

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2016

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.A.No.1623 OF 2016 &
CMP No.20133 of 2016

Thenmozhi

... Appellant

vs-

- 1.K.Ramachandran
- 2.V.Krishnan
- 3.S.Vijayaraghavan

- 4.The Managing Director
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower-II, IV Floor
Gandhi Irwin Bridge Road
Egmore, Chennai 8.

- 5.The District Manager
Chennai (South), IMFS Depot
TASMAC Ltd., TASC Unit, B4,
Ambattur, Chennai.

- 6.The Principal Secretary to Government
Home, Prohibition and Excise Dept.,
Secretariat, Fort St.George,
Chennai 600 009.

- 7.The Commissioner of Prohibition and Excise
Chepauk, Chennai 5.

- 8.The District Collector
Chennai Collectorate Building
Rajaji Salai, Chennai 1.

- 9.Mrs.Tamizharasi

.. Respondents

Writ Appeal filed under clause 15 of the Letters Patent against the order dated 04.07.2016 rendered in W.P.No.26049 of 2014. filed under article 226 of the constitution of India issue a writ of mandamus Directing the respondents 1 to 5 to shift to an appropriate place or close down the TASMAC retail vending outlet i.e. TASMAC Shop No.914 and attached bar situated at Narmada Apartments No.21 III Cross Street Raja Annamalai Puram Chennai-600 028.

For Appellant : Mr.M.Balasubramanian
For Respondents : Mrs.A.Sri Jayanthi,
Spl.Govt. Pleader - R6 to R8

J U D G E M E N T

NOOTY.RAMAMOohana RAO, J.

Heard Mr.M.Blasubramanian, learned counsel for the appellant.

2.The learned single Judge, who entertained the Writ Petition, instituted by a resident of the locality, taking a serious objection to the location of a retail liquor vend, sought for the same to be re-shifted to a different location.

3.During the course of order, the learned single Judge has adversely commented upon the earlier report dated 28.03.2009, made available by the second respondent, District Manager of IMFS Depot, TASMAC Limited, Chennai. Perhaps, the passage of time of nearly seven years from the date of the said report, has generated the hygienic conditions around the liquor might have suffered a drastic decline and therefore the learned single Judge, had commented adversely against the said report taking a contemporary fact situation prevailing, as made out before him into consideration.

4.The learned counsel for the appellant has taken a very serious objection to this part of the order, as without affording an opportunity, such an adverse conclusion has been drawn by the learned single Judge. If only grave or serious consequences would have flown from such adverse findings of the learned single Judge, we would have, perhaps, been compelled to take a serious note of the objection, in principle and then deal with it. However, the learned single Judge has concluded the matter by directing a surprise visit to be undertaken by some Senior Officers, to be deputed by the fifth respondent / District Collector, Chennai, and if the findings of fact

recorded by the said Senior Officer are adverse in nature and in case the factual report reveals that the retail liquor vend is required to be re-located to an another unobjectionable location, it goes without saying that the views of the 6th respondent in the matter are bound to be ascertained by the official respondents, particularly, the Commissioner of Prohibition, Excise, 4th respondent or the District Collector, the 5th respondent, who ever amongst them is the competent authority for ordering re-location of the liquor vend. In that sense, no order of adverse impact on the interest of the 6th respondent has been passed by the learned single Judge.

5. Where a liquor vend should be located, is a matter of policy choice. Even, if the same is located in an otherwise unobjectionable locality or area, there is nothing improper in someone or the other drawing the attention of the competent authority for examining as to whether the location of liquor vend is proper and desirable or not. Even though the liquor vend may not have been located in a strictly objectionable area, in accordance with the legal regime, but even in such a case, if a good natured citizen raises an objection for its location from the said point of view of the larger public interest or public good and decency, the State and its Administrative Agencies are duty bound to take into account and consider the serious nature of the objections raised and depending upon the assessment of the potentiality of the risks and dangers perceived by the citizens as a whole, a re-location of the liquor vend can be ordered. After all, we remind ourselves that there is no fundamental right for anyone to carry on a trade or business in liquor and other intoxicants. In that view of the matter, the right, if any, of the sixth respondent is only in the prevailing legal regime but, not in the realm of the fundamental rights and hence we see no serious objection which can be taken warranting our interference with the order passed by the learned single Judge.

6. Accordingly, the Writ Appeal fails and the same is dismissed. If the respondents have not complied with the order of the learned single Judge so far, we hope that trust and they would do so, within the next thirty days. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rpa

To

1.The Managing Director
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Chennai 600 009.

4.The Commissioner of Prohibition and Excise
Chepauk, Chennai 6.

5.The District Collector
Chennai Collectorate Building
Rajaji Salai, Chennai 1.

+1cc to Mr.M. Balasubramanian, Advocate, S.R.No.74615
+1cc to the Government Pleader, S.R.No.74808

nri(CO)
md(06/01/2017)

W.A.No.1623 OF 2016

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