

consequences and discrimination against similarly situated persons, Section 18(1) is liable to be struck down being violative of Article 14 of the Constitution of India.

5. We have heard the learned counsel for both the parties and perused the material placed on record.

6. The Suppression of Immoral Traffic in Women and Girls Act (hereinafter 'SITA') was enacted by the Parliament of India in 1956, pursuant to the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 (hereinafter '1949 Convention'). Before SITA, legislations relating to prostitution existed in several States including Bombay Prevention of Prostitution Act, 1923 and Bengal Suppression of Immoral Traffic Act, 1933. The SITA was enacted as a central legislation to bring uniformity in the law of suppression of immoral traffic, to give effect to Article 23 of the Constitution of India prohibiting traffic in human beings and to satisfy India's obligation under the International Convention signed at New York on 9th May, 1950.

7. Evidently, SITA did not prohibit prostitution *per se* but prohibited organised machinery of prostitution. It prescribed and still prescribes several offences including keeping or managing a brothel or allowing premises to be used as a brothel (Section 3), living on the earnings of prostitution by any person above the age of 18 years (Section 4), procuring, inducing or taking for the sake of prostitution (Section 5) and detaining a person in premises where prostitution is carried on (Section 6). The SITA further penalises prostitution in or in the vicinity of public places (Section 7)

and seducing or soliciting for the purpose of prostitution (Section 8). That apart Section 18, under which both the District Magistrate and the Court are empowered to exercise the power specified therein, provides for closure of brothel and eviction of the offenders from the premises.

8. Since the controversy in the present case relates to exercise of the power conferred by Section 18 of the Act, the same may be reproduced hereunder for ready reference:

“Section 18. Closure of brothel and eviction of offenders from the premises.— (1) A **magistrate** may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of 200 yards [two hundred yards] of any public place referred to in sub-section (1) of Section 7, is being run or used as a brothel by any person or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person in charge of such house, room, place, or portion, to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the magistrate may pass orders—

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;

(b) directing that before letting it out during the period of one year immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate:

Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord,

with a direction that the house, room, place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper user therein.

(2) A **court** convicting a person of any offence under section 3 or section 7 may pass order under sub-section (1) without further notice to such person to show cause as required in that sub-section.

(3) Orders passed by the magistrate or court under sub-section (1) or sub-section (2) shall not be subject to appeal and shall not be stayed or set aside by the order of any court, civil or criminal and the said orders shall cease to have validity after the expiry of one year:

Provided that where a conviction under section 3 or section 7 is set aside on appeal on the ground that such house, room, place or any portion thereof is not being run or used as a brothel or is not being used by prostitutes for carrying on their trade, any order passed by the trial court under sub-section (1) shall also be set aside.

(4) Notwithstanding anything contained in any other law for the time being in force, when a magistrate passes an order under sub-section (1), or a court passes an order under sub-section (2), any lease or agreement under which the house, room, place or portion is occupied at the time shall become void and inoperative.

(5) When an owner, lessor or landlord, or the agent of such owner, lessor or landlord fails to comply with a direction given under clause (b) of sub-section (1) he shall be punishable with fine which may extend to five hundred rupees or when he fails to comply with a direction under the proviso to that sub-section, he shall be deemed to have committed an offence under clause (b) of sub-section (2) of section 3 or clause (c) of sub-section (2) of section 7, as the case may be, and punished accordingly.”

(emphasis supplied)

9. The constitutional validity of Section 18 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (as the Act was then referred to), was challenged before the High Court of Punjab and Haryana in the year 1962 in *Ram Kali v. A.C. Aggarwal & Anr.* contending that the discretion conferred on the Magistrate to take action under Section 18 for closure of brothel and eviction of offenders from the premises or to prosecute under Section 7 of the Act results in invidious discrimination. The said challenge was made in the light of the definition of the word ‘Magistrate’ under Section 2(c) and Section 22 of the Act as they stood at that point of time which may also be reproduced hereunder:

“**Section 2(c)** Magistrate means a District Magistrate, a Sub-Divisional Magistrate, a Presidency Magistrate or a Magistrate of the First Class especially empowered by the State Government by notification in the Official Gazette to exercise jurisdiction under this Act.

