

THE HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.10208 OF 2024

ORDER :

This writ petition is filed aggrieved by the action of respondents Police in not acting upon petitioner's complaints dated 15.07.2022, 07.12.2023 and 27.01.2024 made through Telephone, Whatsapp and written, regarding illegal activities such as gambling, consumption of liquor including drugs and other activities taking place in the Clubhouse of respondent No.9 - Indu Fortune Fields Villa Owners Association, as being illegal, arbitrary and contrary to the Sections 3 and 4 of the Telangana Gaming Act 1974, Rule 4 and 7 of the Telangana Excise Rules 2005 and Telangana Excise Act 1968, provisions of Narcotic Drug and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and provisions of Immoral Traffic (Prevention) Act, 1956.

2. It is submitted that there are three hundred and seventy six (376) villas in gated community by name Indu Fortune Fields Villas (Orchids and Meadows) (for short 'gated community') situated in an extent of Acs.65-00 guntas in Survey No.1009 of Kukatpally

Village, Balanagar Mandal, Medchal-Malkajgiri District. The gated community was constructed by M/s. Cyberabad Hitech Integrated Township Development Corporation Private Limited (CHIDCO Pvt. Ltd.) by entering into agreement with Andhra Pradesh State Housing Board (APHB) for development of aforesaid land. The developer has provided many amenities like Tennis Court, swimming pool along with Clubhouse in the gated community. The Clubhouse was constructed in a plot area of 2,170 square meters which consists of gymnasium, Yoga room, library/reading room, conference hall, canteen, 11 separate rooms to the guests of residents of all villa owners (on rent basis).

3. It is stated that petitioner purchased a villa bearing No.41 admeasuring 325 square yards by registered sale deed bearing document No.5322 of 2015 dated 26.06.2015. Since then he had been staying in the said villa by paying all the requisite charges to the Municipal, Electricity Department including maintenance charges to respondent No.9 from time to time. The villa owners have formed association under the name and style of Indu Fortune Fields Villa Owners Association i.e., respondent No.9 (for short

‘Association’) *vide* registration No.157 of 2009 dated 31.01.2009. As per the Bye laws of the Association, respondent No.9 has to deal with the maintenance of common areas of 376 villas like maintaining cleanliness, arranging water facilities, maintenance of Clubhouse and cultural centre situated in the premises of gated community. Further, as per the Memorandum of Association and Bye laws of Association, there will be an elected Executive Committee for a period of two (2) years who are responsible for maintaining the amenities, Clubhouse etc. As per Article 2 of the Byelaws in Clause 19.22, the Executive Committee of respondent No.9 is competent to take steps either *suo moto* or on receipt of any written complaint from the residents/occupants of villa owners with regard to any objectionable activities that are repugnant to the general decency/morals of the members/nominal members of the Association to prevent the same.

4. It is submitted that during COVID - 19 in the year 2020, when lock down was imposed, life of the citizens has come to stand still. At that time, some of the villa owners used to meet everyday in the Clubhouse for chitchatting. Subsequently, they started

playing cards, consuming liquor and started doing other illegal activities in the Clubhouse. As the respondent No.9 association did not raise any objections the said members continued such activities everyday and caused disturbances and insecurity to all residents in the gated community; petitioner and other residents requested the President of respondent No.9 Association to take immediate action for preventing illegal activities such as playing cards, consumption of liquor, etc., in the Clubhouse. They have also conveyed the message through Whatsapp to respondent No.9 - Association. That instead of taking action, respondent No.9 sought for legal opinion on the issue. The concerned advocate gave legal opinion stating that in the absence of any permission from the Police, playing cards in the Clubhouse is not permissible and without obtaining any license from the concerned Excise Department, consumption of liquor in the Clubhouse is also not permissible. It is further categorically stated by the said advocate that the Clubhouse in a gated community is meant for providing recreational activities to the villa owners but the same cannot be used for any other purpose especially for illegal

activities and also stated that the Association is bound to maintain the decency and decorum of the Clubhouse of the gated community.

