

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.16777 of 2015

Satyaseelan
S/o Natesan

... Petitioner

-Vs-

1. The Commissioner of Excise
Government of Puducherry
Puducherry
2. Deputy Commissioner of Excise
Government of Puducherry
Puducherry

... Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in publication issued in No.1060/thu.Aa(Ka)/Auction/2015-16 Puducherry dated 08.06.2015 and quash the same insofar as the Shop No.1A allotted to the petitioner is concerned in item No.1 of the notification and consequentially direct the respondents to permit the petitioner to operate the arrack shop for the period 2015-16 as the license for the period 2014-15 was unutilized by non supply of arrack by the respondents.

For Petitioner : Mr.R.Suresh Kumar for
M/s K.M.Vijayan Associates

For Respondents : Mrs.N.Mala
Additional Government Pleader (Pondy)

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ORDER

The writ petitioner, Mr.Satyaseelan, aggrieved by the impugned auction notification issued by the Deputy Commissioner of Excise, Puducherry, the second respondent in No.1060/thu.Aa(Ka)/Auction/2015-16 Puducherry dated 8.6.2015, has filed the present writ petition to quash the same insofar as the Shop

No.1A allotted to the petitioner is concerned in item No.1 of the notification with a consequential direction to the respondents to permit the petitioner to operate the arrack shop for the period 2015-16, as the license for the period 2014-15 was unutilized by non supply of arrack by the respondents.

2. Learned counsel for the petitioner submitted that originally the petitioner was the successful bidder of the arrack shop at No.1A of Ariyankuppam Commune Panchayat and also No.6A of Abishegapakkam for the excise year 2013-14 from 1.7.2013 to 30.6.2014 and subsequently the petitioner had also renewed the licence for the same shops for the period from 1.8.2014 to 30.6.2015. While so, the Government issued a notification for public auction of retail vending of toddy and arrack shops for the year 2014-15 in Government Gazette No.75 Extraordinary dated 1.7.2014, clearly specifying the location of shops in each area. As per the notification, a successful bidder should have established the shop only in the location mentioned in the said notification and unless they get permission from the respondents, they cannot shift the shop to any other place than the one specified in the notification. In the meanwhile, one Jayalakshmi, who was the successful bidder of Shop License No.2, Manavelly Revenue Village in Ariyankuppam Commune Panchayat, has wrongly established her shop other than the location mentioned in the notification, which is very close to the petitioner's shop No.1A of Ariyankuppam, as a result the sale of arrack in his shop got constantly reduced to one-third of the actual sale facing the problem of payment of kist to the Government, because there is a specific condition in the notification that the petitioner should take the minimum quantity of arrack as per the notification. But due to the closer location of the Jayalakshmi's arrack shop violating the notification, the petitioner could not take the minimum quantity of arrack, for which he is liable to pay the kist/notional loss to the Government, therefore, he made a representation to the respondents on 1.8.2014 to take appropriate action against the said Jayalakshmi with a further request to locate the arrack shop No.2, Manavelly village as specified in the Gazette notification. But the official respondents refused to take action. Adding further the learned counsel submitted that even in the previous year, Shop No.2, Manavelly village was located in the land bearing Plot Nos.23 and 24, which was objected to by the villagers of Srinivasa Kudiyiruppu. In addition to the objection, there was also continuous agitation throughout the year against the said shop No.2, therefore, the shop was located in a different place, which is also far off from the original place.

3. Aggrieved by the inaction on the part of the respondents, the petitioner filed W.P.No.21990 of 2014 for a writ of mandamus directing the respondents 1 & 2 to take appropriate action against the said Jayalakshmi for running the arrack shop at Manavelly village in violation of the conditions of location mentioned in the Gazette notification No.75 Extraordinary dated 1.7.2014 and also to take action to shift the shop of the said Jayalakshmi as per the notification within a reasonable time. This Court, by order dated 31.10.2014, directed the second respondent to consider the petitioner's objection dated 1.8.2014 as well as the objection from the President of Arulmighu Sri Muthumariamman Devasthanam, Manavelly dated 31.7.2014 and the objection of Sri Ragavendra English School, Manavelly Main Road dated 1.8.2014 with a specific observation that if the said Jayalakshmi was running the shop in the place not specified in the Gazette, then immediate action should be taken to close down the shop. In spite of the said order, there was no response, therefore the petitioner, after issuing the pre-contempt notice on 22.11.2014 to the respondents 1 & 2, finding no response, filed a contempt petition before this Court in Contempt Petition No.3348 of 2014.

