

THE HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.44233 of 2017

ORDER:

The petitioners, viz., Smt.J.Sreelakshmi, W/o.Dr.J.Prabhakar Rao, and Dr.J.Prabhakar Rao, S/o.J.V.P.Sharma, both residents of Flat No.101 of Shilpa Nest, Shilpa part Layout, Kondapur, Hyderabad, filed this writ petition against the State, represented by the Principal Secretary, Home Department, the Sub-Divisional Magistrate & Revenue Divisional Officer, Rajendranagar Division, the Station House Officer, Madhapur Police Station and the Deputy Collector & Tahsildar, Serilingampally Mandal, with the prayer, particularly one in the nature of Writ of Certiorari, calling for records relating to order No.L/L&O/2582/2017, dated 04.12.2017, passed by the Sub-Divisional Magistrate (respondent No.2), ordering eviction of the owner of the premises of Flat No.201, 2nd Floor, Plot No.27/A, Phase-II, Arunodaya Colony, Madhapur, treating the owner as occupier under Section 18(1) (a) of Immoral Traffic (Prevention) Act, 1956 and setting aside the same, and to direct the Station House Officer, Madhapur Police Station to take necessary action in implementation of the orders.

2. The writ petition supporting averments of the 1st petitioner Smt.J.Sreelakshmi disclose that she and her husband J.Prabhakar Rao, 2nd petitioner, purchased 223 square yards in Plot No.28 Part, re-numbered as 27/A of Sy.Nos.72 and 73 of Madhapur village by way of registered sale deed, vide document No.2143/94,

dated 17.03.1994, for a valid consideration, and constructed G+2 building with GHMC permission by the end of May, 2017, and her husband is a Professor and Academician in a reputed University and he is very busy, and she used to oversee the construction activity and looking after the premises and she had to go to USA and left India on 30.03.2017 and the building by then not ready, and it was after completion of the building, from 1st week of June, 2017, started letting out, and there is full time watchman to the premises of the said building, and when she was in USA, she used to talk to the prospective tenants over phone and getting their particulars, including ID proof etc., through WhatsApp and she used to let out the premises, and one person Surya called over phone on 16.06.2017 stating that he is working as Developer in Wisdom IT Solutions, Madhapur and his wife is also working in his company's branch office at Bangalore and both have to travel a lot to Bangalore, and most of the time one of them will be staying at Hyderabad, she let out the premises by believing his words, the said Flat No.201 of PLhase-II, Arunodaya Colony, Madhapur with effect from 18.06.2017. On 11.09.2017 the said Surya informed the petitioner that he was away in Bangalore for the past one week and will vacate the premises and shift to Bangalore by 5th October, 2017, that she returned back to India on 23.09.2017 and on 24.09.2017 to her shock and surprise, she came to know that the said Surya is indulging in unlawful and immoral activities in her let out premises, that she came to know that Madhapur Police registered a case in

Cr.No.961/2017, dated 24.09.2017 under Sections 370 IPC and under Sections 3, 4, 5, 6 and 7 of PIT Act against Suri, Madhav and Miryala Surya Santosh based on a complaint received from R.Kalinga Rao, Inspector of Police, Madhapur P.S. which discloses that on a credible information that prostitution was going on in Flat No.201, Arunodaya Colony, Madhapur, he along with mediators and staff rushed to the place and caught three persons, by name Madhav @ Mahesh @ Mallikarjun, Miryala Surya Santosh and Smt.Aliya Khan (victim), and they stated that one Suri @ Surya is running the prostitution in the house as organizer through online sites and he is absconding; they seized cash and mobile phones and registered the crime covered by disclosure and recovery panchanama, dated 24.09.2017, showing Suri took the premises on rent and indulging in illegal activity, that it is pursuant to them the Sub-Divisional Magistrate-cum-Revenue Divisional Officer issued notice to the writ petitioners on 12.10.2017 to show cause within 7 days as to why the premises shall not be attached for its use and illegal activities, and on 20.10.2017 her husband gave a reply stating that Surya was given Flat for rent after producing ID and basing on conversation through WhatsApp when the 1st petitioner Smt.J.Sreelakshmi was in USA and assured that they will take all measures to see that such incidents will not happen in future and requested to release the flat from passing of any orders of attachment. However, to their surprise, the Sub-Divisional Magistrate-cum-Revenue Divisional Officer issued orders dated 04.12.2017 treating the owner herself as