Section 22. Trials – No Court, inferior to that of a Magistrate as defined in Clause (c) of Section 2 shall try any offence under Section 3, Section 4, Section 5, Section 6, Section 7 or Section 8.”

10. A Division Bench of the Punjab & Haryana High Court by judgment dated 09.09.1963 in *Ram Kali vs. A.C. Aggarwal & Anr.*; **AIR 1964 P&H 518** (hereinafter referred to as ‘*Ram Kali-1*’) held that:

“That being so, it must be held that whenever action is taken under Section 18 independently of Section 7 it would offend Article 14 of the Constitution and to that extent Section 18 would be ultra vires the Constitution. But Section 18 must stay on the statute book because action can legitimately be taken under this provision after proceedings have been concluded under Section 7 of the Act for in that matter it is complementary to Section 7 and also that proceeding can simultaneously be started under Section 7 and under Section 18.

If the latter course is adopted there would be no scope for argument based on discrimination. That argument is only available in one contingency that is where action is taken only under Section 18 and Section 7 is given a go-by. In the light of these observations, these petitions must succeed and the notices issued under Section 18 and the orders passed in consequence thereof must be struck down on the ground that recourse cannot be had to Section 18 divorced from Section 7 of the Act on the ground that such a procedure would offend the provisions of Article 14 of the Constitution being discriminatory vis-à-vis persons similarly situate. These petitions are allowed and the impugned orders are quashed.”

11. The appeals preferred by the respondents therein against the said judgment of the High Court of Punjab and Haryana were dismissed by a Five-Judge Bench of the Supreme Court by judgment dated 16.08.1967 in ***A.C. Aggarwal & Anr. vs. Ram Kali*** **AIR 1968 SC 1** (hereinafter referred to as ‘Ram Kali-2’) holding:

“13. From the copies of the reports made in these cases to the Magistrate by the police – made available to us at the hearing of these appeals – it is clear that they disclose offences under Section 3 against the respondents. Therefore, the question is whether the Magistrate can choose to ignore the cognizable offence complained of and merely have recourse to Section 18 and thus deprive the parties proceeded against of the benefit of a regular trial as well as the right of appeal in the event of their conviction. Bearing in mind the purpose of these provisions as well as the scheme of the Act and on a harmonious construction of the various provisions in the Act, we are of the opinion that in cases like those before us the Magistrate who is also a court as provided in Section 22 must at the first instance proceed against the persons complained against under the penal provisions in Sections 3 or 7 as the case may be, and only after the disposal of those cases take action under Section 18 if there is occasion for it.

14. In the result, we hold, for the reasons mentioned above, that the proceedings taken by the learned Magistrate against the respondents are not in accordance with law as he has proceeded against them under Section 18 without first taking action under Section 3. For that reasons, we uphold the conclusions reached by the learned Judges of the Punjab High Court but on grounds other than those relied on by them. But this conclusion of ours does not debar the learned Magistrate from taking fresh proceedings against the respondents in accordance with law as explained by us earlier.”

12. As could be seen, the Supreme Court in Ram Kali-2 did not agree with the view expressed in Ram Kali-1 that the set of facts to be proved in prosecution under Sections 3 or 7 of the Act and in proceedings under Section 18 of the Act are identical. However, the conclusions reached in Ram Kali-1 were upheld holding that the Magistrate, who is also a Court as provided in Section 22, must at the first instance proceed against the persons complained against under Sections 3 or 7 as the case may be and only after the disposal of those cases take action under Section 18 if there is occasion for it.

13. Subsequent to Ram Kali-1 & Ram Kali -2, the Act has been amended twice vide Act 46 of 1978 and Act 44 of 1986. By virtue of the said Amendment Acts, various provisions have been substituted/inserted/omitted. More particularly, the nomenclature of the Act has been changed by Act 44 of 1986 w.e.f. from 26.01.1987 and now it stands as the “The Immoral Traffic (Prevention) Act, 1956”. Some of the important amendments that were affected by Act 46 of 1978 included substitution of the definition of Magistrate under Section 2 (c) and insertion of a Schedule to the Act

specifying the Magistrates who are competent to exercise the power under different provisions of the Act. Section 22 of the Act which provides for trial of any offence under Section 3, Section 7 and etc. has also been suitably amended. The amended Section 2(c), the Schedule inserted to the Act and Section 22 read as under:

“Section 2(c) “magistrate” means a magistrate specified in the second column of the Schedule as being competent to exercise the powers conferred by the section in which the expression occurs and which is specified in the first column of the Schedule.”

