

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.4406 & 5278 of 2015

D.V.Jawaharlal Sah .. Petitioner in both the writ petitions

-vs-

1. The District Collector
Kancheepuram District
Kancheepuram
2. The Senior Regional Manager
TASMAC, Anna Salai
Chennai Region, Chennai
3. The District Manager
TASMAC, Kancheepuram (South)
Kancheepuram District .. Respondents in both the writ petitions

W.P.No.4406 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, forbearing the respondents from shifting the TASMAC Shop No.4525, which is running in Door No.16-E, Reddipatti Street, Kancheepuram to any other place unless due process of law.

W.P.No.5278 of 2015 is filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.25625/2014/V1 dated 17.02.2015 and consequential order passed by the third respondent in his proceedings Na.Ka.No.347/R-7/2015 dated 20.02.2015 and quash the same.

For Petitioner :: Mr.AR.L.Sundaresan
Senior Counsel for
Mr.C.Prakasam

For Respondents :: Mr.A.Kumar
Special Government Pleader
for R1
Mr.S.Muthuraj for R2 & R3

ORDER

There are two writ petitions filed by Mr.D.V.Jawaharlal Sah. Writ Petition No.4406 of 2015 seeks for issuance of a writ of mandamus, forbearing the respondents from shifting the TASMAC Shop No.4525, which is running in Door No.16-E, Reddipatti Street, Kancheepuram to any other place. The other Writ Petition No.5278 of 2015 seeks for issuance of a writ of certiorari, calling for the entire records relating to the impugned order passed by the District Collector, Kancheepuram District, the first respondent in his proceedings Na.Ka.25625/2014/V1 dated 17.02.2015 and the consequential order passed by the District Manager, TASMAC, Kancheepuram South, the third respondent in his proceedings Na.Ka.No.347/R-7/2015 dated 20.02.2015, to quash the same.

2. Mr.AR.L.Sundaresan, learned senior counsel for the petitioner submitted that the petitioner, being the owner of the building situated in Door No. 16-E, Reddipettai Street, Kancheepuram, has been running the TASMAC Shop No.4525 in the said place after closing the cinema theatre. The said shop was shifted from Eraniyal Sidhi village to his building on the basis of the report sent by the respondents 2 & 3 to the first respondent, who in turn granted approval for shifting of the shop to his building. After receipt of the said approval from the first respondent, the third respondent-District Manager, TASMAC, Kancheepuram South also passed the proceedings in Na.Ka.No.1072/R7/2015 dated .1.2015 signed on 6.2.2015 for shifting of the said shop to his own building at No.16-E, Reddipettai Street, Kancheepuram. Therefore, in terms of the order passed by the third respondent, when the TASMAC Shop No.4525 has been shifted to the petitioner's building on 9.2.2015, while running the said shop in his building after obtaining bar licence, on the pretext that some rival bar licensees have sent unanimous petitions against his shop and the bar under the guise of public objection, even though no public made any such objection, the respondents shall not make any attempt to shift the TASMAC shop No.4525 from his building bearing No.16-E, Reddipettai Street, Kancheepuram to any other place. Adding further, the learned senior counsel submitted that when the petitioner has been running the TASMAC shop No.4525 without causing any nuisance to any one, arbitrarily the first respondent, who has accepted the report of the respondents 2 & 3 and granted approval, cannot unnecessarily interfere with the smooth functioning of the said shop in his own building. If such arbitrary action for shifting his shop is allowed, there is no guarantee for the petitioner to have the shop in any other place, since the very same respondents would be again taking a similar arbitrary action, as a result, the petitioner would not be in a position to continuously run the TASMAC shop in question. Again bringing to the notice of this Court the objection filed by one Mr.J.Balaji on 9.2.2015, the learned senior counsel submitted that when there is no temple, mosque, church

or school within the prohibited distance of 100 metres from the shop in question, the said complaint gives an impression that his shop is situated within the prohibited distance of such religious or educational institutions. Therefore, the petitioner has approached this Court against the arbitrary action of the respondents, the learned senior counsel pleaded.