5. It is submitted that after lifting lockdown in the year 2021, several members started playing cards, consuming liquor and continued illegal activities including the consumption of drugs by their siblings and children. Further, there was human trafficking in the rooms of the Clubhouse during the night hours. Such illegal activities made adverse psychological impact on the children, women, youth and families residing in the villas.

6. It is submitted that the petitioner requested respondent No.9 to take necessary action on such illegal activities. But respondent No.9 did not take any action. In the circumstances, petitioner lodged a complaint dated 15.07.2022 to respondent No.4 - the Commissioner of Police, Cyberabad, through his mobile phone and requested him to take immediate action. In pursuance of the same, respondent No.4 instructed respondent Nos.5 to 7 to inspect the Clubhouse. Accordingly, on 15.07.2022 respondent No.7 - the Station House Officer, Kukatpally Housing Board Police Station,

through his officer in-charge of patrolling duties came to the Clubhouse in the evening hours at 08:15 P.M. Immediately, the staff of respondent No.7 came to the Clubhouse and enquired in the reception. In the meanwhile, all the persons who are playing cards and consuming liquor removed all the evidences and stood at the entrance of the Clubhouse and enquired the name of the person who made complaint. They came to know that petitioner lodged complaint, thereafter the team of Police inspected the rooms and came to know that no illegal activities have taken place in the Clubhouse. Subsequently, the persons who were playing cards and doing illegal activities mobilized the people in the presence of Police and attacked the petitioner with sticks, knuckles and revolver and tried to kill him and with great difficulty, petitioner escaped from the situation.

7. It is submitted that there was no response from the Police on the occurrence of the incident and to ascertain the same, petitioner filed an application under Section 6(1) of the Right to Information Act 2005 (for short 'Act 2005') and information was sought about the status of incident happened on 15.07.2022. Thereupon, on

02.01.2023 respondent No.7 replied him stating that after receipt of complaint, the patrolling staff of respondent No.7 deputed one Mr. Sandeep, Sub-Inspector of Police, to visit the gated community. After inspection, they found some residents of the gated community who were partying, they thoroughly checked the Clubhouse premises, but they found nothing suspicious regarding gambling. It is stated that without giving any information of the said inspection, the Police gave a vague and baseless report in order to protect the interest of villa members.

8. It is submitted that on 23.02.2023 petitioner filed an application under Section 6(1) of the Act 2005 to respondent No.6 - the District Prohibition and Excise Officer, Medchal-Malkajgiri District, seeking information whether permission was granted for consumption of liquor in the Clubhouse on 15.07.2022. On 15.03.2023, respondent No.8 - the Prohibition and Excise Inspector, Balanagar, furnished information stating that no permission was granted and further stated that permission is certainly required for consumption of liquor in the Clubhouse situated in the gated

community. Thus, the alleged report submitted by the Sub-Inspector of Police, KPHB Police Station is illegal.

9. It is submitted that even after the inspection of Police and patrolling staff, the illegal activities continued. On 20.03.2023, petitioner lodged a complaint with respondent No.9 requesting them to take necessary action, but there was no positive action. Again on 07.12.2023, a written complaint was sent through speed post to respondent Nos.1 to 6 narrating about all the illegal activities taking place in the Clubhouse of the gated community, but there was no action. Petitioner came to know that respondent Nos.1 to 6 received complaint on 11.12.2023, but to no avail. The Police failed to take action in accordance with law, though accused persons have committed cognizable offences.

10. It is submitted that on 27.01.2024 petitioner made another complaint to Special Operations Team (SOT), Balanagar, through his mobile phone and also by Whatsapp. The SOT raided the Clubhouse on the same day and have taken fifteen (15) persons into the custody who were playing cards, consuming liquor in the

Clubhouse. All the 15 persons, were taken to KPHB Police Station. However, no information was given to the petitioner whether any crime has been registered. On 06.03.2024, petitioner submitted application under Section 6(1) of the Act 2005 to respondent No.7 seeking information. In reply to that on 26.03.2024, respondent No.7 furnished information stating that required information could not be furnished in view of the bar under Section 8(1)(j) of the Act 2005.

