

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
18.12.2017	21.12.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

**Writ Petition No.24869 of 2017
and
W.M.P.No.26260 of 2017**

M.Kannappan

...Petitioner

Vs.

1. The District Collector,
Namakkal District,
Namakkal.

2. The District Manager/
Deputy Collector,
Tamilnadu State Marketing
Corporation Ltd., (TASMAC),
Namakkal,
Namakkal District.

3. Mr.N.Ponnusamy ...Respondents
R3 impleaded as per order dated 18.09.2017 in W.P.No.24869/2017
&WMP.No.26260/2017.

Prayer: Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to forbear the respondents from carrying on the TASMAC Shop No.5226 at T.S.No.35, corresponding to S.No.475/12A, Namakkal Town, Namakkal District for causing danger to my right to life and property by considering the petitioner's representation dated 30.08.2017.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.R.Rajeswaran Spl.G.P. for R1
Mr.K.Sathish Kumar for R2
Mr.N.C.Ashok Kumar for R3

ORDER

The petitioner seeks for a direction upon the respondents 1&2 from carrying on business in the TASMAL retail vending shop 5926 with bar attached in the property comprised in T.S.No.35(Survey No.475/12A), Namakkal Town, Namakkal District for the reason that it is causing danger to the petitioner's life and property.

2. Heard Mr.N.Manokaran, learned counsel for the petitioner, Mr.R.Rajeswaran, learned Special Government Pleader appearing for the first respondent, Mr.K.Sathish Kumar, learned Standing counsel appearing for the second respondent(TASMAL) and Mr.N.C.Ashok Kumar, learned counsel appearing for the third respondent.

3. On a reading of the prayer in the Writ Petition, it is clear that the petitioner seeks to espouse his personal cause and "property" and therefore, this is not a case where any public interest is involved in the matter as put forth by the petitioner. One more reason to make such an observation is upon perusal of the representation given by the

petitioner dated 30.08.2017. The representation clearly shows the ongoing civil dispute between the petitioner and the third respondent. Therefore, in the given facts and circumstances, it has to be seen as to whether the official respondents should be directed to close down the TASMAL retail vending shop with the bar attached.

4. The petitioner claims to have purchased the property in which the liquor shop and bar are situated by means of sale deed, dated 14.09.1999, executed by the Court of Additional District Munsif, Namakkal, pursuant to the decree granted by the said Court in O.S.No.568 of 1998, dated 29.01.1999. The third respondent claims to be the owner of the property having purchased the same from one Rani, who in turn purchased the same from the Baptist society and the third respondent has filed O.S.No.520 of 2001, to declare the sale deed executed by the Court in favour of the petitioner as null and void. The suit is pending. In the interregnum, on account of the orders passed by the Hon'ble Supreme Court, the said TASMAL retail vending shop was closed on 31.03.2017, and subsequently reopened on 01.09.2017, as it was not located abutting a National Highway.

5. The petitioner's case is that the shop infringes the distance Rule and it is situated within the prohibited distance of educational institutions, hospitals, etc. Therefore, it is submitted that the objections should have been considered and the shop should have been closed. In support of such contention, the learned counsel placed reliance on the decision of the Hon'ble Division Bench in the cases of ***M.Edison vs. The District Collector [2012 (2) CWC 615]; G.Vetrivel vs. Golden Enclave Owners' Association & Ors., [2012 (6) CTC 661]; G.Kanaga Bai vs. The District Collector, Kanyakumari District & Ors., [2013 (5) CTC 141]; V.KA.Velusamy vs. The District Collector, Erode District & Ors., [2015 (1) CWC 9].***

6. The District Collector has filed a counter affidavit which is pursuant to a survey conducted by the Namakkal Town Surveyor and the copy of the survey report, annexures, and photographs were produced before this Court. It is submitted that the shop is located 56.2mtrs from the edge of the State Highway, there is no National Highway as mentioned in the Writ Petition, and it is located 160.4mtrs from the Government Arts College for women, 132.4mtrs from Vasana Eye Care Hospitals, 161mtrs from Thangam Hospital, and 114.6mtrs

from Government Veterinary Hospital and there is no infringement of Rule 8(1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 and the restricted distance in case of Municipality and Corporation is 50mtrs.

7. The respondent TASMAL has reiterated the stand taken by the Collector by filing a counter affidavit *inter alia* stating that the petitioner's claim is not bonafide only with the purpose of ventilating his grievances against the third respondent, who has filed a suit against the petitioner. Further, it is stated that the third respondent has lodged a complaint before the Namakkal Police Station, registered as Crime No.842 of 2017, against the petitioner and one Mohan son of Sekar and the same is pending.

8. The third respondent in the counter affidavit has stated about the civil litigation between the parties and contended that the reason for filing the present Writ Petition is only on account of the petitioner's individual grievance and the petitioner himself in the written statement filed in O.S.No.520 of 2001 has admitted that the property is in possession of the third respondent and the shop has been in existence for several years and the third respondent has purchased the property

from the rightful owner and without impleading the third respondent, the petitioner filed O.S.No.568 of 1998 and obtained an *exparte* decree which is illegal and liable to be set aside. Further, it is submitted that the third respondent has rented out the shop to TASMAL and the liquor shop has been in existence since 2003.

