

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos. 28291 of 2015 & 1148 of 2017
W.M.P.2273, 1112 & 1113 of 2017 and
M.P. Nos.1, 2 of 2015

W.P.No. 28291 of 2015

P.Sundararajan

... Petitioner

Vs.

- 1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai-600 005.
- 2.The Assistant Commissioner of Prohibition
and Excise, Collectorate, Dindigul.
- 3.Tamil Nadu State Marketing Corporation
Limited, rep. by its District Manager,
Thiruchirappalli Road, Dindigul.
- 4.The District Collector,
Dindigul.
- 5.The Superintendent of Police,
Dindigul District, Dindigul.

6.K.R.Hariharan

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of mandamus, forbearing the respondents from acting upon the letters of the sixth respondent herein dated 19.08.2015 and 24.08.2015 to prevent the petitioner herein from continuing his business under the name and style Sri Shanmuganandha Bhavan Inn Madhuram A/C Bar at No.17, Railway Feeder Road, Palani on the basis of the licence FL.3.No.20/2013-14(District : Dindigul) issued by the first respondent herein vide R.Dis.P&E.2(1)14472/2013 dated 28.10.2013.

W.P.No.1148 of 2017

P.Sundararajan

... Petitioner

Vs.

1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai-600 005.

2.The Assistant Commissioner of Prohibition
and Excise, Collectorate, Dindigul.

3.Tamil Nadu State Marketing Corporation
Limited, rep. by its District Manager,
Thiruchirappalli Road, Dindigul.

4.The District Collector, Dindigul.

5.K.R.Hariharan

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondents relating to the order of the first respondent in P&E/B.2(1)/5496/2015 dated 15.12.2016 and quash the same and directing the respondents to renew the licence FL.3.No.20/2013-14 (District: Dindigul) issued by the first respondent herein vide R.Dis.P&E.2(1)/14472/2013 dated 28.10.2013 to enable the petitioner to continue his business under the name and style Sri Shanmuganandha Bhavan Inn Madhura A/C Bar at No.17, Railway Feeder Road, Palani pursuant to the application dated 30.03.2016 made by the petitioner and without insisting upon property tax receipts, list of occupants of the lodge, details of sales in the restaurant, etc. from the petitioner.

For Petitioner : Mr.K.Doraisami, Standing Counsel for
M/s.Muthumani Doraisami in both W.Ps

For R1, R2 & R4 : Mrs.A.Srijayanthi,
and R5 in

W.P.No.28291/15 Special Government Pleader
for R1, R2 and R4 in W.P.1148/17.

For R3 in both W.Ps : Mr.K.Sathish Kumar

For R5 in W.P.1148/17
and R6 in W.P.28291/15 : Mr.Karthik Lakshmanan for
M/s.A.L.Ganthimathi

C O M M O N O R D E R

Heard Mr.K.Doraisami, learned Senior Counsel for M/s.Muthumani Doraisami, learned counsel for the petitioner, Mrs.A.Srijayanthi, learned Special Government Pleader for the respondents 1, 2 and 4, Mr.K.Sathish Kumar, learned counsel for the 3rd respondent and Mr.Karthik Lakshman, learned counsel for M/s.A.L.Ganthimathi, learned counsel for the 5th respondent. With the consent on either side these writ petitions are taken up for final disposal.

2.The petitioner has filed these writ petitions one to forbear the respondents from acting upon the letter of the sixth respondent thereby preventing the petitioner from continuing his business and the second writ petition is against the order passed by the second respondent/the Assistant Commissioner of Prohibition and Excise, Dindigul, dated 15.12.2016. By the impugned proceedings, dated 15.12.2016, the first respondent has locked and sealed the premises where the petitioner was running a bar, based on a license granted in favour of R.K.Hariharan being partner of Tvl.Shanmuganandha Bhavan Hotel, in Form FL 3, bearing license No.20/2013-14.

3.The impugned order has been passed on a letter given by the said R.K.Hariharan, fifth respondent in W.P.No.1148 of 2017, stating that the Bar is no longer required and the license be cancelled. The petitioner is aggrieved by such an action on account of certain financial transactions and agreements between the petitioner and the fifth respondent in W.P.No.1148 of 2017. This Court does not propose to go into the said controversies as they are purely civil in nature, especially when the petitioner has filed a suit in OS.No.671 of 2015, on the file of the Sub-Court, Palani, praying for declaration and injunction. The petitioner has also filed an interlocutory application in I.A.No.561 of 2015, to restrain the fifth respondent/sole defendant from any manner disturbing the petitioner/plaintiff running the bar in terms of a rental agreement dated 10.04.2013. As on date, the license granted for running the bar has been cancelled/suspended, based on a request made by R.K.Hariharan/fifth respondent/licensee. The petitioner has broadly set out two grievances with regard to bar in question.

4.Firstly, that the surrender of the licence and cancellation thereof is not tenable and secondly even assuming that the petitioner is unable to run the bar, because licence has been cancelled/suspended, he would be entitled to use the premises, which according to the petitioner, is a lease hold premises pursuant to a rental agreement. As observed earlier, this Court is not inclined to make any observations in these writ petitions as it may have an impact on the civil proceedings initiated by the petitioner.

5.However, as of now the first respondent has locked the place, where the bar was functioning and the keys are with the second respondent. Since a civil dispute is pending between the petitioner and the fifth respondent in W.P.No.1148 of 2017, and the second respondent having already taken action and cancelled/suspended the license issued by the first respondent, the second respondent would not be justified in retaining the keys of the premises any further.

6.Therefore, this Court is of the view that the petitioner and the fifth respondent in W.P.No.1148 of 2017 should be allowed to agitate all issues in the pending suit and to enable the civil court to take a decision in the matter either by way of final decision or by way of interim decision, the keys of the premises, where the bar was functioning, should be deposited before the civil court. Accordingly, there will be a direction to the second respondent to deposit the keys of the premises, where the bar was functioning, before the civil court viz., Sub-Court, Palani, in OS.No.671 of 2015, by filing a memo/petition along with a copy of this order. After the keys are deposited before the Sub-Court, the same shall be retained by the civil court and liberty is granted to the petitioner to move a proper interim application for taking custody of the keys and if such application is filed, the fifth respondent in W.P.No.1148 of 2017 is entitled to file counter raising all objections, after which, the civil court shall take a decision on the interim application on merits and in accordance with law.

With the above direction, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

abr

To

- 1.The Commissioner of Prohibition and Excise,
Chepauk, Chennai-600 005.
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and Excise, Collectorate, Dindigul.
- 3.Tamil Nadu State Marketing Corporation
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Thiruchirappalli Road, Dindigul.
- 4.The District Collector, Dindigul.
- 5.The Superintendent of Police,
Dindigul District, Dindigul.

Copy to

The Sub Court, Palani.

+2 Ccs to Ms. Muthumani Doraisamy, Advocate sr 66595.

+2 Ccs to Ms.A.L. Gandhimathi, Advocate sr 66771,66772.

W.P.Nos. 28291 of 2015
& 1148 of 2017

AK(CO)
sp(26/09/2017)



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