The Schedule

Section	Magistrate competent to exercise the powers	
xxx	xxx	xxx
18.	District Magistrate or Sub-Divisional Magistrate.	
xxx	xxx	xxx

“Section 22. Trials – No Court, inferior to that of a **Metropolitan Magistrate or a judicial Magistrate of the first class** shall try any offence under Section 3, Section 4, Section 5, Section 6, Section 7 or Section 8.” *(emphasis supplied)*

14. As could be seen, the words ‘magistrate as defined in Clause (c) of Section 2’ in Section 22 have been substituted with the words ‘a metropolitan magistrate or a judicial magistrate of the first class’ by the amendment Act 46 of 1978. Further, the definition of “magistrate” under Section 2(c) has been entirely substituted by Amendment Act 46 of 1978

and as per the amended definition of Magistrate read with the Schedule inserted to the Act, the District Magistrate or Sub-Divisional Magistrate are competent to exercise the powers under Section 18. Similarly, in view of the amendment brought out to Section 22 by Act 46 of 1978, an offence under Sections 3 to 8 can be tried by no court inferior to that of a Metropolitan Magistrate or a judicial Magistrate of the first class.

15. We may also refer to the two penal provisions which are relevant for the purpose of the present case, i.e., Section 3 and Section 7:-

“Section 3. Punishment for keeping a brothel or allowing premises to be used as a brothel.—(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term of not less than two years and not more than five years and also with fine which may extend to two thousand rupees.

(2) Any person who—

(a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is wilfully a party to the use of such premises or any part thereof as a brothel,

shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which may extend to two thousand rupees and in the event of a second or

subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2-A)

Section 7. Prostitution in or in the vicinity of public places.—(1) Any person, who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—

(a) which are within the area or areas, notified under sub-section (3), or

(b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed,

shall be punishable with imprisonment for a term which may extend to three months.

(1-A)
”

16. By virtue of Section 22 as amended by Act 46 of 1978, it is clear that the offences under Sections 3 and 7 cannot be tried by any Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class.

17. Further, the power under Section 18 to direct closure of brothel and eviction of offenders from the premises is exercisable by a Magistrate, i.e., District Magistrate or Sub-Divisional Magistrate and also a Court convicting a person of any offence under Section 3 or Section 7. While sub-section (1) of Section 18 confers power on the District Magistrate or Sub-Divisional

Magistrate, sub-Section (2) confers power on the Court which convicted a person of any offence under Section 3 or Section 7.

18. It is vehemently contended by Shri Anand Grover, the learned Senior counsel appearing for the petitioners that that the Amendment Act 46 of 1978 has nullified the judgment in Ram Kali-2 and that the present law virtually goes back to *pre-Ram Kali* procedure conferring unguided and unbridled power and discretion on the police to initiate proceedings for closure of the premises and eviction of the occupants under Section 18 (1) of the Act by adopting the pick and choose method. Thus it is submitted by the learned Senior Counsel that Section 18(1) which is violative of Article 14 of Constitution of India is liable to be declared as unconstitutional. In support of the said submissions, the learned Senior Counsel relied upon ***Royappa vs. State of Tamil Nadu; 1974 (4) SCC 3*** and ***Maneka Gandhi vs. Union of India; 1978 (1) SCC 405***.

19. Pointing out that Section 23(f) of the Act specifically empowers the State Government to make rules providing for carrying into effect of the provisions of Section 18, the learned Senior Counsel has brought to the notice of this court that the Government of NCT of Delhi has neither framed any rules till date nor any guidelines are laid down regarding the enforcement of Section 18(1) of the Act. In the absence of such Rules, the learned Senior Counsel submits that absolute discretion is vested on the police administration either to initiate criminal proceedings under Section 3 or Section 7 and then to invoke Section 18(1) or to straightaway invoke the proceedings under Section 18(1) of the Act. This, according to the learned

Senior Counsel, has resulted in arbitrariness and abuse of power by the police and thus violating Article 14 of the Constitution of India.