9. After elaborately hearing the parties and perusing the materials placed on record, it is evidently clear that the present Writ Petition is a counter blast to the suit filed by the third respondent in O.S.No.520 of 2001, to declare the sale deed executed in favour of the petitioner as null and void. Admittedly, the shop in question has been functioning since 2003 and was closed for a brief period after the directions were issued by the Hon'ble Supreme Court. Since the restrictions applied only to National Highways, the shop has been permitted to be reopened by the District Collector on 01.09.2017. The District Collector has authorised a survey to be conducted and based upon the survey report, has filed a counter affidavit stating that the shop in question does not offend the distance Rule. In such circumstances, it has to be seen as to whether the Court can exercise jurisdiction in the matter to close down the shop, that too, at the behest of the petitioner. The answer to the question should be in the

negative and against the petitioner for more than one reason. Firstly, as pointed out earlier, the present Writ Petition is a counter blast to the civil litigation initiated by the third respondent. The petitioner appears to have attempted to resolve the civil dispute in an indirect manner by way of this Writ Petition with a view to prevent the third respondent from enjoying the property by leasing out the same to TASMAL. This cannot be permitted and for such reason, this Writ Petition is liable to be rejected at the very threshold as the bonafides of the petitioner are doubtful. In such circumstances, the decisions referred to by the learned counsel are of little assistance to the petitioner, since all those cases, the petitioner who approached the Court came for a general cause with a genuine grievance, which grievance was found to have been established by the Courts and therefore, appropriate directions were given. Recently, the Hon'ble First Bench has dismissed Writ Petitions filed as Public Interest Litigations in respect of cases, where there was no infringement of Rule 8 of the Rules. Therefore, the decisions relied on by the petitioner will not be of any assistance to his case. As rightly pointed out by the learned counsel for the respondents in the representation given by the petitioner, there is no whisper as to any general or public grievance with regard to the location of the shop. A faint attempt has

been made in the Writ Petition, which will not give a cause of action for the petitioner to seek for a Writ of Mandamus as prayed for. The petitioner's plea lacks *bonafide* for the simple reason that he claims an interest over the very same property and the matter under litigation.

10. Thus, for all the above reasons, the petitioner has not made out any case for grant of relief sought for. Accordingly, the Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

21 .12.2017

Index : yes/no
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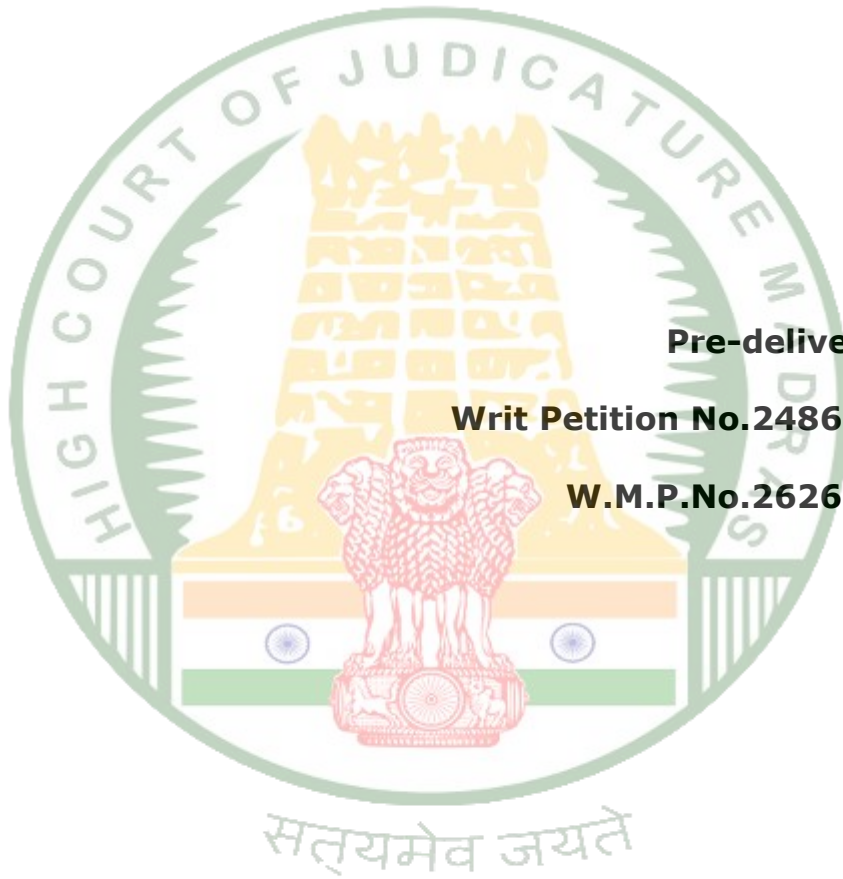
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T.S.Sivagnanam, J.

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**Pre-delivery orders
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