

(2014) 02 AP CK 0019
In the Andhra Pradesh High Court
Case No : Writ Petition No. 15623 of 2010

Sri Motumarri Ramakrishna

APPELLANT

Vs

The Sub-Divisional Magistrate and Revenue Divisional Officer
and Inspector of Police

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Immoral Traffic (Prevention) Act, 1956 — Section 15, 18, 18(1), 3, 3

Citation : (2014) 3 ALD 243 : (2014) 3 ALT 693

Hon'ble Judges : A. Ramalingeswara Rao, J

Bench : Single Bench

Advocate : P. Ganga Rami Reddy, Advocate for the Appellant

Final Decision : Allowed

Judgement

A. Ramalingeswara Rao, J.—The writ petitioner is a Managing Partner of a lodge situated at Kodad Road, Jaggaiahpet, Krishna District. The 2nd respondent-Inspector of Police, Jaggaiahpet Circle along with mediators raided the said lodge on 03-05-2010 at 13.00 Hours and registered Cr. No. 50 of 2010 for an offence under Sections 3, 4 and 5 of the Immoral Traffic (Prevention) Act, 1956 (for short "the Act") against the petitioner and five others. Based on the information furnished by the 2nd respondent, 1st respondent issued a notice dated 02-06-2010 u/s 18(1) of the Act calling for explanation of the petitioner as to why the lodge should not be attached on the ground that it was used as a brothel house. The petitioner submitted his explanation on 08-06-2010. It is stated that the 1st respondent without considering the explanation, passed the impugned proceedings in Rc. No. A1/2133/2010, dated 29-06-2010. The 2nd respondent filed a counter-affidavit stating that on information regarding the maintenance of lodge as a brother house, he raided on 03-05-2010 along with staff and mediators and caught hold of the room boy and on his confession raided Room No. III and found two male and one female and recorded their confessional statements before the mediators. Three persons were arrested and in their

statements they stated that the petitioner being the owner of the lodge knew about the brothel house is being run in the said lodge. Cr. No. 50 of 2010 was booked under Sections 3 to 5 of the Act against the petitioner and five others. On 07-05-2010 he filed a petition before the 1st respondent to seize the said lodge and on 02-06-2010 the 1st respondent issued a notice to the petitioner asking to submit his explanation as to why the said lodge should not be attached. The petitioner received the said notice and submitted his explanation on 08-06-2010. After considering the explanation the impugned orders were passed.

2. Heard the learned counsel for the Petitioner and the learned Assistant Government Pleader for the 2nd Respondent.

3. The learned counsel for the Petitioner states that u/s 18(1) of the Act, the 1st Respondent has power to pass the order of eviction of the occupier, within seven days of the passing of the order, from the premises. If the owner wants to let out during the period of one year, the owner has to obtain previous approval of the Magistrate. But the impugned order was passed directing closure of 2nd and 3rd floors with immediate effect and the same is contrary to the provisions of the Act. It was further stated that there was no allegation what-so-ever either in the First Information Report or in the mediators' report to show that the owners are running the brothel house and they are aware of the same.

4. The learned Assistant Government Pleader on instructions states that case was registered as C.C. No. 174 of 2011 and it was posted for hearing on 19-12-2013.

5. The relevant portion of the impugned order reads as follows:-

The explanation given by the individual is not correct and his version that the hotel is being run by employees" shows his irresponsibility and his explanation that the entire happenings in the hotel. If any will not come to his notice is not convincing and beyond reason.

The records of the complainant i.e., Inspector of Police, Jaggaiahpetta were also perused. As seen from the copy of the Register of Hotel Indu, the room No. III was booked on the name of Sri N. Veera Sankar S/o Veerabhadra Rao. In the mediators report, it was clearly stated by the room boy Sri Pattipati Ramesh S/o Late Yesaiah, that prostitution is being carried out in the hotel and the owners of the hotel also aware of the matter. Sampath Gopi S/o Ramaiah and N. Veera Sankar have stated that they have taken room No. III for rent on 3-5-10 by paying advance of Rs. 1000/- and booked one lady by name Munisha for prostitution.

Hence satisfied with the information laid by the Inspector of Police, Jaggaiahpetta and the material available on record, I, Sri K. Dharma Reddy, Sub Divisional Magistrate & Revenue Divisional Officer, Vijayawada hereby order to closure the 2nd and 3rd floors of Hotel Indu, Jaggaiahpetta U/s. 18(1) of the Immoral Traffic(Prevention) Act, 1956, which is being used for carrying prostitution with immediate effect.

6. Section 18 of the Immoral Traffic (Prevention) Act, 1956 reads as follows:-

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

(1) A magistrate may, on receipt of information from the police or otherwise, that any house, room, place or any portion thereof within a distance of two hundred meters of any public place referred to in sub-section (1) of section 7, is being run or used as a brothel by any person or is being used by prostitutes for carrying on their trade, issue notice on the owner, lessor or landlord of such house, room, place or portion or the agent of the owner, lessor or landlord or on the tenant, lessee, occupier of, or any other person incharge of such house, room, place or portion to show cause within seven days of the receipt of the notice why the same should not be attached for improper user thereof; and if, after hearing the person concerned, the magistrate is satisfied that the house, room, place or portion is being used as a brothel or for carrying on prostitution, then the magistrate may pass orders--

(a) directing eviction of the occupier within seven days of the passing of the order from the house, room, place or portion;

(b) directing that before letting it out during the period of one year or in a case where child or minor has been found in such house, room, place or portion during a search u/s 15, during the period of three years, immediately after the passing of the order, the owner, lessor or landlord or the agent of the owner, lessor or landlord shall obtain the previous approval of the magistrate.

Provided that, if the magistrate finds that the owner, lessor or landlord as well as the agent of the owner, lessor or landlord, was innocent of the improper user of the house, room, place or portion, he may cause the same to be restored to the owner, lessor or landlord, or the agent of the owner, lessor or landlord with a direction that the house, room place or portion shall not be leased out, or otherwise given possession of, to or for the benefit of the person who was allowing the improper use therein.

7. A perusal of the above Section clearly shows that the Magistrate on receipt of information from the police or otherwise that a house is being run as a brothel, after issuance of notice to the owner or lessor, he may pass orders directing eviction of the occupier of house and directing before letting it out during the period of one year immediately after the passing of the order, the lessor or the landlord should obtain the previous approval of the Magistrate.

8. Though the Section provides for issuance of a notice of attachment for improper use of the premises, the Magistrate was not given any power for attachment of the premises directly. In the instant case, the 1st Respondent ordered closure of the 2nd and 3rd floors of the lodge with immediate effect. In view of the Section 18(1) of the Act, the order passed by the 1st Respondent is illegal and is set aside. However, this order has no bearing on the pending proceedings in C.C. No. 174 of 2011, which are independent proceedings.

The writ petition is accordingly allowed. No order as to costs.

That Rule Nisi has been made absolute as above. Witness the Hon"ble Sri Kalyan Jyoti Sengupta, the Chief Justice on this Wednesday, the Fifth Day of February, Two Thousand and Fourteen.