20. Placing reliance upon *State of Tamil Nadu vs. State of Kerala & Anr.*; **2014 (6) SCALE 380**, it is further contended by the learned Senior Counsel that the legislature cannot enact law that in effect declares or renders any decision of a Court ineffective. It is also contended by the learned Senior Counsel that the amendments brought out by Act 46 of 1978 have virtually rendered Ram Kali-2 ineffective since the enforcement of Section 18(1), as it stands as of today, would be contrary to the ratio laid down in Ram Kali-2 that the Magistrate at the first instance must proceed against the persons complained against under Sections 3 or 7 as the case may be and only after the disposal of the same take action under Section 18 if there is occasion for it.

21. It is sought to be explained by the learned Senior Counsel that if Section 18(1) is invoked merely on the basis of an FIR and an order of eviction/closure is followed in respect of a premises, even if the criminal proceedings under Section 3 or 7 ended in acquittal subsequently, there is nothing in the scheme of Act to recall or set aside the order of eviction/closure. Therefore, the learned Senior counsel submits that Section 18(1) of the Act which enables enforcement of closure of the premises and eviction of occupants merely on the basis of the FIR without waiting for the conclusion of criminal proceedings under Section 3 or Section 7 is arbitrary, illegal and unconstitutional.

22. The learned Senior Counsel would further contend that by virtue of the amended provisions, Section 18 of the Act enables treating equals

unequally. In other words, the people belonging to the same category are treated differently resulting in violation of Article 14 of the Constitution of India.

23. Referring to Section 18(3) which gives a finality to the orders passed under sub-section (1) or sub-section (2), it is also submitted by the learned Senior Counsel for the petitioners that if Section 18(1) can be enforced independently on the basis of FIR, it would seriously prejudice the rights of the occupier who would be left without any legal recourse. However, a person who is proceeded against under Section 18(2) after being convicted under Section 3 or 7 has a right to appeal against conviction and in case the conviction is set aside on appeal then the order of eviction is also liable to be set aside. Thus an arbitrary classification has been created between the persons against whom the proceedings for eviction have been straightaway initiated under Section 18 (1) and the persons against whom an order of eviction was passed under Section 18(2) after conviction in the criminal proceedings.

24. On merits of the case, it is submitted by the learned Senior Counsel that the impugned orders of eviction which came to be passed without notice to the petitioners/occupiers of the premises in question are in contravention of Section 18(1) of the Act apart from being violative of the fundamental principles of the natural justice.

25. In the counter affidavit filed on behalf of the respondents, it is contended that sub-section (1) and (2) of Section 18 are entirely independent of each other. Section 18(1) is wholly based on a clear demarcation of a place and the proceedings are preventive in nature to minimize the chance of

‘brothel’ being run in public place whereas Sections 3 and 7 followed by Section 18(2) are punitive. The object of the Amendment Acts is to make the proceedings under Section 18(1) independent and not dependent upon prosecution under Section 7. The amendment has a nexus with the objective of regulating the sanctity of residential units in public places.

26. Reiterating the stand taken in the counter affidavit and pointing out that even after the Amendment by Act 46 of 1978, Section 18(1) of the Act remained unaltered, Shri Sanjay Jain, the learned ASG appearing on behalf of the respondents submitted that the power conferred under Section 18(1) being preventive in nature can be exercised by District Magistrate/SDM who has to record his satisfaction after giving an opportunity of being heard to the person concerned and the same is entirely independent of the penal provision under Section 18(2) which has to be exercised by a Judicial Magistrate.

27. We have given our thoughtful consideration to the controversy involved in the light of the rival submissions made on behalf of the parties.

