

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08..07..2015

Date of Reserving the Orders	Date of Pronouncing the Orders
02.07.2015	08.07.2015

CORAM

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P. No.3099 of 2015

1.Anusham Nagar Resident's Welfare Association
Rep., by its President,
Shri.AD.Khader,
24/48, 2nd Street,
Anusham Nagar, Udumalpet.

2.AD.Khader ..Petitioners

Versus

1.Tamil Nadu Thro its Chief Secretary,
Fort St., George,
Chennai.

2.District Collector,
Tiruppur District,
Tiruppur.

3.Manager,
TASMAC, Collectorate,
Tiruppur.

4.Superintending Engineer,
TNEB, Udumalpet.

5.Sub-Inspector of Police,
Udumalpet Town PS.,
Udumalpet.

6.Hemalatha,
Councillor, Anusham Nagar,
Udumalpet.

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, to direct the State to initiate penal action under Section (13 PCA R/w IPC) against respondents 2 to 5 for abusing their office and endangering lives, by shifting the wine-shop-cum-bar to an (1) illegal construction, (2) under a hazardous HT Line, (3) on a reserved site, (4) in a residential area and besides suitable writ to demolish the illegal structure.

For Petitioner :: Mr.Manikandavathana Chettiyar for
Mr.Mathan Kumar

For Respondents :: Mr.V.R.Kamalanathan AGP for RR 1,2 & R5

Mr.S.Muthuraj for R3

No Appearance for RR 4 & R6

O R D E R

T.S.SIVAGNANAM, J.

This Writ Petition designed as a Public Interest Litigation seeks for issuance of a Writ of Mandamus to direct the State to initiate penal action against the respondents 2 to 5 for abusing their office and endangering their lives by shifting the wine shop-cum-bar to a premises which is an illegal construction, located under a High Tension Power Line, (HTPL), in a residential area and on a reserved site and for a direction to demolish the same.

2. The case of the petitioners is that the first petitioner is a Resident's Welfare Association and the second petitioner, the President of the Association, which is said to have performed several social welfare measures, have come forward with the present grievance with regard to location of a liquor shop. The objection regarding the location of the liquor shop is on four grounds, namely, the place is a residential locality, the site on which the shop has been put up is a reserved site, the shop is located under a High Tension Electric Line and the construction is an illegal construction. The petitioner is said to have met the second respondent as well as his subordinates/ superiors and submitted several representations. The petitioner would further state that the building to which the shop has been shifted is an illegal construction which is owned by the sixth respondent, who is a Ward Councillor. In the typed set of papers filed along with the Writ Petition, a copy of the representation given by the petitioner to the second respondent dated 13.10.2014, the copy of the CSR issued by the fifth respondent Police, dated 06.12.2012 and the complaint addressed to the first respondent, dated 18.11.2014, have been enclosed. In the additional

typed set of papers, the petitioner has enclosed the certain press reports and photographs to show that the public have protested and the building is an illegal building under a High Tension Power Line. Copies of the layout plan has also been circulated.

3. The learned counsel appearing for the petitioner referred to the photographs and sought to demonstrate that the construction is an illegal construction in a residential area and the wine shop is located under the HTPL and there is a prohibition for putting up any construction under the HTPL and therefore, the shop has to be immediately removed. The learned counsel appearing for the petitioner further referred to the resolution passed by the Municipality for removal of the shops under the HTPL and the decision taken by the Municipal Council not to permit any building under the HTPL.

4. The learned Additional Government Pleader appearing for the second respondent by referring to the counter affidavit filed by the second respondent, submitted that all the para-meters were considered and only after being fully satisfied that the site where the shop has been located is an unobjectionable site, the District Collector granted permission and writ petitioner itself has been filed only with the personal motive and there is no public interest.

5. The counter affidavit and the additional counter affidavit filed by the third respondent are on similar lines as that of the stand taken by the second respondent, the District Collector. With the above submissions, the learned counsel for the respondents 2 and 3 prayed for dismissal of the Writ Petition.

6. We have heard the learned counsel appearing for the parties and carefully considered the materials placed on record.

7. As noticed above, the objections raised by the petitioner with regard to the location of the subject liquor shop is on four grounds (i.e.,) that the shop is located in a residential area; a reserved site; housed in an illegal construction and under a HTPL. The petitioner would rely upon the decision taken by the Udumalpet Municipality not to permit any construction under HTPL. The petitioner has not pointed out any violation of the Rules framed under the Tamil Nadu Prohibition Act relating to location of liquor shop. It is submitted by the third respondent, TASMAL that the subject shop was shifted to the present site after obtaining approval from the District Collector and prior to grant of approval, all parameters were examined to ensure that it satisfies the requirements under the Rules and it is only thereafter, the District Collector granted permission for shifting and the shop has been located in the present site. The second respondent, District Collector, Tiruppur, the authority under the provisions of the Act and Rules has filed a counter affidavit stating that the site in question where the shop has been located lies outside Anusham Nagar and the building has been constructed away from the residential site. Further, it is stated

that as per the approved lay out plan the reserved site is 28350 sq.ft., and the TASMAC shop lies away from the reserved site. Further, it is stated that the building is located with sufficient space and distance between the building and the HTPL and it is as per the Tamil Nadu Electricity Board Rules and Regulations. Further, it is submitted that the process of shifting of the shop commenced only during October 2013 and the owner of the property one Mr.Dhanasekar gave his consent on 16.06.2014 to shift the liquor shop to his building and therefore, there is no chance of giving objection in the year 2012 and therefore, the statement made by the petitioner is not true.

