

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9649 of 2013 & MP.NO.1/2014 & 1/2015

M.Veerateeswaran

.. Petitioner

Versus

1.The Collector-cum-The Excise Officer,
Revenue Department,
Karaikal.

2.Smt.Bhuvaneswari

3.Mr.Gerald Suresh Savari Malayappa

4.T.K.S.M.Meenatchisundaram

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, forbearing the first respondent from renewing the liquor licences in respect of the liquor shops run by respondents 2-4, in premises owned by this petitioner bearing Door No.284, Old Door No.5, TS No.96/1, 96/2 and 97/2, Bharathiar Road, Karaikal.

For Petitioner : Mr.P.Thiagarajan

For R1 : Mrs.D.Reena Ishwariya

Additional Government
Pleader (Pondicherry)

For RR2 to 4 : Mr.G.Ilanthirayan for
M/s.Sai, Bharath & Ilan

ORDER

Heard the learned counsel for the petitioner and Mrs.D.Reena Ishwariya, learned Additional Government Pleader [Puducherry] appearing for the 1st and Mr.G.Ilanthirayan, learned counsel appearing for the respondents 2 to 4.

2 The petitioner seeks for a writ of mandamus, forbearing the 1st respondent from renewing the liquor licences in respect of the liquor shops run by respondents 2-4, in premises owned by this petitioner bearing Door No.284, Old Door No.5, TS No.96/1, 96/2 and 97/2, Bharathiar Road, Karaikal.

3 The petitioner is the owner of the premises bearing Door No.284, Old Door No.5, TS No.96/1, 96/2 and 97/2, Bharathiar Road, Karaikal. He has leased out the premises, which is a shop to the respondents 2 to 4. The respondents 2 to 4 have applied for a FL-2 licence for sale of Indian/Foreign liquor in the said premises and the licence has been granted. The petitioner's case is that, inspite of the objections raised by the petitioner, the first respondent has been mechanically renewing the licence. Therefore, the petitioner has come forward with this writ petition to forbear the first respondent from renewing the licence of the respondents' 2 to 4 liquor shop.

4 Since, this court was prima facie of the view that the dispute is on account of a difference of opinion between the landlord and tenant, the Court suggested the parties to go for mediation. Accordingly, the matter was sent to the Mediation and Conciliation Centre. However, the papers have come back to this court as mediation attempts failed.

5 The learned counsel for the petitioner would submit that to enable an applicant to obtain licence in FL-2, he has to satisfy the conditions set out in Rule 113 of the Pondicherry Excise Rules, 1970, which provides that the licenced premises shall be 300 meters away from public places, educational Institutions or religious establishments as far as possible. It is submitted that a Public Interest Litigation was filed by the Prohibition Council of Mahe before the Honourable First Bench of this court in W.P.No.14739 of 2001 declaring the amendment to the Pondicherry Excise Rules, stating that "as far as possible" is vague and the rule has to be amended. The Honourable First Division Bench, by order dated 25.08.2014, recorded the submission of the learned Senior Counsel for Government of Puducherry that amendments are being proposed to Rule 113.

6 The learned Additional Government Pleader appearing for the first respondent submitted that rule has since been amended and it has also been made stringent and such amendment has been notified in the Gazette Notification dated 11.11.2014 and the amended rule 113 reads as follows:

"2.Amendment of rule 113 - In Puducherry Excise Rules, 1970, in rule 113, in Sub-rule(2), for the existing clause(i), the following shall be substituted, namely:-

"(i) No shop shall be established in Municipal areas within a distance of 50 (fifty) meters and in other areas 100 (hundred) meters from any place of worship or educational institution.

Provided that the distance restriction shall not apply in areas designated as "Commercial" or "Industrial" by the Town Planning Authorities.

Provided further that if any place of worship or educational institution comes into existence subsequent to the establishment of the shop, the distance restrictions specified in this rule shall not apply.

Explanation - For the purposes of this rule -

- (a) "Place of worship" means a 'temple' as defined in the Puducherry Hindu Religious Institutions Act, 1972, a Mosque/Dargah registered with the Wakf Board, a Church and includes such other religious institutions as the State Government may by order specify in this behalf.
- (b) "Educational Institution" means any pre-primary, primary, middle or high school or higher secondary school or any other institution imparting education or training, recognized by the State Government or Central Government, or any college affiliated to any University established by law.
- (c) Calculation of distance for the purpose of this rule will be the shortest pathway/lane/street/road generally used by the public and the same shall be measured from gate to gate.
- (d) The distance restrictions specified in this rule does not apply to licences issued to hotels and restaurants under the Tourism Category.

(By order of the Lieutenant Governor)"

7 So far as the contention raised by the tenants is that the license has been granted after examining all the parameters and there is no violation of the distance rule. Further, it is submitted that in terms of the decision of the Honourable Supremen Court in Sudhakaran Vs. Corp. of Trivandrum & Another in Civil Appeal No.5435 of 2016 dated 05.07.2016, the Hon'ble Supreme Court held that the consent of the landlord is applicable only when a person intends to obtain a license for the first time and renewal or subsequent application for obtaining license on expiry period of the existing license, during the currency of the tenancy, is not applicable for

obtaining license. Therefore, it is submitted that everytime, when he applies for renewal of license, as long as the tenancy is in currency, the first respondent cannot insist upon the petitioner's/landlord's consent.

8 However, in the instant case, the complaint of the petitioner is that there is violation of distance rules and the road leads to several residential colonies and on account of location of the shop, there are various other issues in the area. All such allegations are stoutly denied by the learned counsel for the respondents 2 to 4 and it is stated that the allegations are all tainted with malafide on account of the landlord-tenant dispute.

9 After hearing the learned counsels for the parties and perusing the materials placed on record, whenever a renewal has to be made in respect of license granted to the respondents 2 to 4, it goes without saying that Authority should verify as to whether there is any violation of the rules and this is more so in the instant case, the rules have been amended recently i.e., after filing of this Writ Petition.

10 Thus, taking out of the above contentions and the amended rule 113, there will be a direction to the first respondent to consider as to whether any infraction of the rule as and when the license of the respondents 2 to 4 comes in for renewal.

11 With the above directions, this Writ Petition is Disposed of. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To
The Collector-cum-The Excise Officer,
Revenue Department,
Karaikal.

+1 cc to Mr.P.Thiagarajan,advocate,sr.56204
+1 cc to Govt.Pleader,sr.56424.
+1 cc to M/s.Sai Bharath, advocate,sr.56374(22/11)
gj(co)
krd 1/11

W.P.No.9649/2013