4. Continuing his arguments, he submitted that due to the illegal shop run by the said Jayalakshmi, the petitioner, being a successful bidder for the arrack shop No.1 of Ariyankuppam village for the period from 1.8.2014 to 30.6.2015 for a monthly rent of Rs.8,25,300/-, is unable to pay the kist fixed by the department due to the illegal location of the shop run by Jayalakshmi, which is closer to the shop of the petitioner, as a result the sale of arrack in the petitioner's shop got reduced. Since the sales from his shop got reduced to one-third of the actual intake everyday, he was forced to commit default, because he was unable to take the intake of 775 litres per day. Therefore, the petitioner's shop was brought to re-auction earlier, but nobody was willing to take the shop at the revised rate and finding that the re-auction did not fetch any new bidder for running the shop, the petitioner was allowed to continue. But however, in view of the arrack shop of the said Jayalakshmi, which is not running in the place as per the Gazette notification, the sale of arrack in the petitioner's shop substantially got reduced and after January 2015, no intake had been taken from the Government. Hence a representation dated 2.12.2014 was addressed to the respondents requesting for remission of kist, for which there was no response. On the contrary, the respondents are insisting the petitioner to pay the kist of Rs.8,25,300/- per month, which is illegal, irregular

and unsustainable in the eye of law, for the simple reason that the respondents had allowed the said Jayalakshmi to run the illegal arrack shop in the jurisdiction of the petitioner's arrack shop, as a result the petitioner was unable to sell the arrack and admittedly after January 2015, no intake was received by the petitioner.

5. Adding further, he submitted that from 31.8.2014, the details of intake got substantially reduced, namely, in the month of August-31 days, 13000 litres were taken; in the month of September-30 days, 8000 litres were taken, in the month of October-31 days, 13000 litres were taken; in the month of November-30 days, 1000 litres were taken; in the month of December-31 days, 6000 litres were taken and from January 2015, no intake has been taken, only because of the location of the Jayalakshmi's shop closer to the petitioner's shop as against the Gazette notification, therefore, it is a fit case where the respondents should have considered the remission of kist. When the matter stood as above, the second respondent has once again called for re-auction of the Shop No.1A to be held on 28.1.2015 through the notice dated 21.1.2015. If the re-auction of the shop No.1A is allowed, there is every likelihood that the petitioner would be put to irreparable loss and great hardship, he pleaded.

6. Continuing his arguments, the learned counsel for the petitioner submitted that when there was a representation given by him that the sale of arrack by the said Jayalakshmi outside her jurisdiction had caused hindrance and also caused loss of business for the petitioner from day one, the respondents, instead of taking action to close down the shop of Jayalakshmi, in spite of the order passed by this Court in W.P.No.21990 of 2014 on 31.10.2014, have chosen to take action against the petitioner by re-auctioning the shop No.1A in Ariyankuppam, which is arbitrary and discriminatory in nature. Therefore the petitioner has filed W.P.No.1881 of 2015 challenging the re-auction and this Court also by interim order dated 28.1.2015 was pleased to grant interim stay of the re-auction notification. Immediately after the stay of re-auction granted by this Court on 28.1.2015, the respondents totally stopped the supply of arrack. This would evidently demonstrate that the respondents have arbitrarily stopped the supply of arrack, as a result the petitioner is incurring huge loss. Although the respondents passed an order on 26.5.2015 closing the shop of the said Jayalakshmi, they have permitted the shifting of the said shop just few metres away from the original position, which is again contrary to the Gazette notification dated 1.7.2014 stating that

