



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

and

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD) No.15616 of 2017

and

W.M.P. (MD) .No.12346 of 2017

S.P.M.Jamal Mydeen

: Petitioner

Vs.

1.The District Collector,
Madurai District,
Madurai.

2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation Limited,
(TASMAC),
Anna Nagar, Madurai.

3.The Deputy Collector/ District Manager,
Tamil Nadu State Marketing Corporation Limited,
(TASMAC), Madurai North,
Madurai.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the third respondent in Na.Ka.No.0269/2017/H, dated 27.06.2017, quash the same, and direct the respondents to take action to close the TASMAC Shop No.5197, running at No.64, South Masi Street, Madurai-625001.

For Petitioner	: Mr.Gokul
For Respondent No.1	: Mr.T.S.Md Mohideen Additional Government Pleader
For R2 & R3	: Mr.H.Arumugam For TASMAC

ORDER

[Order of the Court was made by G.R.SWAMINATHAN, J.]

The petitioner has filed this writ petition for the welfare of the members of his locality. He is aggrieved by the running of TASMAC liquor shop bearing No.5197, running at No.64, South Masi Street, Madurai-625001.



2.He approached the District Collector earlier for closure of the said shop. The said petition was forwarded to the third respondent herein, who informed the petitioner by a communication dated 27.06.2017, that the locations of the shop is not in violative of Rule 8(1) of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003. Not satisfied with the said response, the petitioner herein has moved this Court contending that the shop is located within the prohibited distance.

3.During the course of hearing, this Court wanted to know if the premises in which the shop in question is located is an approved building. Such a question came to be posed because the use and development of any land is covered by the provisions of the Tamil Nadu Town and Country Planning Act 1971. The said Act extends to the whole State of Tamil Nadu, except the cantonment areas.

4.Chapter VI of the said Act is particularly relevant. Section 47 of the Tamil Nadu Town and Country Planning Act 1971, states that no person other than the State Government or the Central Government or any Local Authority shall use or cause to be used any land or carry out any development in that area otherwise than in conformity with such development plan. As per Section 47(A) of the the Tamil Nadu Town and Country Planning Act 1971, any person intending to carry out any development on any land in an area other than planning area shall apply for permission to the Local Authority.

5.Section 49 of the Tamil Nadu Town and Country Planning Act 1971 deals with application for permission. Any person intending to carry out any development on any land or building shall apply to the appropriate planning authority for permission. The appropriate planning authority shall in deciding whether to grant or refuse such permission, have regard to in the following matters, namely, (a) the purpose for which the permission is required; (b) the suitability of the place for such purpose; (c) the future development and maintenance of the planning area. If any development of land or building has been carried out in defiance of the statutory provisions, the appropriate authority can take remedial measures for restoring the status quo ante. Power is also available to stop the unauthorised development.

6.Section 58 of the Tamil Nadu Town and Country Planning Act 1971 deals with development undertaken on behalf of any State Government or Central Government or Local Authority. They have to inform in writing to the Planning Authority concerned. If the Planning Authority raises any objection, the matter will have to be dealt with in the manner and set out in Section 58 (2) and (3) of the Tamil Nadu Town and Country Planning Act 1971. The provision reads as under :

" 1.

2.Where a planning authority concerned or the regional planning authority concerned, as the case may be,



raises any objection to the proposed development on the ground that the development is not in conformity with the provisions of any development plan under preparation or for any other material consideration, the officer of the State Government, Central Government or any Local Authority, as the case may be, shall-

(i) either make necessary modifications in the proposals for development to meet the objections raised by the Planning Authority concerned, or (ii) submit the proposals for development together with the objections raised by the Planning Authority concerned to the Government for decision.

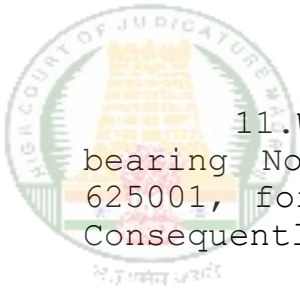
3.The Government, on receipt of the proposals for development together with the objections of the Planning Authority concerned shall, in consultation with the Director, either approve the proposals with or without modifications or direct the officer to make such modifications in the proposals as they consider necessary in the circumstances and the officer concerned shall be bound to make such modifications as proposed by the Government."

7.Tasmac is not State Government or Central Government or Local Authority. It is only an undertaking of the State Government. Therefore, the provisions of the Tamil Nadu Town and Country Planning Act, 1971 would very much apply to the TASMAC.

8.In any event, in this case, Tasmac is not undertaking any development activity. It is only taking the buildings belonging to private parties on rent. Therefore, the buildings in which the liquor shops are located will have to have requisite planning approvals and building permits. They should also conform to the zoning regulations.

9.In the present case, it has now come to be known that a portion of the residence has been illegally converted as a shop from which liquor is being sold. Admittedly, the permission of the Local Body has not been obtained for effecting such a conversion from residential to commercial use.

10.The authorities cannot labour under the mistaken impression that the location of the liquor shops needs to be tested only in the light of Rule 8(1) of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003. The law is an integral whole. The provisions of the Tamil Nadu Town and Country Planning Act, 1971, cannot be lost sight of. In this case, the location of the shop in question in a building which was permitted to be used only as a residence is clearly illegal.



11. We direct the respondents to close down the TASMAL Shop bearing No.5197, running at No.64, South Masi Street, Madurai-625001, forth with. The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The District Collector,
Madurai District, Madurai.
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Tamil Nadu State Marketing Corporation Limited,
(TASMAL), Anna Nagar, Madurai.
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TSG
ES/RP/SAR 4/12.11.2018/4P/4C