

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.01.2019

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.17568 of 2018

K.M.S.Rathinam

.. Petitioner

Vs.

The Revenue Divisional Officer,
Office of the Revenue Divisional,
Collectorate Building,
Salem District.

... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondent to consider the petitioner representation dated 01.03.2018 and to de-seal the petitioner house property in connection with the proceeding of the respondent in Na.Ka.No.5579/2013/A2.

For Petitioner : Mr.N.Vijaya Baskar

For Respondent : Mr.V.Shanmugasundar
Special Government Pleader

O R D E R

The Writ Petition is filed seeking a mandamus to the respondent to consider the petitioner's representation dated 01.03.2018 and to de-seal his house property in connection with the proceeding of the respondent in Na.Ka.No.5579/2013/A2 and pass orders.

2. The petitioner and his wife were teachers at Hosur School, Krishnagiri District and retired from service and they are residing in Hosur for the past fifteen years. In the native place of the petitioner, namely, Karukkalvadi Post, Omalur Taluk, Salem District, the petitioner owned property at No.3/225, Karukkalvadi Post, Omalur Taluk, Salem District. After the purchase of the said house, the same was let out for rent. While so, one Rajini @ Palanisami and his wife Selvi approached

the petitioner through house broker for residential purpose and the said house was let out for rent at Rs.5,000/- p.m. based on a lease agreement dated 20.04.2013. Though it was let out only for residential purpose, there was a phone call from the Inspector of Police, Steel Plant Police Station, Salem, to inform the petitioner that their tenants, namely, Rajini @ Palanisami and his wife Sevi involved in the business of brothel and a case was registered in Crime No.224 of 2013 dated 11.08.2013 for offences punishable under Sections 3(1), 4(1), 5(1), 6(1) and 7(1) of Immoral Traffic (Prevention) Act, 1956 by including the name of the petitioner also. It is stated that at the time of registering the case, the police authorities had sealed the house premises and referred the issue to the respondent for conducting an enquiry. Based on which the respondent had also sent summons to the petitioner vide Proceedings in Na.Ka.No.5579/2013/A2 dated 06.01.2014. The petitioner appeared before the respondent and gave a detailed statement that he is no way connected with the occurrence and offences, since he and his family were settled in Hosur for the past 15 years.

3. Heard the learned counsel appearing on both sides.

4. It is stated by the learned counsel for the petitioner that as per Section 18(1) and (3) of Immoral Traffic (Prevention) Act, 1956 the respondent has to conduct an enquiry within 7 days and pass orders with regard to the immovable property. However, if it is sealed for more than three years, the same has to be de-sealed. It is relevant to extract the said provision 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 order--

(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.

(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 or three years, as the case may be:

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.

5. According to the said provision, the subject matter of the property is sealed for more than three years. It is also stated that against the Crime No.224 of 2013 dated 11.08.2013, the petitioner had preferred Crl.O.P.No.9767 of 2018 before this Court and has obtained an order of stay on 24.01.2019. As stated, if the premises is sealed for more than three years automatically the same has to be de-sealed.

6. As per Section 18(3) Proviso, 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.

7. As the provision itself is very clear, from the date of sealing, it has been in the custody of the police, the premises has to be de-sealed. Accordingly, there will be a direction to the respondent to de-seal the property in connection with the proceedings of the respondent in Na.Ka.No.5579/2013/A2 within a period of three weeks from the date of receipt of a copy of this order.

8. With the above directions, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rsi

To

The Revenue Divisional Officer,
Office of the Revenue Divisional,
Collectorate Building,
Salem District.

+1 cc to Mr.N.Vijaya Baskar, Advocate Sr.No.6379

+1 cc to The Government Pleader, Advocate Sr.No.8212

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PM(CO)
CSL/12.02.2019

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