28. We may at the outset point out that Sections 3 and 7 of the Act provide for the punishment of persons guilty of the offences mentioned therein and thus they are punitive in nature. The said offences can be tried by no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of First Class in view of Section 22. However, a proceeding under Section 18 is a preventive measure and it is intended to minimise the chance of a brothel being run or prostitution being carried on in a premises within a distance of 200 mtrs. of any public place. The inquiry contemplated by Section 18(1) is summary in nature and the power to pass

such an order has been conferred on the District Magistrate or Sub-Divisional Magistrate. Before passing such an order, it is mandatory to issue a notice on the person in occupation or any other person in charge of the premises to show cause and also to give an opportunity of being heard and thereupon if the District Magistrate or Sub-Divisional Magistrate is satisfied that the premises is being used as a brothel or for carrying on prostitution then the order of eviction or not to let out the same for a period of one year without the previous approval of the Magistrate may be ordered. Under the proviso to Section 18(1), in an appropriate case, the Magistrate may also restore the possession of the premises with directions as specified therein.

29. Similar order may also be passed under sub-Section (2) of Section 18 by a Court which convicted a person of any offence under Section 3 or Section 7, as a consequence to the conviction. As could be seen, by virtue of the amendment by Act 46 of 1978, sub-Section (1) and sub-Section (2) of Section 18 are made independent of each other. Though the power exercisable under sub-sections (1) and (2) is one and the same, the authorities empowered to exercise the said power are different and the circumstances under which the same can be exercised and the procedure to be followed are entirely different. It may be recalled that before amendment by Act 46 of 1978, the powers under both sub-Sections (1) and (2) of Section 18 were exercisable by a District Magistrate, a Sub-Divisional Magistrate, a Presidency Magistrate or a Magistrate of first class specially empowered by the State Government by notification in the official gazette to exercise jurisdiction under the Act who are also competent to try the

offences under Sections 3 and 7. The Division Bench of the High Court of Punjab & Haryana in Ram Kali-1 therefore opined that whenever action is taken under Section 18 independently of Section 7, it would offend Article 14 of the Constitution. Reiterating the same, the Supreme Court in Ram Kali-2 made it clear that the Magistrate who is also a Court as provided in Section 22 must at the first instance proceed against the persons complained against under the penal provisions in Sections 3 or 7 as the case may be and only after the disposal of those cases take action under Section 18, if there is occasion for it.

30. However, now there is a change in the legislation and there is no more overlapping of the powers conferred under sub-Sections (1) and (2) of Section 18. The District Magistrate or Sub-Divisional Magistrate who is conferred with the power to direct eviction under sub-Section 18(1) is not competent to try an offence under Section 3 or 7. Though the Metropolitan Magistrate or a Judicial Magistrate of the first class apart from trying an offence under Section 3 or 7 is also empowered to direct eviction under Section 18(2), the same can be done only if the criminal proceedings resulted in conviction.

31. Therefore, it appears to us that Section 18(1) as it stands as of today is in conformity with the law laid down in Ram Kali-1 and Ram Kali-2 and the contention that the amendments by Act 46 of 1978 have rendered Ram Kali-2 ineffective is untenable. At any rate, as held in *State of Tamil Nadu Vs. State of Kerala*; **(2014) 6 Scale 380**, though the legislature cannot declare any decision of a court of law to be void or of no effect, it can pass an amending Act to remedy the defects pointed out by a court of law. In our

considered opinion, the Amendment Act 46 of 1978 has been made only to remedy the defects pointed out in Ram Kali-1 and Ram Kali-2 and the same cannot be held to be impermissible under law.

32. The further contention of the learned Senior Counsel for the petitioners that under the amended provisions absolute discretion is vested on the police administration either to initiate prosecution under Section 3 or Section 7 and then to invoke Section 18(1) or to straightaway invoke the proceedings under Section 18(1) of the Act and the same results in arbitrariness and abuse of power by the Police is equally untenable. Though in a different context, this issue was considered and answered in Ram Kali-2 as under:

“12. The attachment contemplated by that section can enure only for a period of one year. Under these circumstances evidently the legislature thought that a regular trial and an appeal against the order of the Magistrate is not called for. In these cases it is unnecessary for us to spell out the scope of the expression "hearing" found in Section 18. It is necessary to remember that Sections 3 and 7 deal with persons guilty of offences whereas Section 18 deals with the premises mentioned therein. It is not correct to say that the set of facts to be proved in prosecutions under Sections 3 or 7 and in proceedings under S.18 are identical. In the former the prosecution to succeed has to establish either the intention or knowledge referred to therein but in the latter they are not necessary ingredients. Section 18 provides for two classes of cases namely, (1) those coming either under Section 3 or 7 as well as under Section 18 and (2) those coming only under S. 18. They are two distinct classes of cases-a classification which has reasonable relationship with the object sought to be achieved and therefore falls outside the rule laid down by this Court in *Answar Ali Sarkar* case.”