11. It is submitted that such information sought by the petitioner has nothing to do with the exemption from disclosure of information as stated under Section 8(1)(j) of the Act 2005. It clearly shows that respondent No.7 is hand in glove with persons who have committed illegal activities in the Clubhouse. The application of the petitioner was rejected on 03.04.2024 and he preferred an appeal before the First Appellate Authority i.e., the Assistant Commissioner of Police, Kukatpally Division, Cyberabad, which is pending.

12. It is submitted that in the above circumstances, having no other alternative petitioner invoked extraordinary jurisdiction under Article 226 of the Constitution of India and filed this writ petition.

13. Upon hearing learned counsel for the petitioner and learned counsel for respondent No.9, this Court passed the following order on 15.07.2024:

“Mr. Resu Mahender Reddy, learned Senior Counsel appearing for respondent No.9 Association, placed on record the Minutes of the meeting held on 10.07.2024. It is stated that the Executive Committee has decided to instruct the security personal of the community to keep track of all activities of the Club House and report to the Executive Committee about objectionable activities. Further, the Executive Committee has decided to monitor the situation on regular basis to ensure that no objectionable activities take place in the Community premises.

Learned counsel for the petitioner submitted that the assurance given by respondent No.9 before this Court on the basis of Minutes of the meeting held on 10.07.2024 would not be sufficient and it is necessary that respondent No.9 convenes an extraordinary General Body Meeting as the Club House is being used by several members/children in the community for organizing gaming activities, liquor parties etc., and there are also instances of consumption of drugs.

In the circumstances, respondent No.9 is directed to convene extraordinary General Body Meeting within a period of four (04) weeks from today and discuss/solicit opinion of all the stakeholders to curb illegal activities such as consumption of

drugs, and come out with a permanent action plan so as to ensure that such illegal activities do not recur at future point of time.”

Subsequently, order dated 18.09.2024 was passed recording the submissions of learned counsel for the petitioner that a sub-committee comprising of three senior members, two of whom are ladies, be constituted so as to supervise the activities in the Clubhouse and ensure that illegal activities are not allowed and there is supervision on day-to-day basis. It was also recorded that Mr. S.V.S. Chowdary, learned counsel for respondent No.9, would give appropriate advice to his client and get back to this Court with necessary instructions in that regard.

14.1 Learned counsel for respondent No.9 filed counter stating that pursuant to the order dated 15.07.2024, an Extraordinary General Body Meeting (EGM) of the Association was conducted on 28.07.2024 and the Association discussed the various issues raised by the petitioner and resolved as follows:

a) It has been resolved that the Executive Committee shall do all such acts that are required to be done to ensure that no illegal and immoral activities are carried out in the community,

b) It has been resolved that a 3-member committee is to be formed to look into complaints of any illegal / immoral activities.

c) It has been resolved that ID cards of guests booking Guest rooms and other facilities are to be collected and recorded.

d) It has been resolved that CC cameras be installed in areas not being covered at present.

14.2 The above resolutions were passed in the EGM by 102 residents/members of the gated community and Executive Committee is implementing the said resolutions. Pursuant to the order dated 18.09.2024 passed by this Court, petitioner has been claiming that in the gated community he will be appointing a three member committee who will take over from the duly elected Executive Committee and subsequently, he would close the Clubhouse and all the common facilities in the gated community. Petitioner had been threatening that he would ruin the Association if his views are not imposed in the Association. Petitioner has contacted the developer who is the owner of the Clubhouse and asked him to cancel the lease of the Clubhouse to the Association. All these actions are causing devastation to the residents of the gated community.

14.3 It is submitted that the constitution of sub-committees should be in line with the Bye-laws of the Association. In any case, any constituted sub-committee can only have a reporting responsibility to the Executive Committee and cannot have a supervisory role over the elected Executive Committee of the Association. If any additional sub-committee is to be constituted to look exclusively into the management of the Clubhouse, then such sub-committee should be an elected one and the petitioner cannot take over the management through oblique and devious route.