8. It is further submitted that due to the representation made by the owner of the TASMAC shop at Gandhi Chawk, it was decided to shift the shop from the said area and there is no other area or any personal motive to shift the shop to the present location. Further, there is reference to the report of the Revenue Divisional Officer, Udumalpet, who has certified that there will be no law and order problem, if the shop is shifted and after taking into consideration these aspects, permission to shift the shop was granted by order dated 25.09.2013. Further, it is reiterated that the owner of the shop at Gandhi Chawk submitted a letter on 21.10.2013, to vacate the shop as he has decided to construct a new building and the letter was forwarded to the TASMAC Supervisor to inspect the said shop, who submitted a report stating that the building was in a damaged condition. Subsequently, the owner of the said shop issued a legal notice on 16.12.2013, stating that if TASMAC does not vacate the shop, the official of the TASMAC would be responsible for the loss or injury that may be caused in future due to the condition of the building. A reply was given to the legal notice stating that after locating a new site, the shop will be shifted. It is thereafter the present building was identified and after inspection was conducted, proposal was submitted to the District Collector for permission to shift the shop. The District Collector on being satisfied that the proposed location is suitable, has given permission for shifting and the shop was shifted to the present location and functioning from 15.11.2014, till date and there is no problem.

9. Further in the counter affidavit, the District Collector has stated that there are no schools, colleges, temples or hospitals situated near the shop, it is located in an industrial shop area and not a residential area. There is no petrol pump or gas godown and after thorough inspection of the property and local area approval, permission was granted to shift the shop.

10. It is further submitted that at a distance of about 1000meters, there are two other TASMAC shops functioning and there is a private air conditioned bar in Anusham Nagar area at a distance of about 500 meters from the said shop. It is stated that the petitioner has not objected to functioning of those shops or the bar and if the petitioner was truly interested in the welfare of the public, they ought to have objected to those two shops and bars, but

has selectively raised objection only to the subject shop and therefore, the objection is on account of personal motive and there is no public interest.

11. The objections raised by the petitioner with regard to the location of the subject TASMAL shop was on four grounds as pointed out earlier and we propose to deal the same in serial. The first ground being that the site is located in a residential area and it is a reserved site. The District Collector has filed a counter affidavit stating that the property lies outside Anusham Nagar layout and the building which has been constructed in which the subject shop was located, is away from the reserved site and as per the approved layout plan, the reserved site is 28350 sq ft., and the TASMAL shop lies outside the reserved site.

12. The learned counsel appearing for the petitioner would submit that the layout plan has been forged. It is submitted that in the layout plan, the prohibition for putting up construction has been erased and this is an act of forgery which is now sought to be used to justify the grant of approval for shifting of the shop. However, this issue cannot be adjudicated in this Writ Petition as the planning authorities are not parties to the Writ Petition and this could be only examined by the District Collector who has granted approval for shifting and location of the shop.

13. As regards the second contention that it is a reserved site, this also relates to the approved layout plan and requires to be examined by the competent authority.

14. The other two contentions are regarding the location of the shop in a residential area under a HTPL and the construction being illegal. The counter affidavit filed by the District Collector points out that the area is an industrial area and not a residential area. The photographs produced by the petitioner also prima facie shows area to be industrial area and the construction is a shed and not a pukka construction as alleged by the petitioner. Therefore, on those grounds, we are not inclined to accept the case for the petitioner.

15. In the light of the above, the Writ Petition stands disposed of with a direction to the second respondent, District Collector, Tiruppur to examine the objections raised by the petitioner that the shop is located in an area which according to the layout plan is an area where the construction is prohibited. The petitioner alleges forgery in the layout approval plan, therefore, we deem it appropriate to direct the District Collector to examine the petitioner's grievance in this regard alone and to examine whether there is any prohibition in the approved layout for putting up construction in the place in question. The District collector is directed to consider the above aspect, within a period of six weeks from the date of receipt of a copy of this order, after notice to all

concerned and pass a reasoned order and communicate the same to the petitioner. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

pbn

To

1.The Chief Secretary,
Fort St., George,
Chennai.

2.District Collector,
Tiruppur District,
Tiruppur.

3.Manager,
TASMAC, Collectorate,
Tiruppur.

4.Superintending Engineer,
TNEB, Udumalpet.

5.Sub-Inspector of Police,
Udumalpet Town PS.,
Udumalpet.

1 cc to Mr.S.Muthuraj , Advocate Sr.No.34280
1 cc to Government Pleader.Sr.No.34394

jsv(co)
pmk.15.7.2015

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