3. Learned counsel for the respondents 2 & 3 fairly submitted that although there is no school, mosque, church or temple within the prohibited distance of 100 metres, whenever complaints/objections are made for shifting of any TASMACH shop, the respondents are duty bound to consider such objections. Accordingly, while going through the objections presented by various parties including one Mr.J.Balaji on 9.2.2015, the temporary licence granted to the petitioner for running the TASMACH shop No.4525 at No.16-E, Reddipettai Street, Kancheepuram has been ordered to be shifted. That apart, only a temporary licence for three months was granted. Now the petitioner is left with only 10 days. Therefore, the petitioner cannot be allowed to complain that he is put to great prejudice, as still it is open to him to shift the shop to any other place where there is no objection forthcoming.

4. Learned Special Government Pleader for the first respondent also submitted that the petitioner has no indefeasible right to the order passed by the first respondent for shifting of the shop in question from No.16-E, Reddipettai Street, Kancheepuram to any other place. The reason is that he was granted only temporary licence and within the temporary licence period, when several objections have been received by the first respondent, the first respondent cannot ignore the objections. Therefore, considering the public objection, the first respondent has rightly ordered for shifting of the shop in question to some other place. Therefore, no interference is called for.

5. This Court finds some merits in the submissions made by the learned Special Government Pleader for the first respondent. The reason is that the petitioner was granted only temporary licence to run the TASMACH shop No.4525 at No.16-E, Reddipettai Street, Kancheepuram only for a period of three months and that the petitioner has completed 70 days. However, only on receipt of the objection from the public, the first respondent-District Collector has thought it fit to again effect the shifting of the petitioner's shop from his own building to some other place. Therefore, this Court is not inclined to interfere with the administrative order passed by the first respondent, who has acted on some complaints

received from the public. Therefore, the writ petitions fail and they are dismissed. Consequently, M.P.Nos.1 & 2 of 2015 are also dismissed. No costs.

ss

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

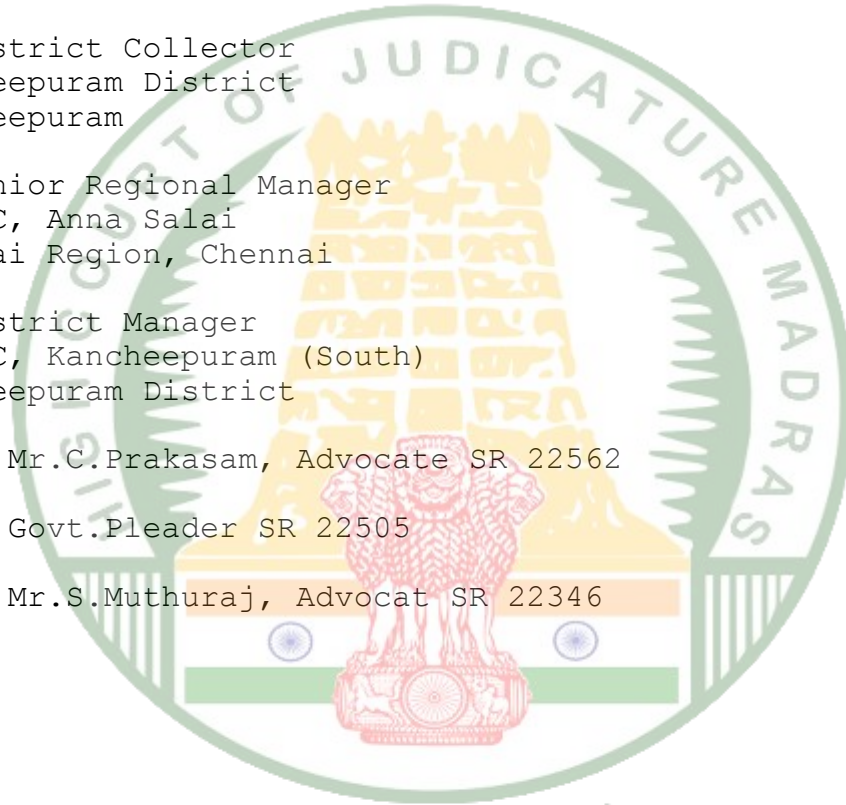
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Kancheepuram District

+ 1 cc to Mr.C.Prakasam, Advocate SR 22562

+ 1 cc to Govt.Pleader SR 22505

+ 1 cc to Mr.S.Muthuraj, Advocat SR 22346

tej(co)
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