IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19121 of 2013
and
M.P.No.1 of 2016

Mrs.M.S.Malliga ... Petitioner

Vs.

1. The District Collector,
   Ootacamund, The Nilgiris.

2. The Managing Director,
   Tamil Nadu State Marketing Corporation Limited,
   CMDA Tower-II, Chennai - 8.

3. The Senior Regional Manager,
   Tamil Nadu State Marketing Corporation Limited,
   Ootacamund, The Nilgiris.

4. The Deputy Commissioner of Excise
   and the District Revenue Officer,
   Ootacamund, The Nilgiris.

5. The District Manager,
   Tamil Nadu State Marketing Corporation Limited,
   Door No.363, Regent House,
   Club Road, Ootacamund,
   The Nilgiris. ... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of mandamus to direct the respondents to close down the TASMAC liquor Retail Vending Shop Number 8208 situated at No.14, Mount Road, Near Tamilagam Hotel, Coonoor, The Nilgiris.

For Petitioner	:	Mr.A.R.Suresh
For R1	:	Mr.A.Zakkir Hussain, Government Advocate
For R2 to R5	:	Mr.B.Nedunchezhiyan

ORDER

Heard Mr.A.R.Suresh, learned counsel for the petitioner and Mr.A.Zakkir Hussain, learned Government Advocate for the first respondent and Mr.B.Nedunchezhiyan, learned counsel for the respondents 2 to 5, and with their consent, the writ petition itself is taken up for disposal.

2. The petitioner has filed this writ petition seeking a direction to the respondents to close the TASMAC Retail Vending Shop No.8208 and the bar located at No.14, Mount Road, Near Tamilagam Hotel, Coonor, The Nilgiris.

3. The petitioner's case is that the shop is situated in the heart of the Coonor town which is a busy commercial area and the existence of the shop is causing great nuisance to the public. In the regard, the petitioner has filed affidavits sworn to by the persons who are carrying on business and other advocates near the TASMAC Retail shop, such as clinics, laboratories, retail shops, medical shops, advocate office, etc. In the affidavit filed in support of the writ petition, the petitioner contended that the location of the shop is in violation of the distance rules as provided under the Tamil Nadu Liquor (Retail Vending) Rules, 1989. It is further stated that the shop is situated very near to the Vinayagar temple which is situated within 60 to 70 feet and in the light of the nuisance caused in the said locality, the petitioner sent several representations and since the representations were not considered, the petitioner has moved this writ petition.

4. The counter affidavit filed by the District Collector shows that the shop is situated about 255 meters away from Ayyappan Temple, 216 meters from Melmaruvathur temple, 231 meters from Vinayagar Temple and 66 meters from the Mosque. Therefore, the respondent seeks to justify their action in locating the shop in the said area stating that it does not offend the distance rules as provided under Rule 8(1) of the said Rules. It is further submitted by the learned counsel for the TASMAC that the shop has been in existence for 20 years and the present attempt by the petitioner is motivated and there is no illegality in locating the shop in the said area which is a commercial area.

5. The respondent may be right in contending that the location of the shop does not offend the business. However, it is not clear as to how the distance was measured since admittedly the shop is located in a hill-station. Prima-facie, on a perusal of the photographs, it is seen that the shop is

located in a busy commercial area and it is surrounded by various establishments, such as laboratories, clinics, medical shops, advocate office, etc. Therefore, the larger aspect that has to be seen is as to whether the location of the shop causes nuisance in the locality, since it is the allegation of the petitioner that the people, after consuming liquor in the bar attached to the shop, have created very ugly scenes and that the women and children, who are coming to the market in the evening, are unable to go through the said area.

6. The Hon'ble Division Bench of this Court in the case of G.Vetrivel v. Golden Enclave Owners' Association and others [2012 (6) CTC 661], has considered somewhat a similar issue, wherein the TASMAC took a stand that the shop does not offend the rules and should not be closed down. The Hon'ble Division Bench pointed out that though the TASMAC has contended that there is no nuisance, it is within every prudent man's knowledge that drunken man will be flying somewhere and he will be out of his own control and therefore, even though there are different entries to the building, the nuisance factor claimed by the occupants of the building cannot be ruled out as a drunken man is susceptible to claim anything and everything, even the globe for himself and no barricades will prevent him from indulging in any sort of nuisance. The Hon'ble Division Bench has also examined the rights of the owner of the premise to rent out the property to profitable use. While considering the said contention, the Hon'ble Division Bench pointed out that it is fit to remind the owner of the building the basic principle of Law of Tort that 'one's liberty ends, where other man's nose starts' and that he may be owner of the flat, that does not mean that only with a view to generate income, he can do whatever he likes particularly at the cost of safety and security of others. After referring to the earlier decision in the case of Tamil Nadu State Marketing Corporation Limited v. R.M.Shah and others [2011 Writ L.R. 267], it was pointed out that whether the building is a residential building or commercial building, it should meet out the public safety and security and ultimately, the Hon'ble Division Bench, after reconsidering the entire facts and circumstances of the case, upheld the order passed by the learned Single Judge and held against TASMAC.

7. The above decision has been referred to impress upon the respondents to regulate the manner in which the shops are functioning. The respondents are not expected to implement the rules with mathematical precision. Rule does not relate to measuring distances for forming roads or collecting tolls etc., but essentially the rule has been enacted to safeguard the places of worship. Thus, prescribing a minimum distance between the TASMAC shop and the places of worship itself will show that

the shops located nearby worship will undoubtedly cause nuisance and it would pose a threat to public safety. If such is the reason for framing the rule, the respondents have to take a holistic view of the matter and not to be scuttled down by technicalities. The contention raised by the respondent is that the shop is in existence for 20 years is hardly a reason to refuse to look into the petitioner's complaint. Probably, for all these years, nobody had the courage to represent to the authorities for shifting of the shop.

8. In the light of the above discussions, there will be a direction to the first respondent to reconsider the whole matter on the lines indicated in the preceding paragraphs and examine the matter without being in any manner influenced by the stand taken by the earlier District Collector in the counter affidavit. Such direction shall be complied with by the first respondent within a period of six weeks from the date of receipt of a copy of this order. To enable the District Collector to have a correct picture of the ground realities, he may authorise a senior officer to conduct surprise inspection and thereafter be guided by legal principles enunciated above and pass appropriate orders.

9. With the above discussions and directions, the writ petition is disposed of. No Costs. M.P.No.1 of 2013 is closed. Consequently, connected M.P.No.1 of 2013 is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Ootacamund, The Nilgiris.

2. The Managing Director,
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   Door No.363, Regent House, Club Road, Ootacamund,
   The Nilgiris.

+1cc to Mr.A.R.Suresh, Advocate, S.R.No.44960
+1cc to the Government Pleader, S.R.No.45219

W.P.No.19121 of 2013

AD(CO)
CA(29/08/2016)