

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 195 OF 2019

Shantilal Khushaldas & Bros.
Pvt. Ltd.,

..... Petitioner

V e r s u s

1. State of Goa.

2. Smt. Justiniana Lourence D' SouzaRespondents

Mr. A. D. Bhobe and Mr. C. Angle, Advocates for the Petitioner.

Mr. Pravin Faldessai, Additional Public Prosecutor for the State-Respondent no.1.

Mr. Vivek Rodrigues, Advocate for the Respondent no.2.

CORAM : NITIN W. SAMBRE, J.

DATE : 15th April, 2021

P.C.

The order impugned is passed by the Deputy Collector and Sub-Divisional Magistrate, Salcete, Margao, Goa, in Case no. MAG/MRG/18/Immtr-Act/01/2018/7349, whereby, the application preferred by the Petitioner under Section 18 of the Immoral Traffic

(Prevention) Act, 1956, herein after shall be referred to as the 'Act' for the sake of brevity, seeking possession of the attached premises came to be dismissed, whereas that of the one preferred by the Respondent no.2, tenant, came to be allowed.

2. The prosecution of the Respondent no.2 by the State-Authorities in Sessions Case (ORS) No. 18 of 2018, for an offence punishable under Section 370(A)(2) of the Indian Penal Code and Sections 3, 4, 5, 6 and 7 of the said Act, resulted into acquittal.

3. During the said proceedings, the premises in question which are claimed to be owned by the Petitioner, were subjected to attachment. The Respondent no.2, by an order dated 11.05.2018, passed by the competent Authority, was directed to vacate the premises in question. He was also asked to stop the activities running therein in the name of Goa Lords Bar and Restaurant and the said premises were directed to be sealed.

4. Vide Order impugned, the said premises were directed to be unsealed by the Police Inspector, Margao, on an application dated 27.02.2019 preferred by Respondent no.2 and permitted the possession of the same in his favour whereas the prayer of the Petitioner for possession of the same came to

be rejected.

5. I have heard the respective Counsels at length. Shri A. D. Bhobe, learned Counsel appearing for the Petitioner-Landlord, while emphasizing on the scheme of Section 18 of the Act, would urge that the order is a non-speaking order as no reasons whatsoever are furnished by the Authority i.e. Respondent no.1 while allowing the prayer of Respondent no.2 and rejecting the prayer of Petitioner for possession under Section 18 of the Act. According to him, land owner has every right to claim the possession of the sealed premises provided he satisfies the statutory requirement.

6. While countering the submissions, the learned Counsel for Respondent no.2 so also learned Additional Public Prosecutor, would support the order and submits that there are sufficient reasons in support of the order impugned and prayed for dismissal of the Petition.

7. In the backdrop of aforesaid submissions, I have analyzed the reasons furnished by the Respondent no.1 in the order impugned while granting the prayer of the Respondent no.2 and rejecting the prayer of Petitioner for handing over possession of the suit premises. The Authority was of the opinion that it cannot adjudicate the right of the parties based on the lease or

the agreement of tenancy, however, allowed the prayer of the Respondent no.2 in view of acquittal order passed by the learned Sessions Judge.

8. If we appreciate the scheme of Section 18 of the Act, what is expected of the said Authority is, while exercising the powers of Magistrate, it has to record a finding on the issue that Landlord or the Lessor was innocent of the improper user of the house while dealing with the prayer for restoration of the possession. As far as the order impugned is concerned, there are no specific findings recorded by the Magistrate as contemplated in the proviso to Section 18 of the Act. So as to substantiate the contentions, the learned Counsel for the Petitioner has relied on the Judgment of this Court in the matter of *Dhansingh Gopal Chauhan vs. State of Maharashtra* reported in *2005(2) Bom. C. R. (Cri.) 441*.

9. In that view of the matter, it could be inferred that the order impugned lacks the reasons which should have been germane for the cause of deciding the issue of restoration of possession canvassed by the rival parties. The absence of reasons speaks of the non-application of mind and same demonstrate the absence of link between the issues canvassed, considered and the decision made.

10. In that view of the matter, the order impugned is not sustainable. That being so, the order impugned dated 26.07.2019 passed by Deputy Collector and Sub-Divisional Magistrate, Salcete, Margao, Goa, in Case no. MAG/MRG/18/Immtr-Act/01/2018/7349, is hereby quashed and set aside. The proceedings preferred by the Petitioner and the Respondent no.2 stood restored to the file of the said Authority before whom the parties hereto agree to appear on 03.05.2021 at 11.00 a.m.

11. As such, no fresh notices are required to be issued to the parties to the Petition.

12. It is expected of the said Authority to decide the issue of restoration of possession having regard to the aforesaid observations and requirements under Section 18 of the Act.

13. The Petition stands partly allowed in the above terms.

14. Needless to clarify, till the issue is decided by the said Authority, the order of sealing of the premises shall continue since the de-sealing or handing over of the possession is not acted upon till this date.

NITIN W. SAMBRE, J.