

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1769 OF 2019

Aashabai d/o Santram Deshmane
@ Aashabai w/o Rambhau Pandit,
Age 50 years, Occupation Household,
R/o Manvat Tq. Manvat Dist.Parbhani. **..Petitioner.**

VERSUS

- 1) The Collector, Parbhani.
- 2) The Sub-Divisional Officer, Pathari
Tq. Pathari Dist. Parbhani.
- 3) The Police Inspector,
Police Station, Manvat,
Tq. Manvat Dist. Parbhani. **..Respondents.**

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Advocate for Petitioner : Mr. M. S. Bhosale.
APP for Respondents-State : Mr. B. V. Virdhe.
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 18-02-2020.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, heard both sides for final disposal.
2. Present petition has been filed invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge the order dated 11-09-2019 passed by learned Sub-Divisional

Officer, Pathari in Application No. 2019/MAG/AAR/17 wherein he has refused to unlock the seal of the house under Section 18 (3) of the Immoral Traffic (Prevention) Act, 1956.

3. The facts which are not in dispute that, a First Information Report came to be registered under Section 3, 4, 5, 5A, 5B, 6, 7 of the Immoral Traffic (Prevention) Act, 1956 with Section 366A, 370, 370D, 372 and 373 of Indian Penal Code with Manvat Police Station, District Parbhani on 27-03-2015, against one Sonabai Sanjay Pandit and others in which the present petitioner is not as an accused. Thereafter an application was moved by Police Inspector, Manvat Police Station on 09-04-2015 to the Sub-Divisional Officer, Pathari for putting seal to the house bearing No.2-3-62 and 2-3-63 belonging to present petitioner. Accordingly show cause notice was issued to the present petitioner, and then by order dated 14-05-2015, both the houses of the present petitioner and also one more house i.e. 2-1-243 came to be sealed. Thereafter on 31-01-2017 an application was filed by the present petitioner to reopen the lock by desealing of the house under Section 18 (3) of the Immoral Traffic (Prevention) Act. Sub-Divisional Officer, thereafter, called report from police, and after the objection was taken in the report, order came to be passed on 31-12-2018 rejecting the application given by the present petitioner. It also appears that, a

panchanama was drawn on 26-07-2017 regarding the seal of the house wherein it was mentioned that the seal is intact. After the rejection of the application, the present petitioner had come to this Court by way of filing Criminal Writ Petition No.389 of 2019. This Court on 29-07-2019 remitted the case to the learned Sub-Divisional Officer to decide the representation of the petitioner afresh by passing a reasoned order. After remitting the case back, it appears that again the matter was heard and the application was again rejected on 19-09-2019. The said order is under challenge in this writ petition.

4. Say has been filed on behalf of the respondent-State by one Vyankat Limbaji Koli working as Sub-Divisional Officer, Sub-Division Office, Pathari taking objection to the petition. It is nothing but reiterating the same facts which were stated in the impugned order. It specially underlines that the seal cannot be opened in view of the fact that again a First Information Report has been lodged bearing No.52 of 2017 under Section 370 (2) (3) of Indian Penal Code read with Section 3, 4, 5 of Immoral Traffic (Prevention) Act. It is also stated that, prior to that in 2016 also First Information Report No.138 of 2016 was lodged almost having the similar sections and, therefore, it is stated that, though petitioner is not an accused in these offences, yet it cannot be ignored that already one offence is registered in respect of the

house of the petitioner and the other two offences are registered in the same locality. Therefore, possibility of putting the said house for the same user cannot be ruled out.

5. Heard learned Advocate Mr. M. S. Bhosale for petitioner and learned Additional Public Prosecutor Mr. B. V. Virdhe for respondents-State. In order to cut short it can be said that, both the learned advocates have made submissions in support of their respective contentions.

6. It is to be noted that, while passing the order in Criminal Writ Petition No.389 of 2019, this Court has categorically taken note of the validity period of the order of closing the house, in view of Sub-section (3) of Section 18 of the Immoral Traffic (Prevention) Act is one year or three year, as the case may be. The matter was remitted to the Sub-Divisional Officer for passing an appropriate order. Further it is also observed thus,

“In the event the premises found to be again used for prostitution, the authority can again use the powers under Section 18 of the Act. Only on the basis of apprehension expressed by police, the Sub-Divisional Officer cannot overlook the mandate of law as contained in Sub-section (3) of the Section 18 of the Act.”

After observing this, the impugned order passed by the Sub-Divisional Officer was set aside and then the matter was remanded back.

However, it appears that the learned Sub-Divisional Officer has not at all considered the observation of this Court and the mandate of the law. It is, therefore, convenient to reproduce Section 18 of Immoral Traffic (Prevention) Act as follows ;

“18. Closure of brothel and eviction of offenders from the premises. -

(1)

(2)

(3) Orders passed by the Magistrate or Court under sub-section (1) 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.”

7. Therefore, the validity of the order cannot go beyond one or three years, as the case may be. Here, the original order to put seal to the house of the petitioner is dated 14-05-2015. Further it does not appear from the impugned order that, the same houses which were sealed by order dated 14-05-2015 are used for committing similar offence in 2016 or 2017. Those offences are stated to have taken place in adjoining area of the same locality. Perusal of the panchanama dated 26-07-2017 would show that, all the three houses were found in

sealed condition. Therefore, no question of using these houses for commission of similar crime had ever arose. Under such circumstance, the validity of the order passed on 14-05-2015 had expired in view of Section 18 (3) Immoral Traffic (Prevention) Act after maximum of three years. On the same ground and in the same offence those houses could not have been continued to be kept sealed beyond the said statutory period. The reason mentioned in the impugned order, for rejecting the application, is absolutely improper. Merely on the basis of similar activity going on in adjoining houses or house in the same vicinity, it cannot be presumed that henceforth also houses in the present matter would also be put to similar use. The most important point to be noted is that, in none of the cases present petitioner is an accused. Therefore, the order passed by the learned Sub-Divisional Officer even after remitting the matter to him, is totally illegal and improper and, therefore, it deserves to be set aside by allowing the writ petition by invoking the constitutional powers of this Court. Right to property is also a fundamental right of the citizen of India. No doubt by law there can be certain restrictions on right to enjoy property, but when on some flimsy grounds or only on suspicion the said fundamental right is infringed by even the government officer then it can be said that such case is the fit case where the constitutional powers under Article 226 and 227 of the Constitution of India are

required to be invoked. Hence, following order.

ORDER

- 1) Writ petition stands allowed.
- 2) The order passed by learned Sub-Divisional Officer, Pathari Dist. Parbhani in 2019/MAG/AAR/17 on 11-09-2019 is hereby quashed and set aside.
- 3) The proper authority i.e. Sub-Divisional Officer, Pathari or any equivalent competent authority or even the Police Officer, whose seal has been put to the houses No.2-1-243, 2-1-62 and 2-3-63 in Siddheshwar Galli, Manvat be desealed and the possession of the same be handed over to the petitioner within a period of one (01) month.

Rule made absolute in above terms.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.