15. Heard Mr. K. Muralidhar Reddy, learned counsel for the petitioner, Mr. S.V.S. Chowdary, learned counsel for respondent No.9, Mr. Mahesh Raje, learned Government Pleader for Home and Mr. E. Ramesh Chandra Goud, learned Government Pleader for Excise and perused the material on record.

16. During the course of hearing of writ petition, learned counsel for the petitioner submitted that pursuant to the orders passed by this Court, the illegal activities in the Clubhouse have come down substantially. However, there have been instances of youngsters

who are children of the resident members consuming liquor and playing cards. Whenever, petitioner brought such activities to the notice of the Executive Committee, he is being threatened by some members and residents of the gated community with dire consequences.

17. Mr. Mahesh Raje, learned Government Pleader for Home, submitted that it would be difficult for this Court to supervise the day-to-day activities of the gated community. In the interest and welfare of the gated community, this Court may issue general instructions to ensure that no illegal activities take place in the Clubhouse of the gated community, in future. The Government of Telangana had been strictly implementing the provisions of the NDPS Act. The Telangana Anti-Narcotics Bureau (TNCB) has been keeping vigilance over vulnerable places including the residential places and the Clubhouses. As and when credible information is received necessary action is being taken by the TNCB.

18. During the course of hearing, learned counsel for the petitioner submitted that whenever illegal activities in the Clubhouse are reported to the Police, the security personnel on coming to know about the surprise checks of the Police are passing on the information to the members/residents who are illegally using the Clubhouse. By the time, the Police reach the Clubhouse, the evidence is wiped out.

19. This Court informed the learned counsel for the petitioner that it would be difficult for this Court to supervise the activities of the Clubhouse and give frequent directions to the Police unless any instance of illegal activity is brought to the notice of this Court by the Police.

20. Learned counsel for the petitioner submitted that necessary directions/instructions be issued to respondent No.9 Association to ensure that there is peace and tranquillity in the Clubhouse and gated community keeping in view the residents who are senior citizens, women, teenagers and minors.

21. This Court has given earnest consideration to the submissions made by learned counsel for the petitioner, learned counsel for respondent No.9 and learned Government Pleader for Home. It may be noted that unlike regular residential colonies which are in open layouts, a gated community has restricted entry for others/outsiders except guests. These communities offer round the clock surveillance, manned entry gates and trained security services. They have advantages like privacy, safety, eco-friendly environment, amenities for children and pedestrians, standard lifestyle etc. The outsiders are not permitted to enter gated communities without permission. The same is not the situation in open and other residential colonies. The petitioner who is a practising lawyer and resident of gated community has approached this Court ventilating his grievances regarding illegal activities within the gated community and particularly the Clubhouse. On reading the averments of the writ affidavit, it cannot be said that petitioner has approached this Court without any cause and concern. As a matter of fact, petitioner has also categorically stated in the affidavit that when SOT Police raided the Clubhouse on 27.01.2024, it was found

that 15 persons were consuming liquor without permission, which is not denied by the respondents.

22. It is contended by learned counsel for respondent No.9 that if a sub-committee is appointed, it has to be formed in accordance with the Byelaws of the Association. It is relevant to note that it would not be possible for the entire Executive Committee Members to take cognizance of activities/nuisance in the clubhouse on day-to-day basis. In a community of 376 villas, it would rather be impossible for the Executive Committee to keep a check on the activities given the other core responsibilities like maintenance of roads, water, parks and cleanliness etc.

23. Assuming that Byelaws to the Association did not permit the constitution of the sub-committees, respondent No.9 which is an elected body is required to come out with a solution before this Court. The counter of respondent No.9 does not specifically speak about any action plan to curb the illegal activities pointed out by the petitioner. It is a desire of a person who owns a house in the gated community to have a peaceful, decent and dignified life. People

choose to live in gated community with a fond hope that they will have peace, harmony, better amenities and facilities like gymnasium, sports, parks etc.

