



W.P.No.17194 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.04.2023

Pronounced on : 28.04.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No.17194 of 2022
and W.M.P.No.16470 of 2022

Royal Yanam Recreation Society,
rep. by its Secretary
Mr.P.N.V.S.S.V. Prasad Raju,
R/No.3LH 3304,
Lanaco Hills,
Manikonda,
Hyderabad.

...Petitioner

vs.

1.The Member Secretary,
Yanam Planning Authority,
Yanam.

2.The Superintendent of Police,
Yanam,
Puducherry - 533 464.



W.P.No.17194 of 2022

3.The Circle Inspector of Police,
Yanam Police Station,
Yanam,
Puducherry - 533 464.

4.The Regional Administrator
-cum- Sub Divisional Magistrate,
Yanam.

5.The Assistant Engineer,
Electricity Department,
Yanam.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 1st Respondent impugned order in No. 44/ YPA/ BP/ 2022/ 280 dated 27.06.2022, quash the same and consequently directing the respondents not to interfere with the petitioner Society's functioning in any manner except in accordance with law.

For Petitioners : Mr.Om Prakash,
Senior Counsel
for Mr.J.Saravanel

For Respondents : Mr.R.Sankara Narayanan,
Additional Solicitor General
assisted by
Mr.S.Ravee Kumar,
Government Pleader (Puducherry) and
Mr.Ramasamy Meyyappan,
Government Advocate (Puducherry)



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W.P.No.17194 of 2022

ORDER

(Order of the Court was delivered by V. LAKSHMINARAYANAN, J.)

The writ petitioner seeks for a Writ of Certiorarified Mandamus calling for the records on the file of the 1st Respondent in its proceedings in No. 44/ YPA/ BP/ 2022/ 280 dated 27.06.2022, quash the same and consequently directing the respondents not to interfere with the petitioner Society's functioning in any manner except in accordance with law.

2.The writ petitioner is a Society registered under the Societies Registration Act, 1860. As per the impugned proceedings, the petitioner was directed to stop / stay all works immediately in the industrial building sheds in No.F/2/14/Pt. Door No.6-08-139, Dommetipata /Farampet, Adavipolam Revenue Village, Yanam. The petitioner/Society was created for the purpose of operating a recreation club. It caters to the needs of its members alone. It applied for license to the Commissioner of Yanam Municipality in December 2021 and license was also granted on 18.01.2022. Prior to



W.P.No.17194 of 2022

obtaining license and since it carried on legal activities, fearing the interference by the police, the Society had filed a Writ Petition seeking for the relief not to be interfered with by the Police authorities. Pending the Writ Petition, this Court had directed the petitioner to file an application for grant of license from the Corporation Authorities.

3. It is on record that pursuant thereto, the petitioner filed an application to the Commissioner and the same was also granted on 18.01.2022. Consequently, the Writ Petition was disposed of on 20.01.2022. Thereafter, there had been no interference in the activities of the petitioner.

4. Soon thereafter, an FIR was registered against the petitioner in FIR No.16 of 2022 under the Pondicherry Gaming Act, 1965. According to the petitioner, this complaint was registered on the direction of the 4th respondent, who at that relevant time, was also acting as the Commissioner of Yanam Municipality. The respondent passed orders on 15.04.2022 and 16.04.2022 directing the closure of the premises. It is on record that the police had taken



W.P.No.17194 of 2022

custody of the premises. The said orders have been challenged before this Court in W.P.No.10289 of 2022.

5.This Court had granted an interim order of Stay and had ordered joint inspection of the premises by the respondents as well as the petitioner in and by way of its order dated 01.06.2022. According to the petitioner while the matter was pending, the 4th respondent gave a Press Release on 18.04.2022 containing false statements, the 4th respondent was forcing the other officials to do as per his willing.

6.After the orders were passed on 15.04.2022 and 16.04.2022, the Member Secretary, Yanam Planning Authority, Yanam, issued a notice under Sections 43 to 46 of the Puducherry Town and Country Planning Act. Pursuant to the orders of this Court on 01.06.2022, the premises which had been sealed by the Superintendent of Police were de-sealed. Taking note of this fact, the Court adjourned the matter to July 2022. The petitioner records that on 27.06.2022, the Superintendent of Police had called upon the petitioner to stop all operations till 04.07.2022. The petitioner had refused the same, as he had obtained an interim order of this Court and had also filed an



W.P.No.17194 of 2022

Undertaking, as directed by this Court. On 28.06.2022, the Circle Inspector, together with other policemen, blocked the entrance of the petitioner's premises. They checked each and every vehicle coming to the premises and started questioning and intimidating the Members of the Society and its guests. The petitioner also had, in the meanwhile, filed an application for regularisation of the existing and proposed sheds to the 1st respondent. He gave a reminder on 29.06.2022 requesting the Authorities to process the same.

7. Surprisingly, on the very next day, the 1st respondent issued an order dated 27.06.2022 directing the petitioner to discontinue the use of the building in question. This has been challenged on the ground that it is in violation of the order of this Court dated 01.06.2022. The petitioner states the allegation that the premises can be used for recreational purposes only as an integral part of an industrial unit is not correct and that when the proposal for regularisation is pending with the Yanam Planning Authority, the passing of the impugned order pre-judges the issue and is without jurisdiction. It is pertinent here to point out the order of this Court



dated 01.06.2022. It states as follows:

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"13.The first and second respondent thereafter had a decision to take. They could have acted against the writ petitioner on the basis of what they found illegal gambling activities which had been conducted for which an First Information Report had been registered by the jurisdictional police and which has to proceed in accordance with law. They also had in their hands a report that there was violation of the building plan as such and additional constructions had been put up. Both these aspects were clubbed together in the impugned notice.

