

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.14827 of 2017
and W.M.P.No.16069 of 2017

Rajesh Somasundaram

... Petitioner

Vs.

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. The District Manager,
Tasmac Limited,
No. 14-18, Sipcot Industrial Estate,
Kancheepuram-631 502,
Kancheepuram District.

3. The Inspector of Police,
Kanathur Police Station,
Kancheepuram District.

4. M.Soundarapandian,
(R4 impleaded as per order dated 07.07.2017
in WMP.No.18821/2017 in W.P.No.14827/2017)

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue of writ of mandamus, forbearing the respondents from establishing or re-locating or running the Tasmac shop at Plot No.36, Madras Builders in S.No.99/1C2B1 of Muttukadu Village, Thiruporur Taluk, Kancheepuram District by considering the objection of the petitioner dated 24.05.2017.

For Petitioner : Mr.M.R.Jothimanian
for M/S.K.Balu
For Respondents : M/s. M.Lalitha (R1 & R3)
Government Advocate
: Mr.B.Nedunchezhiyan (R2)
: Mr.A.E.Ravichandran (R4)

O R D E R

Heard Mr.M.R.Jothimanian, learned counsel for the petitioner; Ms.M.Lalitha, learned Government Advocate appearing for respondents 1 and 3, Mr.B.Nedunchezhiyan, learned counsel appearing for the second respondent and Mr.A.E.Ravichandran, learned counsel appearing for the fourth respondent.

2. The petitioner has sought for a direction, upon the respondents not to establish or re-locate or run a TASMACH Shop at Plot No.36, Madras Builders in Survey No.99/1C2B1 of Muttukadu Village, Thiruporur Taluk, Kancheepuram District by considering their objections.

3. The petitioner submitted his representations stating that the area is a purely residential area and there are residential plots and the road leading to the said property is a private road meant only for the residents of the area for their ingress and egress and the road has not been handed over to the Panchayat and it is maintained by them individually and except them, no one else has right to use the road. The owners of the properties, through which they have got access to the road, are nine in number, have submitted representations, since they are aggrieved by the conduct of the fourth respondent, who has permitted the TASMACH shop to be located in the property and there is also an allegation that he has unauthorizedly encroached into plot No.36.

4. When the writ petition came up for admission before this Court, an interim direction was issued on 15.06.2017 to the District Collector to consider the objections and submit a report. Accordingly, a report dated 22.06.2017 was submitted, from which it is shown that the pathway in dispute belongs to a private party.

5. Recording the report submitted by the District Collector, the Court by order dated 30.06.2017 directed the closure of the shops forthwith. It is submitted by the learned counsel for the respondents that the shop in question has been closed. The fourth respondent is aggrieved by the stand taken by the District Collector stating that it is a private property and according to the fourth respondent, it is a public road and in this regard a reference was made to the Sale Deed executed in favour of the writ petitioner dated 27.10.2010, registered as document No.8111/2010, on the file of the Sub-Registrar, Thiruporur and referring to the boundaries to the schedule of property on the northern side, it is described as "Road leading to East Coast Road". Therefore, it is submitted that it is a public road. The learned counsel for the fourth respondent has also produced photographs to show that there is an electric post, which has been erected on the road and therefore, it is

not a private road as mentioned by the District Collector in the report.

6. The learned counsel appearing for the TASMAL would submit that the site was earmarked to locate the liquor shop and till they relocate the shop, they may be permitted to run.

7. After elaborately hearing the learned counsel for the parties, two issues arise for consideration. Firstly, though the shop in question was permitted to be run initially, considering the report submitted by the District Collector that the shop is located in a private road, this Court directed the closure of the shop. Pursuant to the said order, the shop has also been closed. Therefore, this Court does not wish to alter the position, for the simple reason that the shop is located in an open area and the photographs would show that tables have been laid in the entire area and people are openly consuming liquor and vehicles viz., two wheelers and auto rickshaw have been parked in a haphazard manner, and the shop itself in a pakka construction and appears to have been recently put up. That apart, the shop appears to be located in a secluded place. Thus the shop cannot be permitted to be run in such a location and it shall be permanently closed and the interim order, which was granted by this Court on 30.06.2017, is made absolute.

8. The second aspect is whether the observation made by the District Collector in his report stating that the pathway is a private pathway and not a public pathway would in any manner infringe upon the rights of the parties, who are owners of the properties abutting or living adjacent to the pathway. This issue cannot be decided in a writ petition and if at all the fourth respondent contends that it is a public pathway, it is always open to the fourth respondent to approach the competent civil forum for such declaration by leading oral and documentary evidence.

9. However, this Court would like to observe that merely because the description of boundaries on the northern side in one of the sale deeds that it is a road leading to East Coast Road, would not make the road a public road. There are other factors which have to be proved by the fourth respondent to substantiate that it is a public road.

10. With the above observations, the writ petition stands disposed of. No costs. Consequently, connected

miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

vsm

To

1. The District Collector,
Kancheepuram District,
Kancheepuram.
2. The District Manager,
Tasmac Limited,
No. 14-18, Sipcot Industrial Estate,
Kancheepuram-631 502,
Kancheepuram District.
3. The Inspector of Police,
Kanathur Police Station,
Kancheepuram District.

+1cc to Mr.B.Nedunchezhiyan, Advocate Sr. 51559

+1cc to Mr.K.Balu, Advocate Sr. 51479

+1 ccs to M/s.A.E.Ravichandran Advocate sr51466 dt 21/08

सत्यमेव जयते

W.P.No.14827 of 2017

VD(CO)
VR(11/8/2017)

WEB COPY