24. The provisions of the Hyderabad City Police Act, 1348 F, (for short 'City Police Act') regulate public nuisance and safety. The counsel for the petitioner and respondents have not brought to the notice of this Court any statute specifically dealing with the activities of "gated community". With the ever growing trend of people aspiring to have better lifestyles and the pace of growth of the gated communities including the villas and flats, it is appropriate time for the State to frame specific guidelines and instructions for their internal management. Though all the communities/flat associations are governed by the provisions of the Telangana Apartments (Promotion of Construction and Ownership) Act, 1987 and the sale deeds mandatorily contains clauses relating to compulsory membership of the association and adherence to the Byelaws, there is likelihood of situations where due to internal differences and fear of disrepute illegal activities are not reported and often ignored. This can be because many of the residents

belong to rich class having influence with the authorities, particularly Police. A lone fighter like the petitioner would naturally find it difficult to face the mighty/majority members. Further, in a community or association having people of various walks of life, there are bound to be difference of opinion and internal disputes like public nuisance, breach of peace and tranquillity, gaming, unauthorised consumption of alcohol etc., which have criminal consequences cannot be addressed by the provisions of the Telangana Societies Registration Act 2001 and other statutes like the Cooperative Societies Act 1964.

25. This Court has come across several writ petitions filed seeking criminal action against the co-residents in villas/apartment complexes. There are disputes regarding parking, pet dogs, non-payment of maintenance charges, organizing parties, playing disc jockey ('DJ') and sound system till late hours in the night, misuse of Clubhouse etc. There are 376 villas in the gated community and it is not an easy task for respondent No.9 to control the day-to-day activities of the residents and curb unwanted activities in the Clubhouse. The Commissioner of Police and other

Police officials have powers under the provisions of the City Police Act including the power to pass special orders under Section 22 of the City Police Act for regulating processions, maintain order in the streets, public places, regulate music or singing in any street or public place and also under the provisions of the Hyderabad City Loudspeaker Rules, 1963, the Hyderabad and Secunderabad (Public Place of Halt/Peace of Public Entertainment/Amusement) Rules, 2005, Noise Pollution (Regulation and Control) Rules, 2000 and G.O.Ms.No.172 Environment, Forests, Science and Technology (ENV) Department dated 12.10.2010.

26. In the above background, the writ petition is disposed of with following directions:

- (i) The respondent No.9 shall forthwith constitute a Sub-Committee of three members from out of Executive Committee members. Such members preferably be senior citizens/women/retired employee-residents who can spare more time in the gated community and keep the surveillance at the vulnerable places like Clubhouse.

- (ii) The respondent No.9 shall provide a platform/application ('app'), so that, its members can send their complaints/messages. The said platform/application should have separate group to which, only the sub-committee members have the access and the complaints/messages need to be sent to that group. The sub-committee members shall ensure that identity of the complainant is not disclosed.
- (iii) Any such complaints shall be acted immediately and reported to Executive Committee. If any illegal acts are noticed, the Sub-Committee shall report to the concerned Police.
- (iv) The respondent No.9 shall frame specific dos and don'ts for using the Clubhouse of the gated community warning the member/resident users of stringent criminal action if the Clubhouse is misused for criminal activities and if any nuisance is caused.
- (v) Respondent No.5 shall issue necessary advisory (dos and don'ts) to the gated communities/associations/flat

associations in accordance with the statute / rules referred to in paragraph No.25 and other related Government orders to prevent illegal activities, nuisance etc and also for reporting any crimes. Respondent No.5 shall also issue necessary instructions to the concerned Police Station/Task Force/TNCB to take appropriate action in gated communities / associations / flat associations whenever incidents of nuisance or crimes are reported. If possible, separate software application shall be provided to the concerned Police Stations for lodging complaints relating to offences within the gated communities/associations/flat associations and also for protecting the identity of the informant / complainant.

As a sequel thereto, miscellaneous applications, if any, pending in the writ petition stand closed. There shall be no order as to costs.

B. VIJAYSEN REDDY, J

December 31, 2024.
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