the occupier of the premises within the meaning of Section 18(1)(a) of the Immoral Traffic (Prevention) Act, 1956 (for short "the Act") and ordered eviction within 7 days which order is outcome of non-application of mind, erroneous for nothing to show any of the petitioners are indulging in any such activities to seize their premises and even the investigation shows Surya @ Suri took the premises and using for that not even with the knowledge of the writ petitioners and they never did any act prohibited by law, much less by all allowed anybody with any knowledge, but for if at all anything happened out of their knowledge by the said tenant Surya @ Suri and thereby sought for allowing the writ petition as prayed for.

3. Heard both sides and perused the material on record.

4. Section 18 (1) of the Immoral Traffic (Prevention) Act, 1956 reads as under:

"Section 18 in The Immoral Traffic (Prevention) Act, 1956

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 ⁷² [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 ⁷³ [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."

5. The impugned proceedings of the Sub-Divisional Magistrate-cum-Revenue Divisional Officer speaks that pursuant to the report received by the Station House Officer, Madhapur Police Station in Cr.No.961/2017, Accused No.1 (Surya), who was absconding, was organizing prostitution by engaging ladies having taken them to the rented premises of the owner, which belongs to Smt.J.Sreelakshmi, W/o.J.Prabhakar Rao, written explanation submitted by them, stating that the said Surya taken the flat on rent and it was given after proof that he is working so also his wife in software company and both have to travel from Hyderabad and Bangalore vis-à-vis for their staying, that Surya informed to vacate the premises by October, 2017 and stated that he was transferred to Bangalore and the incident alleged happened in between the end of September, 2017 when she was in USA.

6. The explanation is examined and there is no lease deed enclosed to say that they let out the premises to the said Surya, there is nothing placed on record as per Section 18(1) r/w.Sec.7(1) of the Act, the owner is innocent of the user of the premises thereby ordered eviction of the occupier-cum-owner.

7. A perusal of the Cr.No.961/2017, dated 24.09.2017, figures Suri as Accused No.1, Madhav as Accused No.2 and Miryala Surya Santosh as Accused No.3. Even from the facts of the First Information Report, covered by mediators report, it was Suri that was running the said activity and the disclosure statement given by Kuri Madhav @ Mahesh @ Mallikarjun, Accused No.2, also speaks that Surya @ Suri taken the premises on rent and at his instance the activity was going on. It is not even the case of the prosecution that any of the petitioners indulged in such activity or running the brothel house nor allowing the tenant Surya @ Suri knowing that he is using the premises as such. The Sub-Divisional Magistrate-cum-Revenue Divisional Officer did not advert to the factual matrix in passing the impugned order.

8. Leave it as it is, as held by a Division Bench of the Mumbai High Court in *Dhansingh Gopal Chauhan vs State of Maharashtra*¹ referring to Section 18(1) of the Act which reproduced above, that Section 18 no way empower the authorities to evict the owner from the premises nor remain closed the premises merely on the ground that the premises were used for running brothel or for carrying on prostitution and therefore, the orders directing eviction of the owners is bad in law and outcome of non-application of mind for nothing to show that the owner is using the premises as brothel and even the provision speaks to evict the person using the premises as brothel and restore the possession to

¹ 2005 (3) MhLJ 500

the owner of the premises, provides the owner not to let out the premises without prior approval of the authority for a statutory time, one way provided at best and thereby set aside the order to evict the owner from the premises.

9. Having regard to the above, and in the result, the writ petition is allowed by setting aside the impugned order, dated 04.12.2017, and with the observation that the Authorities can pass an order directing the owner not to let out the premises without prior approval for the statutory period provided under Section 18 of the Act.

Consequently, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

Date: 12.06.2018
Dsr

Dr. B. SIVA SANKARA RAO, J