no shop could be located in a place other than the place mentioned in the notification. In view of the dilly-dallying game adopted by the respondents, the entire license period from 1.8.2014 to 1.7.2015 is totally wasted. Restating these facts, the learned counsel submitted that when the petitioner is the successful bidder for the two arrack shops for the period from 1.7.2013 to 30.6.2014 for the bid amount of Rs.7,86,000/- per month, he had renewed the shop in Ariyankuppam for the period from 1.8.2014 to 30.6.2015 for the monthly rent of Rs.8,25,300/- with the minimum intake of 775 litres per day. While so, because of the illegal location of the Jayalakshmi's shop closer to the petitioner's shop, the sale of arrack in the petitioner's shop got reduced and the same made him impossible to pay the kist, because the petitioner was not able to take the minimum quantity of arrack as prescribed by the department. Therefore, without removing the shop allotted to the said Jayalakshmi nearer the petitioner's place, when the petitioner's shop has already suffered reduction of sale and subsequently no intake was supplied by the respondents after the petitioner filed Contempt Petition No.3348 of 2014, in which notice was ordered against the respondents, it is not open to the respondents to ask for payment of kist of Rs.8,25,300/- per month from the petitioner. Concluding his arguments, he submitted that when the petitioner could not take 775 litres of arrack everyday, he is unable to pay the kist of Rs.8,25,300/- per month fixed by the respondents. On the contrary, the respondents have allowed Jayalakshmi to run the business in a place other than the place mentioned in the notification, which is closer to the petitioner's shop. When their actions are highly motivated and discriminatory, the impugned order is liable to be set aside, the learned counsel pleaded.

7. A detailed counter affidavit has been filed by the respondents. The learned Additional Government Pleader for the respondents submitted that as per Rule 144 of the Pondicherry Excise Rules, 1970, the period of lease of a shop shall be one year at a time, renewable for the like period upto a period not exceeding three years from the date of commencement of the first year of the lease period. While so, for the first lease year 2012-13, one Mr.Ravichandran, S/o Marudhappan emerged as a successful bidder for the shop in question. Subsequently, for the second lease year 2013-14, the petitioner became the successful bidder. Hence the petitioner was granted the lease of the arrack Shop No.1(A) of Ariyankuppam for the period from 1.7.2013 to 30.6.2014. As the arrack shop was running profitably, he had renewed the lease for the third lease year 2014-15 at 5% enhanced kist amount as provided under Rule 156A

of the Pondicherry Excise Rules for the period from 1.8.2014 to 30.6.2015. In view of the above, as the lease period for the said shop ends on 30.6.2015, there is no provision under the Pondicherry Excise Act and the rules framed thereunder to extend the lease period on the grounds stated by the petitioner.

8. Adding further, she submitted that during the lease year 2009-10, the arrack shop No.2(A) Manavelly was located in the land bearing R.S.No.65/4 of Ariyankuppam revenue village belonging to one Mr.Subburayan. However, there was objection for the location of the shop from the local Member of Legislative Assembly. Hence the shop was shifted to Government poramboke land bearing R.S.No.157/2 of Manavelly revenue village for the lease year 2010-11. Subsequently, in the same lease year, due to objection from the public, the shop could not be set up by the successful bidder in the notified site, therefore, in exercise of the powers conferred under Rule 163 of the Puducherry Excise Rules, 1970, by order dated 18.8.2010, the Deputy Commissioner (Excise) shifted the location of arrack shop No.2(A), Manavelly to the Plot Nos.23 & 24 in R.S.No.70/1A of Manavelly revenue village. However, during the years 2011-12, 2012-13 & 2013-14, the arrack shop No.2(A) Manavelly of Ariyankuppam commune continued to be located in the R.S.No.70/1/A of Manavelly revenue village. Further, since the land owner refused to give consent to run the arrack shop for the lease year 2014-15, a new site was identified in R.S.No.157/1 of 70-Manavelly revenue village and the same was notified for the year 2014-15, but the same was not due to the objection by the villagers of Srinivasa Kudiyruppu as alleged by the petitioner. She also submitted that the statement made by the petitioner's counsel that the petitioner had suffered loss due to the location of Manavelly arrack shop is beyond truth, for the reason that when the petitioner took over the lease of his arrack shop for the year 2012-13, the same arrack shop, namely, Manavelly also existed. Only because of the profit earned by the petitioner from his arrack shop in the previous lease year 2013-14, the petitioner preferred to renew the shop at 5% enhanced kist amount for the next lease year 2014-15. While so, it is not open to the petitioner to evade from the payment of kist.

