



W.P.No.33878 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.33878 of 2022
and W.M.P.No.33358 of 2022

Royal Yanam Recreation Society,
rep. by its Secretary
Mr.P.N.V.S.S.V. Prasad Raju,
Ward F, Block 2, T.S.No.14/1,
Avidipolam,
Hamlet of Yanam,
Puducherry.

...Petitioner

vs.

1.The Director General of Police,
Puducherry.

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

3.The Circle Inspector of Police,
Yanam Police Station,
Yanam,



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Puducherry - 533 464.

4.The Regional Administrator

-cum- Sub Divisional Magistrate,

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 2nd respondent impugned order No. 1093/ SPY/ DR/ 2022, dated 7.11.2022, 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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ORDER

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

This Writ Petition seeks for a writ of Certiorarified Mandamus calling for the records of the 2nd respondent impugned order No. 1093/ SPY/ DR/ 2022, dated 7.11.2022, 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. The writ petitioner is running a club for the purpose of catering to the needs of its members and guests who come along with the members.

3.The petitioner states that its activities are legal and has in fact filed an Affidavit of Undertaking before this Court on 23.02.2023. It reads as follows:-

“I state that the petitioner Royal Yanam Recreation Society is conducting games and activities



which are in accordance with law. The activities and games are Chess, Caroms, Badminton, Table Tennis, Volleyball and skill game like Rummy 13 cards by its members and guests only.”

4.By the impugned order, the Superintendent of Police/2nd respondent has directed the writ petitioner to stop illegal gaming activities on the ground that the Sub-Divisional Magistrate, Yanam, had instructed clubs not to allow outsiders into the clubs, apart from the organizers and caretakers. The order also reads that the Sub Divisional Magistrate had further directed the police to ensure that no club activities are being carried on in the recreation club and that the presence of clubs is causing havoc to the peaceful life of the residents of Yanam and creating enmity among the rival groups which might lead to law and order problems. On this basis, the Superintendent of Police had directed stopping all illegal gaming activities. This order is challenged before this Court.

5.The Puducherry Gaming Act, 1965 prohibits "gaming" as defined under Section 2 (b) of the said Act. It also has penalty for opening of a gaming house and for persons found to be gaming in a



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"common gaming house". A common gaming house is also defined under Section 2 (a) of the said Act. The penal provisions are found under Sections 4 to 9 of the said Act. It is pertinent to point out Section 10 of the said Act which holds that nothing in the aforesaid Sections would apply to the games of mere skill wherever it is played. If an activity is contrary to the said provisions, then the Police are empowered to arrest without warrant for any activity that are in fraction of the said Law. It also empowers the police to lodge a complaint and take up matters for investigation. Therefore, if any illegal gaming act is being carried on in a club, it is for the police to register an FIR, investigate and file a charge sheet. It is always open to the Police to prosecute the persons concerned and to get a conviction, if the facts are so made out.

6.A general direction by the police that, law and order problems might occur does not answer the requirement of the said Act.

7.This Court by its order in ***Sri Satya Sai Recreation Society Yanam Vs. The Superintendent of Police and others*** in W.P. No. 7241 of 2022 had passed the following directions:



"This petition has been filed by the writ petitioner praying for interim injunction restraining the respondents and their men, agents, servants from interfering with the services of the petitioner Club in any manner till the disposal of the writ petition.

2.Learned Counsel appearing for the petitioner made reliance upon the directions issued by this Court in W.P.No.2972 of 2012 dated 05.03.2012, which is extracted hereunder:

'11.Therefore, in the light of the aforesaid facts and law, I am inclined to follow the earlier judgement dated 04.11.2011 made in W.P.No.21620 of 2011 and dispose of this Writ Petition with the following conditions:

a)The petitioner association shall not indulge in any illegal activity other than playing Rummy (13 cards) with stakes by its members and guests;

b)If there is any evidence of gambling in some other way, the respondent police have a right to enter the premises of the petitioner's association, inspect and take action as per law;

c)The respondent police are also advised not to disturb the petitioner association frequently under the guise of inspection as it would disturb the peace harmony of the petitioner association.

