

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P. No. 19056 of 2017

&

W.M.P. No. 20573 of 2017

P. Pandian

..Petitioner

Vs.

1. The Commissioner of Excise,
Government of Puducherry,
Puducherry.

2. The Deputy Collector (Excise),
Office of the Deputy Collector
(Excise),
Thattanchavady,
Puducherry - 9.

3. P. Ramesh

(3rd respondent impleaded as per order of
Court dated 05.09.2017 in W.M.P. No.
23087 of 2017 in W.P. No. 19056 of 2017)

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for
issue of a Writ of Mandamus directing the respondents to close down the newly
opened arrack shop which is functioning at Mariamman Kovil Street,
(Sivaranthagam to Ariyur) Pangur Village, Villianur Taluk, Pondicherry, which is

functioning against public objection by considering the petitioner's representation dated 14.07.2017 within a time frame fixed by this Court.

For Petitioner :: Ms.G.V. Seethalekshmi

For Respondents :: Mr.J. Kumaran,
Govt. Advocate for R1 & R2
Mr.Bharatha Reddy
M/s.Sai, Bharath & Ilan for R3

ORDER

The petitioner has filed this writ petition stating that he is espousing the grievances of the people, who are residing near Mariamman Kovil Street (Sivaranthagam to Ariyur) Pangur Village, Villianur Taluk, Pondicherry and they are objecting to the location of the arrack shop in the said area.

2. When the writ petition came up before this Court on 26.07.2017, it was pointed out that there was a large scale agitation by the local public and the petitioner relied on newspaper reports dated 01.07.2017 and 19.07.2017. Apart from that, photographs were also shown as to how the shop is located within the prohibited distance. Thus, this Court was of the prima facie view that the petitioner had made out a case for grant of an interim order and accordingly, directed respondents 1 and 2 to close down the shop and then file their counter affidavit.

3. Though respondents 1 and 2 have complied with the order, but what has happened is that respondents 1 and 2 have closed down three shops bearing Shop Nos. 3, 18 and 11. The 3rd respondent is the successful bidder for shop No.3 and the owners of Shop Nos. 18 and 11 are not before this Court. The petitioner did not disclose in the affidavit filed in support of the writ petition that there were three shops in the locality. Conspicuously, shop numbers were not mentioned and thus the Court, prima facie, opined that since there was public objection, the shop in question shall be closed and then the Court will hear the official respondents and take a decision in the matter.

4. One more disturbing fact, which has come to the notice of this Court is that, the writ petitioner himself was a licensee of an arrack shop and he is in arrears of kist and as he could no longer participate in the auction he is stated to have set up one of his representatives by name Kasilingam @ Velayutham, who has participated in the auction for Shop No.18, Pangur Village and offered a price of Rs.7,07,000/- as against the upset price of Rs.4,29,303/- and the auction has been confirmed in favour of the said Kasilingam. However, it appears that he was not able to carry on business as the shop has now been closed as the kist amount has not been remitted.

5. Thus, it is clear that the writ petition filed by the petitioner is not a public interest litigation or a writ petition espousing the cause of local residents, but purely, a personal interest litigation to promote his own business interests. The official respondents have filed counter affidavit, from which, it is seen that that the shops in question have been located in the same area after the sites have been selected in accordance with the Pondicherry Excise Rules, 1970. It appears that there is a procedure to be followed before the site is selected for location of a shop and the decision is taken by a Selection Committee and after being fully satisfied that there is no infraction of Rules, the sites are approved. Thus, the present attempt of the petitioner is clearly to vindicate his personal interest and the petitioner has suppressed the fact that there were three shops in the area and made the Court to believe that there was only one shop. Furthermore, the newspaper report referred in page No.7 of the typed set of papers is in respect of some other shop, which is situated 24 kilometres away from the present location. Thus, the petitioner is guilty of suppression of material facts and as such, he is not entitled for any relief. Accordingly, the writ petition is dismissed. The interim order granted by this Court on 26.07.2017 is vacated and respondents 1 and 2 are directed to re-open the shop of the 3rd respondent. No costs. W.M.P. No.20573 of 2017 is dismissed.

nv/sai

05.09.2017

To

1. The Commissioner of Excise,
Government of Puducherry,
Puducherry.
2. The Deputy Collector (Excise),
Office of the Deputy Collector
(Excise),
Thattanchavady,
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T.S. SIVAGNANAM,J.

nv



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