

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION Nos.2295 & 3417 OF 2018

COMMON ORDER:

Since these two writ petitions are similar and filed by the same individual and as the contentions raised in these writ petitions are also the same, this Court deems it appropriate to dispose of these two writ petitions by way of this common order.

2. In these two writ petitions, the orders passed by the Sub-Divisional Magistrate and Revenue Divisional Officer, Rajendranagar Division, Ranga Reddy District, Telangana State, respondent No.3 herein, under Section 18 of the Immoral Traffic (Prevention) Act, 1956 (for short, "the Act") on 12.12.2017 and 30.01.2018 respectively, are under challenge.

3. Heard Sri P.Gangaiah Naidu, learned senior counsel representing the learned counsel for the petitioner on records, and the learned Government Pleader for Home (TG) appearing for respondent Nos.1 and 2.

4. The petitioner herein claims to be the Managing Partner of ASP Enterprises (ASP WELLNESS SAPTA SPA). He claims to be the tenant of the premises bearing Plot Nos.21 and 22 situated in Telecom Nagar Cooperative Society, Gachibowli, Hyderabad and the premises bearing No.1-88/2 situated at Madhapur, Serilingampally Mandal, Ranga Reddy District. The police registered Crime Nos.466 of 2017 on the file of Raidurgam Police Station and 815 of 2017 on the file of Madhapur Police Station on 19.08.2017 under Sections 370 and 370(A)(ii) I.P.C. and Sections

3, 4, 5, 6 and 7 of the Immoral Traffic (Prevention) Act and according to the learned senior counsel appearing for the learned counsel for the petitioner on record, the said crimes are pending investigation. Pending investigation of the said crimes, the Station House Officers, Raidurgam and Madhapur Police Stations filed applications before respondent No.3 – The Sub-Divisional Magistrate/Revenue Divisional Officer under Section 18 of the Act. On the said applications, the Sub-Divisional Magistrate/respondent No.3 herein passed the orders under challenge in Case Nos.L&O/2401/2017, dated 12.12.2017, and Proc.No.L&O/2327/2017, dated 30.01.2018, under Section 18 of the Act directing closure of the premises while asking owners of the premises to obtain previous approval of respondent No.3 before letting out the premises. These two writ petitions, filed under Article 226 of the Constitution of India, challenge the validity and the legal sustainability of the said orders passed by respondent No.3 herein.

5. The only contention advanced by the learned senior counsel appearing for the petitioner in these cases is that the impugned orders passed by respondent No.3 are in total violation of the mandatory provisions of Section 18 of the Act. In elaboration of the said contention, it is maintained by the learned senior counsel that as the petitioner is the tenant of the subject premises, before resorting to the impugned action, respondent No.3 ought to have issued notice and ought to have provided opportunity of being heard to the petitioner herein also.

6. On instructions in W.P.No.2295 of 2018, it is submitted by the learned Government Pleader for Home that respondent No.3 issued notice to the owners of the premises before passing the orders under challenge. The leasing out of the property in favour of the petitioner herein is not disputed. In this connection, it may be appropriate to refer to the provisions of Section 18(1) of the Act, which reads as under:

“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 two hundred metres 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 incharge 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, or in a case where a child or minor has been found in such house, room, place or portion during a search under section 15, during the period of three years, 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.”

7. A reading of the above provision of law, in clear and vivid terms, reveals that it is obligatory on the part of respondent No.3/competent authority to issue notice to the tenants also, who are in possession of the property, and to hear the persons concerned. In the instant cases, it is the case of the petitioner that respondent No.3, without affording any opportunity to him, passed the orders under challenge. In view of the statutory mandate, as provided under Section 18 of the Act, respondent No.3 should have heard the petitioner also before passing the orders under challenge. In the considered opinion of this Court, the impugned action on the part of respondent No.3 is not only in contravention of the mandatory provisions of Section 18 of the Act, but also violative of the principles of natural justice.

8. For the aforesaid reasons, both the Writ Petitions are allowed, setting aside the orders in Case No.L&O/2401/2017, dated 12.12.2017, and Proc.No.L&O/2327/2017, dated 30.01.2018, passed by respondent No.3, and the matters are remanded to respondent No.3 for fresh consideration of the issue

after giving notice and opportunity of being heard to the petitioner herein. There shall be no order as to costs.

9. Miscellaneous Petitions pending, if any, in these Writ Petitions shall stand closed.

JUSTICE A.V.SESHA SAI

Date : 05.02.2018
AMD



THE HONOURABLE SRI JUSTICE A.V.SESHA SAI



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