

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.34471 of 2015

and

M.P.No.1 of 2015

M.Kanaram

... Petitioner

Vs

1. The Commissioner of Prohibition & Excise,  
Ezhilagam, Chepauk, Chennai - 600 005.
2. The Managing Director,  
Tamil Nadu State Marketing Corporation Limited,  
CMDA Tower - 2,  
Gandhi Irwin Road,  
Egmore, Chennai - 600 008.
3. The District Manager,  
Tamil Nadu State Marketing Corporation Limited,  
Orikkai, Kancheepuram.
4. The District Collector,  
Kancheepuram District,  
Kancheepuram.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings of the 2<sup>nd</sup> respondent dated 28.09.2015 made in Na.Ka.No.R3/18581/2015 and quash the same, consequently direct the respondents to close down the IMFL Shop NO.4493 established by the respondents at Moovarasampettai Village, Tambaram Taluk, Kancheepuram District (Ganesh Street, Madipakkam, Chennai - 600 091).

For Petitioner : Mr.S.Thirumavalavan

For Respondents : Mr.B.Nedunchezhiyan  
R1 to R3

R4 : Mr.A.Mohamed Mushtak  
Government Advocate

## ORDER

Heard Mr.S.Thirumavalavan, learned counsel appearing for the petitioner, Mr.B.Nedunchezhiyan, learned counsel appearing for the respondents 1 to 3 and Mr.A.Mohamed Mushtak, learned Government Advocate appearing for the 4<sup>th</sup> respondent and with their consent, the writ petition is taken up for disposal.

2.The petitioner has filed this writ petition seeking for issuance of writ of Certiorarified Mandamus, to quash the order passed by the second respondent dated 28.09.2015 enclosing the copy of the order passed by the 4<sup>th</sup> respondent, District Collector, Kancheepuram District, dated 21.09.2015.

3.The petitioner has challenged the location of TASMAL retail shop bearing No.4493 in Ganesh Street, Madipakkam, Chennai - 91. The petitioner's specific case is that the Ganesh Street is very narrow lane connecting Anna Street and Medavakkam Main Road. There is a marriage hall in the said street and a post office is located adjacent to the IMFL shop. Further it is stated that students studying in the nearby schools commute through Ganesh Street for the purpose of reaching the school from the bus stand in the Medavakkam main road. Apart from the nuisance created in the locality by the shop there is a huge bar which almost extend from Ganesh Street to the Street in the rear, namely, 20 ft road connecting Ganesh Street and Defence Street. The specific case of the petitioner is that the shop is functioning in violation of Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops & Bars) Rules, 2003 and inspite of repeated representations made for almost 6 to 7 years no appreciable action has been taken by the authorities. Therefore, the petitioner came before this Court and filed a writ petition in W.P.No.19648 of 2012. The said writ petition was disposed of by order dated 01.11.2012 by directing the second respondent herein to dispose of the representation on merits and in accordance with law. Thereafter, no action was taken by the second respondent and contempt petition was filed in Cont.P.No.2544 of 2014 to punish the second respondent. Even after receiving the notice in the contempt petition, the second respondent was dragging on the matter and ultimately, the Court directed the petitioner to appear before the second respondent on 19.08.2015 and he was directed to consider the representation. Subsequently, the impugned order came to be passed.

4.Along with the impugned order, a proceedings of the District Collector dated 21.09.2015 in Na.Ka.No.19630/2015/V1 addressed to the second respondent has been enclosed. Only on

perusal of the same, the petitioner came to know that the District Collector has passed an order stating that all is well with the said shop and there is no violation for which the District Collector did not personally conduct an inspection and directed the Assistant Commissioner to conduct inspection. Based on which, the communication was sent to the second respondent. Thus, the second respondent conveniently without applying his mind passed the order merely relying upon the District Collector's proceedings. The manner in which the petitioner's representation was dealt with by the second respondent is not appreciable. Further the proceedings of the District Collector dated 21.09.2015 as communicated to the second respondent is also bereft of particulars and merely because the shop has been functioning for 10 years would not cure the illegality if it is found that the shop is running in a premises in contravention to the Rules. That apart, the larger aspect that has to be considered is the convenience of the public and the inconvenience that will be put to. The sketch produced by the petitioner shows that the Ganesh Street is only 24 ft road and the shop is in a small area and almost the entire building is occupied by the bar. Thus going by the size of the bar one can safely presume the number of people who will be visiting the bar and this undoubtedly would cause nuisance. Therefore, the authorities should examine the issue in a proper perspective and not have a pedantic approach stating that it is more than 200 meters than the prohibited distance or on other minor technical grounds. The authorities should approach the matter in such a manner considering the recent policy decision taken by the Government of Tamil Nadu in reducing the number of shops. Therefore the matter has to be considered afresh specifically taking note of the petitioner's objections.

5. In the light of the above, the writ petition is allowed and the order passed by the second respondent dated 28.09.2015 and the proceedings of the District Collector in Na.Ka.No.19630/2015/V1 dated 21.09.2015 are quashed and the matter is remanded to the 4<sup>th</sup> respondent for fresh consideration. The 4<sup>th</sup> respondent shall nominate a Senior Officer under her control and the Senior Officer shall cause a surprise inspection of TASMAC retail shop bearing No.4493 in Ganesh Street, Madipakkam, Chennai - 91. After conducting inspection, the Senior Officer nominated by the 4<sup>th</sup> respondent shall record the statement from the salesman in the shop and the nearby residents and make an assessment of the situation, verify whether the shop satisfies the distance rule and submit a report to the District Collector. Based on such report, the District Collector shall take into consideration the over all situation and also the policy decision of the Government of Tamil Nadu in reducing the number of shops and take a conscious decision in the matter and

communicate the same to the petitioner. The inspection shall be conducted within a period of two weeks from the date of receipt of a copy of this order and orders shall be passed by the District Collector on such inspection within a period of two weeks from the date of receipt of the report from the Senior Officer who is nominated to conduct inspection. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cse

To

1. The Commissioner of Prohibition & Excise,  
Ezhilagam, Chempauk,  
Chennai - 600 005.
2. The Managing Director,  
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Tamil Nadu State Marketing Corporation Limited,  
Orikkai, Kancheepuram.
4. The District Collector,  
Kancheepuram District,  
Kancheepuram.

+1cc to Mr.S.Thirumavalavan, Advocate, S.R.No.41765  
+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.41417  
+1cc to the Government Pleader, S.R.No.41712

W.P.No.34471 of 2015  
and  
M.P.No.1 of 2015

AK(CO)  
CA(04/08/2016)