14.It is to be noted that the information which proceeded from the Yanam Municipality about extension of building without any permission, had not been put to the petitioner. But that was the basis on which the premise of the petitioner was closed and sealed.

15.Independently, the fourth respondent / the Superintendent of Police, Yanam, owing to the registration of the First Information Report had again taken a decision to seal the premise of the petitioner and strangely had put the building into the custody of the police station. That step should not have been done.

16. If the premises had to be sealed then it should have been handed over to the Municipality and the fourth respondent should not have handed over the custody of the building to the police.

17.In view of the arguments advanced and in view of the documents presented, let me take a via media approach and direct immediate de-sealing of the premises. The petitioner is directed to give an undertaking they would not conduct any gaming activity which can be termed as illegal. I also direct inspection of the building by the 1 st , 2 nd and 3 rd respondents in the presence of the petitioner to determine whether there



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W.P.No.17194 of 2022

is any violation of the building plan and thereafter file a report before this Court, whether such violation can be regularised or whether any penalty will have to be paid by the petitioner herein.

18. The petitioner must give an independent undertaking not only before this Court but also before the concerned officials that they would not violate the terms of the license particularly with respect to conducting any illegal gambling activities. Such activity should stop forthwith. They cannot continue with any such illegal activity and claim innocence and seek indulgence of this Court."

8.A joint inspection was held and a report had been filed before this Court. Pending consideration of the said report, the hastiness that has been shown by the 1st respondent in deciding the issue is surprising. The issue whether running of a club in an industrial zone is an illegality or irregularity was still pending before this Court. In W.P.No.10289 of 2022, we have already held that the change in use would not be illegal but would be irregular at best. It is settled position of law that what is not prohibited is permitted.

9.The argument of the learned Additional Solicitor General that the activities must be permitted or otherwise have to be treated as prohibited, does not answer constitutional norms. Part III of the



W.P.No.17194 of 2022

Constitution enshrines the fundamental right to a person to carry on lawful activities. Running of a club, for the benefit of its members, cannot be treated as an unlawful activity. We have observed, in the abovesaid Writ Petition, that in case the positive report/charge sheet filed by the police ends in a conviction, it is always open to the Authorities to take action against the writ petitioner and the persons responsible for all these activities. It is surprising that when the matter is seized of before this Court and the very same issue is the subject matter of the Writ Petition, in which this Court had granted an interim order and had directed to de-seal the premises, within a couple of weeks, the Authorities would come up with a very same ground and direct closure of the premises.

10.It is here that we have to take note of the fact that the petitioner had filed an application for regularisation of the premises. That application is pending with the Yanam Planning Authority. It is always open to the Authorities to decide one way or other. Even before the decision is arrived at, to direct closure of the premises, cannot be read but as arbitrary.



W.P.No.17194 of 2022

11.The petitioner is in possession of the property under the lawful lease from the owners for the period commencing from 01.04.2022 and ending with 31.03.2041. The said lease is a registered one. In the Inspection Report filed before this Court, the parties, i.e., the petitioner as well as the respondents 1 to 3 have stated that the deviations can be regularised. That report was still to be either accepted or rejected by this Court. Overreaching this Court, the respondents have passed the impugned order.

12.It is pertinent to point out that the very same Authority who had submitted the report and which was pending consideration before this court, has passed the impugned order. In the impugned order, the petitioner had been informed that the plan requires correction and the proposal of the petitioner was being placed before the Yanam Planning Authority in its next meeting. Having stated that the Yanam Planning Authority is yet to take a decision, to direct closure of the premises, is an indirect way to get over the interim orders of this Court. Obedience to the orders passed by the Court is the foundation of this republic which is working in accordance with law.



W.P.No.17194 of 2022

13. Having suffered an interim order on 01.06.2022, to overreach that order and direct closure on 27.06.2022 is nothing but an arbitrary exercise of power. What the respondents were not able to achieve in W.P.No.10289 of 2022, they have sought to achieve by the impugned order. We are not in agreement with the order which seeks to overreach the orders of this court.

14. It is here that the Pondicherry Change of Land Use Regulations of 2022 issued on 15.12.2022 becomes relevant. As per this statutory regulation issued in terms of Section 34A read with Section 82 of the Pondicherry Town and Country Planning Act, 1969, the Pondicherry Government has decided that it will permit the land use conversion on payment of charges. This is sufficient to conclude that a change in usage of the premises is only a condonable act and not an illegal one.

15. The learned counsel appearing for the petitioner seeks liberty of this Court to file an application seeking for change in land use. When the law enables the petitioner to file an application, no liberty is necessary from this Court. The plea, having been made, we



W.P.No.17194 of 2022

make it clear that it is open to the petitioner to file an application and it is for the Authorities to consider the same in accordance with the regulations dated 15.12.2022. Insofar as the present impugned order is concerned, as we have found inherent contradictions in the order as well as it is a brazen attempt in overreaching to get over the order of this Court and one passed without jurisdiction, since the Yanam Town planning Authority was yet to take a decision on the application filed by the writ petitioner, the impugned order is set aside.

16. Accordingly, this Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (V.L.N., J)
28.04.2023

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mps

Note to Office:
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W.P.No.17194 of 2022

To:

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Yanam Planning Authority,
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W.P.No.17194 of 2022

V.M.VELUMANI,J.

and

V.LAKSHMINARAYANAN,J.

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Pre-delivery Order in
W.P.No.17194 of 2022&
W.M.P.No.16470 of 2022

28.04.2023