33. It may be added that while Sections 3 and 7 of the Act are concerned with the culpability of the accused persons, Section 18 is concerned with the misuse of the premises in question. The two set of provisions are entirely independent of each other and as held in Ram Kali-2 the set of facts to be proved in prosecutions under Sections 3 or 7 and in proceedings under Section 18 are not identical. Section 18(1) is based on a clear demarcation of a place being a public place. Admittedly, the proceedings are of a preventive nature and have been placed on the statute with an object to minimize the chance of brothel being run in public place which would offend the moral conscience or tend to spread disorder in the immediate society which is habited by temples and mosques or educational institutions. Apparently, Section 18(1) is aimed at addressing the issue of misuse of the premises immediately without waiting till the trial of the cases under Section 3 or Section 7 is concluded. The Amendment Act 46 of 1978 has a nexus with the object of making the exercise of powers under Section 18(1) independent so as to regulate the sanctity of residential units in public places.

34. For the aforesaid reasons, we are of the considered view that Section 18(1) read with Section 2(c) and Section 22 of the Act as amended by Act 46 of 1978 cannot be held to be arbitrary and unconstitutional on any ground whatsoever. The hardship pleaded by the petitioners even assuming to be true, cannot be a sufficient ground for striking down the constitutional validity of a statutory provision.

35. It is also brought to our notice by the learned ASG that the Division Bench of the Bombay High Court in ***Sunny Kamalsingh Mathur vs. Office***

of Commissioner of Police and Ors.; 2009 CrL.LJ 1465, having interpreted the effect of the amendments to the Act post Ram Kali-1 and 2 expressed a similar view observing:

“...14. It emerges from the discussion hereinabove that, the trial under Section 22 has to be conducted by a Magistrate or a Judicial Magistrate, whereas under Section 18(1), the power has to be exercised by a District Magistrate or a Sub-Divisional Magistrate in terms of the Schedule of the Act. Therefore, the legislature has taken note of the fact that whereas power under Section 18(1) is a preventive power, power under other section like Sections 3, 4, 5, 6, 7 or 8 is of penal nature, which should be given to the Judicial Magistrates. But if a Magistrate does not take action under Section 18(1), the Judicial Magistrate empowered to conduct trial under the amended provisions of Section 22 may still take action under Section 18(2) after a person is convicted by such a Judicial Magistrate under Section 3 or 7. Since Section 22 has undergone amendment, we do not feel that the judgment of the Hon’ble Supreme Court will apply to the controversy.”

36. Therefore, the contentions advanced as to the *vires* of Section 18(1) of the Act cannot be accepted.

37. Regarding the validity of the impugned orders dated 21.07.2012 passed by the Sub-Divisional Magistrate on the ground that there is no notice to the petitioners who claim to be the occupants/residents of the premises in question, we found that the contention of the petitioners has no legal basis since show cause notice under Section 18(1) is not mandatory to the occupants/residents. The language of Section 18(1) shows that the notice may be issued to any of the persons mentioned therein, i.e. owner, lessor or landlord of such house or the agent of the owner, lessor or landlord

or the tenant, lessee, occupier or any other person in-charge of such house. Therefore, the impugned order dated 21.07.2012 cannot be held to be illegal on the ground of want of notice to the petitioners.

38. However, keeping in view that by interim order dated 25.07.2012, stay of eviction of the petitioners has been granted and that the said order has been in operation all through, we consider it appropriate to permit the petitioners herein to submit their objections, if any, to the Sub-Divisional Magistrate, Paharganj, Delhi within four weeks from today. If any such objections are received within the time fixed above, the SDM shall consider the same and pass appropriate orders in accordance with law. Till such time, the petitioners herein shall not be evicted from the premises in question.

39. The writ petition is accordingly disposed of.

CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J.

JANUARY 04, 2016

pmc