

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.08.2017

Coram:

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

W.P.No. 19423 of 2017
and
W.M.P.No. 20946 of 2017

M.Zakir Hussain

...Petitioner

Versus

1. The Secretary
Government of Tamil Nadu
Prohibition and Excise Department,
Fort St., George, Chennai
2. The District Collector,
Thiruvallur District, Thiruvallur.
3. The Superintendent of Police,
Thiruvallur District, Thiruvallur.
4. The District Manager,
TASMAC, Thiruvallur.
5. The Thasildar,
Thiruvallur Taluk, Thiruvallur.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of writ of mandamus, forbearing the fourth respondent from opening and establishing a TASMAC shop at Plot No. 298 Vengal Modern City or nearby Vengal Village, Vengal, Thiruvallur District.

For Petitioner : Mr. M. L. Ramesh

For Respondents : Ms.A.Sri Jayanthi
Special Govt.Pleader
for R1 to R3 and R5

Mr.Arumugharajan for R4

O R D E R

Heard Mr.M.L.Ramesh, learned counsel appearing for the petitioner, Ms.Sri Jayanthi, learned Special Government Pleader for respondents 1, 2, 3 and 5 and Mr. Arumugharajan, learned Standing Counsel appearing for the fourth respondent.

2. With the consent on either side, the writ petition is taken up for disposal.

3. The petitioner is stated to have purchased a residential plot in a housing lay out approved by the Directorate of Town and Country Planning, called as Vengal Modern City in Thiruvallur District. The petitioner has come forward with this writ petition on his behalf and on behalf of the other residents of the said Vengal Modern City, stating that the fourth respondent TASMAL has established a retail liquor vending shop in Plot No.298 and it is impermissible, as per the approval granted by the DTCP for the lay out, as it is a Primary Residential Use Zone, which clearly places an embargo on what are the nature of shops and Non-Residential establishments that can be located in a Primary Residential Use Zone. In this regard, the learned counsel referred to the Information Hand Book under Right to Information Act, issued by the department of Town and Country Planning, Government of Tamil Nadu, and submitted that insofar as the Primary Residential Use Zone, the Non-Residential establishment, which are permitted, are petty shops dealing with daily essentials, including retail provisions, soft drinks, cigarettes, newspapers, milk, Kiosks, cycle repair shops and single person tailoring shops. Apart from that, professional consulting offices of the residents and other incidental uses thereof are permissible. It is submitted that the Rules of development as formulated by the Government do not permit the location of liquor shop in the Primary Residential Use Zone.

4. The learned counsel for the 4th respondent TASMAL on instructions submitted that the TASMAL shop has been in existence for several decades and the objection has been raised recently only by the petitioner.

5. In my view, merely because objection has been raised only recently, cannot be a ground to justify the location of the TASMAL shop. What is required to be seen is whether there is restriction statutorily or otherwise for locating a retail vending liquor shop in a Primary Residential Use Zone. Therefore, regardless of the fact that there was no objection earlier, the District Collector should consider the petitioner's

objection and examine as to whether a liquor shop can be located in the Primary Residential Use Zone. It appears to have been prohibited under the Planning Permission Rules framed under the Tamil Nadu Town and Country Planning Act.

6. In the light of the above, there will be a direction to the second respondent to consider the petitioner's representation dated 15.05.2017, which has been acknowledged by the office of the District Collector vide acknowledgment dated 10.07.2017, direct a surprise inspection to be conducted by one of his officers of the shop in question and after obtaining appropriate report and also taking note of the grievances expressed by the petitioner and the observations made in this order, take a pragmatic decision in the matter and pass appropriate orders on merits and in accordance with law, within a period of three weeks from the date of receipt of a copy of this order.

7. The writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mrr/svki

To

1. The Secretary
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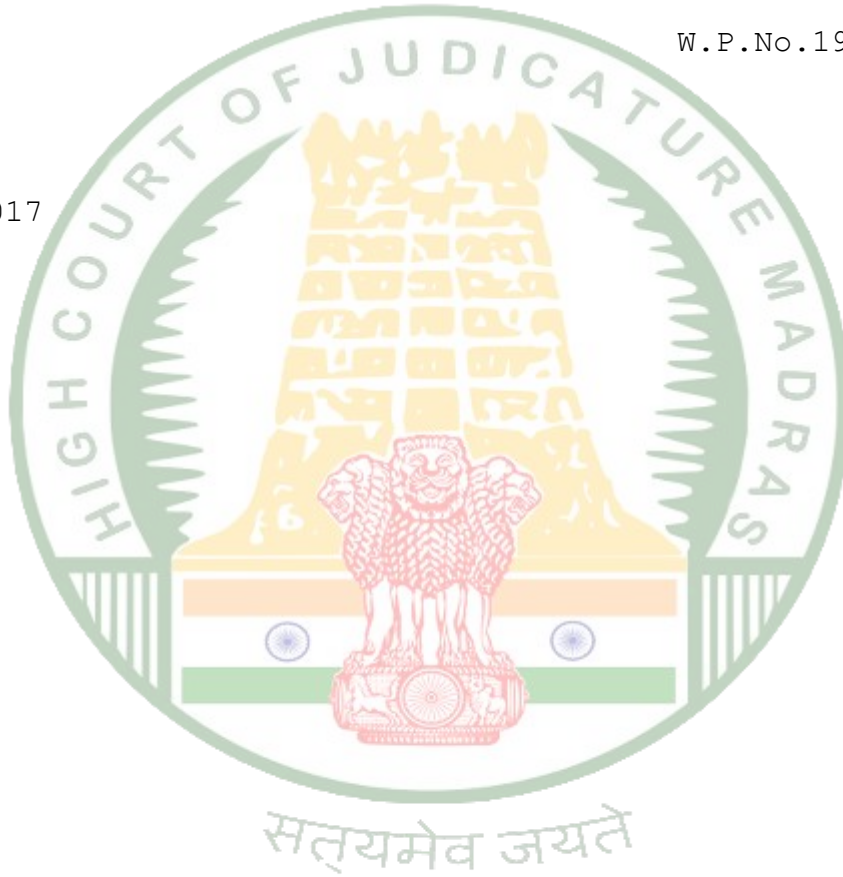
+1 cc to Tasmac Standing Counsel Advocate sr 56786

+1 cc to M/s.M.L.Ramesh Advocate sr 56998

+1 cc to the Government Pleader sr 57475

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