



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.04.2015

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

W.P. (MD) No.7319 of 2015

GEORGE

.. Petitioner

Vs.

1. THE DISTRICT COLLECTOR,
KANYAKUMARI DISTRICT, NAGERCOIL.
2. THE SENIOR REGIONAL MANAGER,
TASMAC, NAGERCOIL,
KANYAKUMARI DISTRICT.
3. THE DISTRICT MANAGER,
NAGERCOIL, KANYAKUMARI DISTRICT.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to shift the TASMAC Shop No.4875 at Samuthayapatru Vanniyur Village, Kanyakumari District.

For Petitioner	: Mr.S.Kameswaran
For Respondents	: Mr.M.Govindan
	Special Government Pleader
For Respondents 2 & 3	: Mr.M.Muniyasamy

O R D E R

(The order of the Court was made by S.MANIKUMAR, J.)

A resident of Samuthayapatru Vanniyur Village, Kanyakumari District has sought for a writ of Mandamus directing the respondents herein, to shift TASMAC shop No.4875 at Samuthayapatru Vanniyur Village, Kanyakumari District to some other place.

2. Supporting affidavit and the material on record shows that when a TASMAC shop was attempted to be locked, objections were made against the opening of the shop at Samuthayapatru Vanniyur Village, Kanyakumari District. Cases in Crime Nos.291 and 292 of 2014 have been registered for the offences under Sections 147, 148, 448, 341, 294(b), 353, 332 and 307 IPC and 3(1) of Tamil Nadu Public Properties (Damages and Loss) Act, 1992 and charge sheets have been filed before the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District in P.R.C.Nos.50 and 51 of 2014, respectively.

3. Material on record further discloses that when Criminal Original Petition (MD) No.14517 of 2014 was filed by the petitioner's mother for a direction to the first respondent not to harass the petitioner and family members, without following due process of law, this Court has appointed



an Advocate Commissioner to ascertain, as to whether, TASMAC is located at Samuthayapatru, Vanniyur Union near the bus stop, Kanyakumari District or near any educational institution. Learned Advocate Commissioner has filed a report along with a sketch.

4. P.R.C.Nos.50 and 51 of 2014 had been stayed by this Court on 08.04.2015. Shop has now been located. On the above averments, the petitioner has sought for a Mandamus, as stated supra.

5. Attention of this Court was also invited to the proceedings of the District Collector, Nagercoil in Na.Ka.No.332/E/2014, dated 05.03.2014 and the learned counsel for the petitioner contended that in 2014, when a representation was made on behalf of the general public by one Mr.Domnic, Vanniyur Panchayat, Kanyakumari District, a reply was given, to the effect that no steps were taken to locate any TASMAC shop at Samuthayapatru Vanniyur Village, Kanyakumari District. But contrary to the above, now the shop is located at Samuthayapatru Vanniyur Village, Kanyakumari District.

6. Learned counsel for the petitioner also drew the attention of this Court to the report filed by the learned Advocate Commissioner in CrI.O.P.(MD)No.14517 of 2014.

7. Placing reliance on the decision of the Hon'ble Division Bench of this Court reported in **2013 (6) MLJ 133 (T.PAUL RAJ v. DISTRICT COLLECTOR)**, learned counsel for the petitioner submitted that when the Panchayat has passed a resolution opposing the location of liquor shop, the respondents have a duty to respect the same.

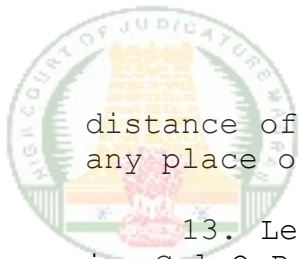
8. When the matter came up for admission, Mr.M.Gonvindan, learned Special Government Pleader submitted that the TASMAC shop is located outside the prohibited distance. He also drew the attention of this Court to the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 and further submitted that even as per the report of the learned Advocate Commissioner, there is no educational institution or any place of worship, near the TASMAC shop at Samuthayapatru Vanniyur Village, Kanyakumari District.

9. We have heard the learned counsel appearing for the parties and perused the materials available on record.

10. It is seen that when a representation was made objecting to the location of TASMAC shop at Samuthayapatru Vanniyur Village, Kanyakumari District, a reply has been given that as on that date, steps were not taken to locate any TASMAC shop at Samuthayapatru Vanniyur Village, Kanyakumari District.

11. Criminal cases, in which, charge sheets have been filed in P.R.C.Nos.50 and 51 of 2014 on the file of the Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District, are stayed on 08.04.2014, and therefore, we are not inclined to delve into the same.

12. We may refer Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, which states that no shop shall be established in Municipal Corporations and Municipalities within a



distance of 50(fifty) metres and in other areas 100 (hundred) metres from any place of worship or educational institutions.

13. Learned Advocate Commissioner's report stated to have been filed in Crl.O.P.(MD)No.14517 of 2014, does not indicate that there is any educational institution, within the restricted distance. For better understanding, it is worthwhile to extract paragraph Nos.2, 3 and 6 of the learned Advocate Commissioner's report. It is a fact that a resolution has been passed, but location of the shop is not contrary to the rules.

14. Thus, from the above report coupled with Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, it is abundantly clear that TASMAC shop at Samuthayapatru Vanniyur Village, Kanyakumari District is not within the restricted distance. There is no statutory/violation. But at the same time, we only wish to state that the statutory rules empower the District Collector for shifting of a TASMAC shop. In that context, the District Collector, Kanyakumari, Nagercoil District may consider the decision of this Court in **2013 (6) MLJ 133 (cited supra)**, and also the view of the villagers.

15. With the above directions, the writ petition is disposed of. No costs.

Sd/-
Vacation Officer/
Assistant Registrar

/True Copy/

Sub- Assistant Registrar

To

1. THE DISTRICT COLLECTOR,
KANYAKUMARI DISTRICT, NAGERCOIL.
2. THE SENIOR REGIONAL MANAGER,
TASMAC, NAGERCOIL,
KANYAKUMARI DISTRICT.
3. THE DISTRICT MANAGER,
NAGERCOIL, KANYAKUMARI DISTRICT.

+1cc to Mr.S.Kameswaran,Advocate in SR.No. 23959
+1cc to Special Government Pleader in SR.No. 24849

rj2
Sm:19.05.2015:3P/6C

Order made in
W.P. (MD)No.7319 of 2015
30.04.2015