

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2017

CORAM :

The Hon'ble Ms.INDIRA BANERJEE, CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P. No.23800 of 2017

and

W.M.P.No.25017 of 2017

S.Shankar

...Petitioner

Vs.

1.The District Collector,
Coimbatore District,
Coimbatore.

2.The District Manager,
The Tamil Nadu State Marketing Corporation
(TASMAC),
Coimbatore District,
Coimbatore.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Mandamus forbearing the respondents from opening the Government Tasmac shop bearing No.1803 in the ground floor of CS Lodge, Uzhavar Sandai Road, Jawahar Bus stand, Mettupalayam, Coimbatore District.

For Petitioner : Mr.M.Guruprasad

For Respondents: Ms.Vasudha Thiyagarajan, AGP
for R-1
Mr.K.Sathish Kumar for R-2

ORDER

(Order of the Court was made by M.Sundar, J.)

This writ petition has been filed as a Public Interest Litigation. The prayer in the writ petition is to mandamus the

respondents by forbearing them from opening a Government TASMAC shop bearing No.1803 in what has been described as ground floor of CS Lodge, Uzhavar Sandai Road, Jawahar Bus stand, Mettupalayam, Coimbatore District.

2 The aforesaid shop No.1803 situated at the aforesaid location is hereinafter referred to as 'said shop' for the sake of convenience and clarity. It has been averred in the writ petition that there are two temples within the restricted 100 meters from the shop and according to the writ petitioner, the two temples are Sakthi Vinayagar Temple and Muniappasamy Temple.

3 Respondents were put on notice and respondent No.2, i.e., Tamil Nadu State Marketing Corporation (TASMAC) has filed a counter affidavit dated 22.09.2017.

4 In the counter affidavit, it has been brought to our notice that the said shop has been functioning for 14 years in the same location and that there has been no complaint whatsoever from the local populace (citizenry) till the closure of the shop on 1.4.2017 pursuant to orders of the Hon'ble Supreme Court. Thereafter, after a clarificatory order was passed by the Hon'ble Supreme Court, said shop was reopened on 1.9.2017.

5 Learned counsel for the writ petitioner submits that it is not in dispute that the said shop is functioning at the same location for 14 years (obviously with the exception of aforesaid five months i.e., April 2017 to August 2017). It is his submission that the shop was closed on 1.4.2017 pursuant to the orders of the Hon'ble Supreme Court. When there was a proposal to reopen the shop at the same location, writ petitioner came up with the instant writ petition is his further say.

6 Therefore, in effect the averment of TASMAC that the said shop has been functioning in the same location for 14 years without any complaint from the local populace / citizenry is not disputed.

7 Be that as it may, with regard to the pivotal point on which the writ petition is predicated, i.e., said shop is located within prohibited distance from the two temples, we deem it appropriate to extract paragraph 5 of the counter affidavit of TASMAC, which reads as follows :

"5.I most respectfully submit that the District manager (In the rank of Deputy Collector) Coimbatore has conducted an inspection and found that there is no disturbance by the said existing shop and also the District survey officer also conducted an inspection and submitted a report that the shop located 138 meter away from sakthi vinayagar temple. Therefore the allegations leveled by the petitioner are utter falsehood."

8 From the aforesaid extracted portion of the counter affidavit and the submission of the learned Standing Counsel for

TASMAC that the other temple, i.e., Muniappasamy Temple is farther away, it is clear that the said shop is not within the prohibited distance from the temples and therefore, there is no violation of Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

9 To be noted, we are informed by both learned counsel that said shop is located in a municipal area and therefore, Rule 8 would apply accordingly.

10 In the light of the fact that the said shop has been in existence for 14 years without any complaint from the local populace / citizenry and the fact that there is no violation of Rule 8 of the aforesaid rules, we are not inclined to interfere in this matter. One other factor which has weighed in our mind is that the writ petitioner is also admittedly running a commercial establishment in the same location and the writ petitioner has also not objected to the said shop in the last 14 years either by himself or on behalf of local populace.

11 For all the aforesaid reasons, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vvk

To

- 1.The District Collector,
Coimbatore District,
Coimbatore.
- 2.The District Manager,
The Tamil Nadu State Marketing Corporation
(TASMAC),
Coimbatore District,
Coimbatore.

+ 1 cc to Mr.K.Sathish Kumar Advocate,SR.72408
+ 1 cc to Mr.M.Guruprasad Advocate,SR.72765
+ 1 cc to Government Pleader in sr.no.72602

W.P.No.23800 of 2017

RR(CO)
NR 07/11/2017