d)The petitioner and the members of the petitioner Club are entitled to carry on lawful activities within their premises and there should not be any interference from the police authorities, so long as their activities are not in violation of the provisions of the Public Gambling Act, 1867/Tamil Nadu Gaming Act, 1930;



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e) In the normal circumstances, there should be no interference in the lawful functioning of the Clubs, by the Police. It is not permissible for the police to enter the Club premises as a routine measure, so long as the Clubs are functioning within the frame work of law;

f) If the police authorities have specific information or reasonable doubt that the activities carried on by the Club or its members are not in accordance with law or they indulge in unlawful activities, in violation of the provisions of the Public Gaming Act, 1867/Tamil Nadu Gaming Act, 1930 or any other enactment, it would be open to them, after recording reasons in the General Diary maintained in the Police Station, to proceed to enter the Club Premises, conduct investigation, interrogate those who involve themselves in such activities and take appropriate action on merits and as per law;

g) While exercising the powers conferred on the police authorities, they should follow the mandatory provision as contained in Section 5 of the Tamil Nadu Gaming Act, 1930/Public Gaming Act, 1867;

h) It is always open to the Club or its members to challenge the action taken by the police, if it is not in accordance with law;

i) In case the Police authorities are of the opinion that a situation has arisen to suspend the operation of the Club in exercise of the powers conferred, they have to issue an order in writing. When there is no authority to the police to issue an order of suspension orally, they are not entitled to pass such oral orders; and

j) Before passing orders for the purpose of closure of the Club, in exercise of the powers conferred on the authorities, they should follow the principles of natural justice. The Club should be given an opportunity to submit their objections and if so desired, a further



opportunity of personal hearing should also be given.

12.In the result, the writ petition is disposed of in the above terms. No cost."

3.Learned Government Advocate appearing for the respondents based upon the counter affidavit submitted that merely rental agreement was entered into by the writ petitioner and the writ petitioner is yet to take possession of the property, which fact is disputed by the writ petitioner as well as the impleaded respondent C.Balakrishnan.

4.However, considering the above said decision dated 05.03.2012 made in W.P.No.2972 of 2012 and the facts and circumstances for the case, there shall be an interim order of status quo. It is made clear that the conditions imposed by this Court in W.P.No.2972 of 2012 dated 05.03.2012 and the directions issued therein are applicable to the present case as well.

The writ petition is directed to be listed for hearing in the first week of October, 2014."

8.The said direction will apply to the facts of the present case. It is made clear that the police must strictly follow the provisions of the Puducherry Gaming Act, 1965 and cannot pass a blanket order as has been done in the present case. We view the order passed by the Superintendent of Police as an attempt to get over the order passed by



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this Court on 01.06.2022 and we frown on this attitude.

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9. The impugned order is also arbitrary in the sense, the Superintendent of Police has said only the organisers of the club and caretakers (3 Nos.) alone are entitled to enter the premises. Such an order is *ex facie* arbitrary. A club, by its very nature of business, involves persons who are its members to visit its campus, in order to relax and to mingle with like-minded persons. The law of this Country does not enable the police to dictate how many guests or how many members that a club can have.

10. Right to form an Association is a fundamental right under Article 19(1)(c) of the Constitution of India. Similarly, the right to assemble peaceably and without arms is protected under 19(1)(b) of the Constitution of India. The ground on which these rights can be restricted is if any activity which affects the sovereignty and integrity of India and public order. These rights too can be restricted only by a law that is made by the Union Territory of Puducherry. The impugned order does not speak of any act of the petitioner which affects the sovereignty and integrity of this nation or has resulted in breach of



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public order. The Police, being a branch of the executive arm, does not have such a power. If such a power is conceded to the police, it is the beginning of the end of the road to freedom which has been guaranteed under the Constitution of India. Therefore, on this ground too, the impugned order is liable to be set aside.

In fine, the parties are directed to comply with the conditions imposed above. This writ petition is allowed with the aforesaid directions. No Costs. Consequently, connected Miscellaneous Petition is closed.

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

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
mps

Note to Office:
Issue on 08.05.2023



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To

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Puducherry.

2.The Superintendent of Police,
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Pre-delivery Order in
W.P.No.33878 of 2022 &
W.M.P.No.33358 of 2022



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