

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2017

CORAM

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.A.No.1215 of 2017
and

C.M.P.No.17135 of 2017
and C.M.P.No.17028 of 2017
in W.A.No.SR.74862 of 2017

P.Murugesan ... Appellant/5th respondent

vs.

1. Shri Kanbavvi Welfare Association
Rep. By its Secretary,
Perumbakkam,
Sholinganalur Taluk,
Kancheepuram Distirct,
Chennai-100.
2. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Fort St. George,
Chennai-600 009.
3. The District Collector,
District Collectorate,
Kancheepuram District.
4. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
TASMAC, District Office,
South Chennai, Chennai.
5. The Tahsildar,
Sholinganallur Taluk,
Sholinganallur,
Chennai-119.

.. Respondents/Petitioner/
Respondents 1 -4/

Writ Appeal filed under Clause 15 of the Letters Patent,
praying to set aside the order passed in W.P.No.18699 of 2017
dated 24.07.2017.

Prayer in WP.No.18699/17:

Writ Petition filed under Article 226 of Constitution of India Praying to issue Writ of Mandamus to direct the 1 to 4th respondents to shift the TASMALC liquor shop in R.S. No.4139 situated at Survey No.17/3 & 17/4B Anandammal Nagar Perumbakkam Solinganallur Taluk Kancheepuram District Chennai and to relocate the said liquor shop to some other location after considering the petitioners representation dated 27.06.2017 and 06.07.2017

For Appellant : Mr.K.Selvaraj

For Respondents: Mr.P.S.Shiva Shanmugasundaram,
Special Govt. Pleader
for RR 1 to 3 & 5

Mr.P.Arumuga Rajan for R4

JUDGEMENT

W.A.No.1215 of 2017
and C.M.P.No.17135 of 2017

4. The challenge in the accompanying appeal is to the judgement and order of the learned Single Judge dated 24.07.2017. The said writ petition was filed by respondent No.1-Association seeking a mandamus qua the official respondents to shift the TASMALC liquor shop bearing R.S.No.4139, situate at Survey Nos.17/3 & 17/4B, Anandammal Nagar, Perumbakkam, Sholingallur Taluk, Kancheepuram District, Chennai (in short, "the subject shop"). A further direction was sought in the writ petition by respondent No.1-Association, which was to relocate the subject shop, after considering the representations dated 27.06.2017 and 06.7.2017, filed by it. सत्यमेव जयते

5. The grievance of the appellant (i.e., respondent No.5) before us, is that, the writ petition was disposed of without even notice to him. While, this may be correct, we are of the view all that the learned Single Judge has said in the operative part of the impugned judgement and order, is that, the representations filed by respondent No.1-Association dated 27.06.2017 and 06.07.2017, should be considered by the District Collector, after carrying out an inspection. Therefore, by this direction, the learned Single Judge has kept the matter alive and not straight away conceded to the prayer made by respondent No.1-Association to relocate the subject shop.

6. It appears, the grievance of respondent No.1-Association (i.e., the original writ petitioner) before the

learned Single Judge was that the subject shop was located in an area, which was, exclusively, a residential area, and that too, within the prohibited zone. In this connection, it was also sought to be emphasised that the prohibited zone was defined by the distance, at which, the subject shop was located from the temple and a matriculation school located in the area.

7. The counsel for the appellant, however, disputes the assertion made in that behalf by respondent No.1-Association. It is the contention of the appellant that the subject shop is located beyond the prohibited area, as defined in Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

8. It is the contention of the appellant that mere location of a TASMAL shop in a residential area, without more cannot be objected to by the respondents. In support of his submissions, the learned counsel relies upon the following judgements of the Division Bench of this Court :

- (i) W.P.No.19181 of 2017, dated 28.07.2017, titled : G.Kavitha Thirumugam Vs. The State of Tamil Nadu and others ;
- (ii) U.Vignes Vs. The Commissioner, Prohibition and Excise Department, Govt. of Tamil Nadu and others, 2017 SCC Online Mad 2295.

9. Having regard to the directions issued by the learned Single Judge and the submissions made before us, we are inclined to dispose of the appeal with the following directions :

(i) The District Collector, Kancheepuram District, will consider, as indicated above, by the learned Single Judge, the representations dated 27.06.2017 and 06.07.2017, filed by respondent No.1-Association.

(ii) The District Collector would get the subject shop inspected and, if necessary, cause a surprise inspection to be conducted.

(iii) The District Collector will, thereafter, generate a report; a copy of which will be furnished both to the appellant as well as respondent No.1-Association.

(iv) The parties, if aggrieved, i.e., the appellant or respondent No.1-Association, will have a right to file their objections to the report, if any.

(v) The District Collector, will fix a date of hearing before him and he will issue notice to the appellant and respondent No.1-Association in that behalf, which will indicate the date of hearing. The notice will be given at least three (3) days prior to the date of hearing fixed by him. At the hearing, an opportunity would be given both to the appellant as well as respondent No.1-Association to advance their stand before him.

(vi) The District Collector, after hearing the parties, i.e., the appellant and respondent No.1-Association will pass an order.

(vii) The parties, if aggrieved, i.e., the appellant or respondent No.1-Association, will, thereafter, have liberty to assail the order, if necessary, in accordance with law.

10. The impugned judgement and order of the learned Single Judge is varied to the aforesaid extent. The appeal is disposed of in terms of the aforementioned directions. Needless to say, the aforesaid exercise will be completed by the District Collector within four (4) weeks from the date of receipt of a copy of the order. Consequently, the connected application shall stand closed. There shall, however, be no order as to costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Govt. of Tamil Nadu,
Secretariat, Fort St. George,
Chennai-600 009.
2. The District Collector,
District Collectorate,
Kancheepuram District.
3. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
TASMAC, District Office,
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4. The Tahsildar,
Sholinganallur Taluk,
Sholinganallur,
Chennai-119.

W.A.No.1215 of 2017

skv(co)
ss(31/10/2017)