

(2011) 01 BOM CK 0111

In the Bombay High Court

Case No : Criminal Writ Petition No. 223 of 2011 and Criminal Application No. 46 of 2011 in Criminal Writ Petition No. 223 of 2011

Sangeeta Ashok Sanap

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 18, 18(1), 18(4)

Citation : (2011) CriLJ 2206 : (2011) 3 KLT 32 (SN)

Hon'ble Judges : A.R. Joshi, J;A.M. Khanwilkar, J

Bench : Division Bench

Advocate : A.R. Pande, for the Appellant; M.H. Mhatre, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Counsel for the Petitioner and learned A.P.P. for the State.
2. By this Petition, order dated 14th January, 2011 for eviction and closure of brothel u/s 18(1)(a) and 18(1)(b) of the Immoral Traffic (Prevention) Act, 1956 issued by the Commissioner of Police, Brihanmumbai is put in issue.
3. The Petitioner before this Court claims to be tenant in respect of premises bearing Room No. 6/A, 1st floor, Liladhar Building (Sharda Sadan), 30 Kenedy Bridge, Opera House, Mumbai. In the said premises it was noticed that illegal activities attracting provisions of Act of 1956 were being conducted by the occupants thereof. As a result, the Commissioner of Police being the competent Authority issued show cause notice to the concerned persons including the Petitioner.
4. The Petitioner, as aforesaid claims to be tenant of the disputed premises. The case of the Petitioner is that some other person i.e. one Durga Krishnamurthy Pujari was given licence by her to use the said premises. The Petitioner asserts that she has no knowledge as to what activities were undertaken in the said

premises. The fact remains that the Appropriate Authority proceeded against the occupants and persons having interest in the said premises on the basis of the illegal activities conducted therein attracting the provisions of Act of 1956. For that reason, show cause notice was issued and consequently order u/s 18(1)(a) as well as u/s 18(1)(b) has been passed. The argument of the Petitioner is that the Commissioner of Police cannot discharge the duties of Magistrate as required for the purpose of Section 18 of Act of 1956. That question has been answered by us in Criminal Writ Petition No. 2838/2010 [Pushpa Ram Thapa v. The State of Maharashtra and Ors.] dated 14th December, 2010. We have negated the argument that the Commissioner of Police cannot be appointed as Magistrate, after considering the relevant provisions of law. For the same reason, we reject the argument of the Petitioner which has been reiterated in this Petition.

5. The next argument of the Petitioner is that the premises in question are not situated within the 200 meters radius distance from any public place as is required by Section 18 of the Act of 1956. This argument does not commend to us. The Appropriate Authority has noted as of fact that the premises falls within the distance of 200 meters from the public place namely "Queen Mary School". That being a finding of fact, will bind the Petitioner as well as this Court. It is not open for this Court to enter into disputed questions of fact in exercise of writ jurisdiction.

6. The next argument canvassed before us is that in any case, the Commissioner of Police has no powers to seal the premises. This argument does not commend to us. Inasmuch as, Section 18 plainly contemplates an action of attachment of the property and eviction of the occupier therefrom as soon as the order is passed and further imposing condition on the owner/lessor or the landlord to obtain previous approval of the authority before letting it out during the period of one year as provided in Clause (b) of Section 18(1). The fact that there is power of attachment and eviction presupposes that it includes the power to seal the premises. This interpretation is inevitable as Section 18(1)(a) empowers the Magistrate to evict the occupier from the house/room/place or portion thereof. The eviction of the occupier can be effected also by sealing the premises, the avowed purpose whereof is to ensure that the illegal activities are stopped forthwith. The Petitioner before us is not an occupier, but, claims to be a tenant. According to the Petitioner, her licensee or the occupier of the premises at the relevant time must have misused the premises. That would however make no difference. The action 5 initiated by the Authority can be even against the occupier of the premises. For that reason, the Authority has not only evicted the occupier but also sealed the premises in question to ensure that the illegal activity is not continued any longer from the same place.

7. We may usefully refer to the provisions of Section 18(4) of the Act which provides that notwithstanding anything contained in any other law for the time being in force, when an order such as the impugned order is passed u/s 18(1), any lease or a agreement under which the house, room, place or portion is

occupied at the time, shall become void and inoperative. The provision opens with a non obstante clause. Further, it creates a legal fiction. The consequence of the impugned order passed, by virtue of Section 18(4) of the Act, results in snapping the relationship of all persons claiming any right in relation to the stated premises be it as a tenant or otherwise under an agreement. For the lease or agreement under which person claims right itself becomes void and inoperative. In the circumstances we fail to understand as to how the Petitioner can succeed in the challenge to the order passed u/s 18(1) of Act of 1956 in respect of premises in question.

8. We have therefore, no hesitation in taking the view that the language of Section 18 is wide enough to permit the Appropriate Authority to seal the premises to ensure that illegal activities attracting the provisions of Act of 1956 are not carried from such place within the radius of 200 meters of any public place. In the circumstances, this Petition fails.

9. Accordingly, Petition is rejected. As a result, the companion Application is also rejected.