9. Replying to the contention made by the petitioner's counsel that in view of the location of the arrack shop of Jayalakshmi and due to the drop in sales he was unable to pay the kist, it was contended that the drop in lifting percentage of arrack by the petitioner was not due to drop in sales, but only due to non-supply of arrack for want of kist amount. This apart, the respondents' office were ready to issue the arrack

permit subsequent to the grant of interim stay of re-auctioning of his arrack shop on 28.1.2015. When the respondents have not prevented the petitioner from lifting the arrack, it is not open to him to approach this Court. Since the petitioner is a big defaulter of the arrack shop No.1(A), Ariyankuppam, the Excise Commissioner, as provided under Rule 201(2), has put the arrack shop into re-auction, in which the arrack shop was fetched by a successful bidder on 25.5.2015, therefore the writ petition is liable to be dismissed.

10. Heard the learned counsel for the parties.

11. It is not in dispute that for the year 2013-14, the petitioner being the successful bidder of arrack shop No.1(A) of Ariyankuppam was granted lease for the period from 1.7.2013 to 30.6.2014. Subsequently, after the expiry of the first lease, he had renewed the lease for the subsequent year 2014-15 at 5% enhanced kist amount as provided under Rule 156(A) of the Puducherry Excise Rules, 1970 for the period from 1.8.2014 to 30.6.2015. In the meanwhile, one Jayalakshmi became the successful bidder of shop licence No.2, Manavelly revenue village in Ariyankuppam commune panchayat. The location of the shop mentioned in the notification is as under:-

"The shop should be located in the northern portion of land belonging to Thiru.A.Velayutham in R.S.No.157/1, Cad.No.818 of 70, Manavelly revenue village to the east of road, West of Arikrishna Counder land, North of Chunnambar and the South of Thiru Jeer Naidu land."

As against the notification, the said Jayalakshmi had established her shop in a place other than the place mentioned in the notification and the said location was also closer to the petitioner's shop 1(A) of Ariyankuppam. Since two shops are closely located, the sale of arrack in the petitioner's shop got reduced to one-third of the actual sale facing the problem of kist payment to the Government. The said Gazette notification also specifically states that the petitioner should take the minimum quantity of arrack as per the notification. However, because of the closer location of the Jayalakshmi's arrack shop, the petitioner could not take the minimum quantity of arrack. Therefore he sent a representation dated 1.8.2014 to the respondents to take appropriate action against the said Jayalakshmi with a request to vacate the arrack shop No.2, Manavelly village in the location specified in the Gazette notification. Since no action was taken on his representation,

the petitioner filed W.P.No.21990 of 2014 seeking a writ of mandamus directing the respondents to take appropriate action against the said Jayalakshmi for running the arrack shop at Manavelly village in violation of the conditions for location other than the area notified in the Gazette notification dated 1.7.2014. This Court by order dated 31.10.2014, considering the fact that the said Jayalakshmi did not run the toddy and arrack shop in the place notified in the Gazette and that the respondents also did not grant any permission to locate her shop in any other survey number, directed the second respondent to consider the petitioner's representation dated 1.8.2014 as well as the objection from the President of Arulmighu Sri Muthumariamman Devasthanam, Manavelly, Ariyankuppam, Pudhucherry dated 31.7.2014. It is necessary to extract the relevant portion of the direction as follows:-

"4. From the above, it is evident that the 3rd respondent is not running Toddy and Arrack shop in the place notified in the Gazette. Further more, the respondents 1 and 2 have not granted any permission to locate the 3rd respondent shop in any other survey number. Therefore, the 3rd respondent cannot run their shop in the place other than the notified place since the objections that has been given by the petitioner as well as the others are pending before the authorities and the authorities are bound to take action on the representation. Accordingly, there will be a direction to the second respondent to consider the petitioner's objection dated 01.08.2014 as well as the objection from the President of Arulmighu Sri Muthumariamman Devasthanam, Manavelly, Ariankuppam, Puducherry-7, dated 31.07.2014 as well as the objection of Sri Ragavendra English School, Manavelly Main Road, Ariankuppam, Puducherry-7, dated 01.08.2014 and if the 3rd respondent is running the shop in the place not notified in the Gazette, then, immediately action should be taken to close down the shop which is within the non-notified area. The said exercise shall be done within a period of two weeks from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. No costs. Consequently, connection miscellaneous petitions are closed."

12. The above direction given by this Court clearly shows that the shop belonging to Jayalakshmi was not located in the place as per the notification. However, the respondents, in spite of the direction given to close down the shop, did not take action, which compelled the petitioner to issue a pre-contempt notice to the respondents. Further, finding no response, Contempt Petition No.3348 of 2014 along with a sub application to supply arrack to the petitioner's shop was also filed. Immediately after the notice was issued in the said contempt petition, it appears that the respondents have stopped the supply of arrack, which leads to incurring of huge loss of revenue to the petitioner.

13. Secondly, although the respondents passed an order only on 26.5.2015 closing the shop of the said Jayalakshmi, they have permitted the shifting of the shop just a few metres away, which is again running contrary not only against the Gazette notification dated 1.7.2014, but also against the order passed by this Court in W.P.No.21990 of 2014 dated 31.10.2014. Therefore, when the respondents have allotted the shop No.2, Manavely in favour of Jayalakshmi, apparently they have issued the licence for the said shop to be located in a place contrary to the Gazette notification dated 1.7.2014, which is the first violation, as a result the said Jayalakshmi was able to set up her shop in a location closer to the petitioner's shop, thereby affecting the sales in the petitioner's shop. Further the details of intake of arrack from the Government godown for sales in the following months will indicate the reduction of business of the petitioner, as follows:-

- | | | |
|-----------------------|---|--------------|
| (a) August 31 days | - | 13000 litres |
| (b) September 30 days | - | 8000 litres |
| (c) October 31 days | - | 13000 litres |
| (d) November 30 days | - | 1000 litres |
| (e) December 31 days | - | 6000 litres |
| (f) January 2015 | - | no intake |

14. As mentioned above, when the petitioner filed the Contempt Petition No.3348 of 2014 for non-compliance of the direction given by this Court in W.P.No.21990 of 2014 for not shifting the Jayalakshmi's arrack shop, this Court ordered issuance of notice to the respondents. Immediately thereafter, the respondents have stopped the supply of arrack, as a result, the petitioner was made to incur huge loss.

16. Thirdly, when the petitioner attributed a legal grievance that due to the closer location of the Jayalakshmi's

shop, the petitioner was not able to sell arrack, since he was not able to take the minimum quantity from the Government, the respondents have arbitrarily stopped the supply of arrack to his shop. Hence it is not open to the respondents to demand kist from the petitioner from the date of stoppage of arrack.

16. For all the aforementioned reasons, this Court is constrained to allow the writ petition by quashing the notification issued by the second respondent in No.1060/thu.Aa (Ka)/Auction/2015-16 Puducherry dated 08.06.2015 insofar as the Shop No.1(A) allotted to the petitioner is concerned in item No.1 of the notification with a consequential direction to the respondents to permit the petitioner to operate the arrack shop for the period 2015-16, since the license for the period 2014-15 was unutilized for non supply of arrack by the respondents. Accordingly, the writ petition stands allowed as prayed for. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Excise
Government of Puducherry
Puducherry
2. The Deputy Commissioner of Excise
Government of Puducherry
Puducherry.

+1cc to M/s.K.M.Vijayan Associates, Advocate, S.R.No.68647

+1cc to the Government Pleader, S.R.No.68517

W.P.No.16777 of 2015

CNR (CO)
CA(22/12/2015)