

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 5/9/2018

C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.12221 of 2018

1. Mr.S.Shankar

2. Mr.N.Chetan

...Petitioners

Vs

1. The Managing Director
Tamil Nadu State Marketing Corporation Ltd
CMDA Tower II, 4th Floor
Egmore
Chennai 8.

2. The Senior Regional Manager
TASMAC Limited
LLA Building
735 Anna Salai
Chennai 600 002.

3. The District Manager
TASMAC Limited
Kancheepuram North District
Thirumazhisai, No.3
Chembarapakkam
Chennai 600 123.

4. The District Collector
Kancheepuram District
Kancheepuram.

5. The Revenue Divisional Officer
Tambaram
GST Road
Tambaram
Chennai 600 045.

6. The Tahsildar
Sholinganallur Taluk
Old Mahabalipuram Road
Sholinganallur
Chennai 600 119.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to consider the representation dated 5/9/2017 and 2/5/2018 opposing the opening of TASMAC wine shop and Bar in Plot No.535, Sri Ganapathy Nagar Colony, in S.No.410/10 Chemmencherry Village, Shollinganallur Taluk, Chennai 600 119, Kancheepuram District, which is within prohibited radius of the residential area, schools and educational institutions.

For petitioner ... Mr.R.Amizhdhu

For respondents ... Mr.P.Arumugarajan
Senior Counsel
for R.R.1 to 3.

Mr.S.Kamalesh Kannan
Government Advocate
for R.R.4 to 6.

O R D E R

(Order of the Court was made by Subramonium Prasad, J)

Claiming themselves to be a public interest litigants, petitioners have filed the instant public interest litigation, for a direction to the respondents, to take appropriate action, based on the representations of the petitioners, dated 5/9/2017 and 2/5/2018 respectively, opposing the opening of TASMAC wine shop and Bar, in Plot No.535, Sri Ganapathy Nagar Colony, in S.No.410/10 Chemmencherry Village, Shollinganallur Taluk, Chennai 600 119, Kancheepuram District, which is within prohibited radius of the residential area, schools and educational institutions

2. The contents of the writ petition is that the petitioners are residing near Ganapathy Syndicate Colony, Chennai. During the month of September 2017, a shop was constructed, very close to the residential area and school, which is within the restricted radius of residential area and School. It is the contention of the petitioners that they along with nine others, sent a representation, dated 5/9/2017, to the respondents, but no action was taken. Writ Petition No.25179 of 2017 was filed by Mrs.Bhuvaneswari, Vice Principal, St. Paul's Nursery and Primary School, Chennai. This Court, vide, order, dated 20/9/2017, directed the District Collector, Kancheepuram District, to consider the representation, dated 5/9/2017. District Collector, was further directed to conduct an inspection, by one of the Senior Officers and take into consideration the views of the residents of the said area. First respondent was injuncted from opening a shop till the

decision was taken by the District Collector.

3. It is alleged in the writ petition that the residents were kept in dark about the enquiry, with regard to the opening of TASMAC wine shop. It is stated that the respondents have now started to work in full swing, to open TASMAC wine shop. It is further stated that the said wine shop is close to the educational institution and residential area and the local residents have conducted a protest and also made a representation dated 2/5/2018 to the fourth respondent. Contending that the said representations have not been considered, petitioners have come forward with the instant writ petition, praying for the relief extracted supra. Notice was issued on 9/5/2018.

4. The District Manager, TASMAC, Kancheepuram (N), Thirumazhisai/third respondent, has entered appearance and filed its counter affidavit. Operative portion of the counter affidavit reads as under:-

"3. It is submitted that the liquor Retail Vending Shop No.4530 was originally located at Survey No.421 and Plot No.53 Sri Ganapathy Nagar Colony, Chemenchery Village, Sholinganallur Taluk, Chennai 600 119. I further submit that in view of the Hon'ble Supreme Court's order dated 15/12/2016 and 31/3/2017 in Civil Appeal Nos.12164 - 12166 of 2016, no liquor vending shops shall be visible from a National or State Highway and situated within a distance of 500 meters and 220 meters in case of areas comprised in local bodies with a population of 20,000 people or less. Hence the above said R.V.Shop was decided to relocate to the following address in S.Nos.410/10 located at Plot No.535 Sri Ganapathy Nagar Colony, Chemenchery Village, Sholinganallur Taluk, Chennai 600 119.

4. It is respectfully submitted that the above said site was selected by the team of Highly Committed Officers comprising the Assistant Commissioner of Excise, the District Manager and the surveyor. While selecting the above place, the

team has considered all the relevant facts including the guidelines stipulated in Rule 8 (1) of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 and submitted a proposal to the District Collector with all the relevant documents. As per the Rules of TASMAC, the shop shall not be located within 50 meters from an educational institution and place of worship in

respect of Corporation and Municipalities and within 100 meters in respect of other places. The new place is also located 500 meters away from National/State Highway. The District Collector after careful perusal of all the relevant records and facts placed before him, came to an independent conclusion and approved the place as suitable for relocation of TASMAC shop.

5. It is humbly submitted that the above said proposed location is not in violation to any of the norms laid down by the Hon'ble Supreme Court of India or any rules stipulated in Rule 8 (1) of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, framed under Tamil Nadu Prohibition Act, 1937.

6. It is further submitted that the School, Place of worship mentioned in the writ petition is nowhere referred as the distances but formally came with a fake representation. Actually, in and around 50 meters, there is no any educational Institution, Place of worship or any residents.

7. It is further submitted that this Hon'ble First Bench of this Court on 13/4/2017 in W.P.No.8902 of 2017 and in a similar line of cases has held as follows:-

"Needless to mention that the liquor shop shall only be relocated in accordance with law and in particular, the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 framed under the Tamil Nadu Prohibition Act, 1937 taking into consideration the judgments of the Supreme Court of India and of this Court in this regard."

It is submitted that W.P.No.25179 of 2017 was also filed before this Court similar to this case and the order was passed on 20/9/2017 as follows:-

"The fourth respondent (District Collector) shall direct an inspection to be conducted on the proposed location by one of the Senior Officers and based upon the inspection report and taking into consideration the views of the petitioner's school and the concern of the residents of the area, shall take a pragmatic decision in the matter. Till a decision is taken by the District Collector, the shop shall not be located in the proposed site."

Accordingly, the Assistant Commissioner

(Excise), Kancheepuram has been directed to inspect the above said proposed site. He thoroughly verified and measured without any deviation on 8/1/2018. The result is contrary to the entire averments stated in the writ petition that the Saint Paul Nursery School is located 240 meters away from the proposed shop and in and around 50 meters, there is no any place of worship or any residents but the representation by whom made as the agitators are all residing at Alarmelu Mangapuram site is clearly located by 900 meters away from the proposed shop. Based on the inspection report which is submitted before the District Collector/fourth respondent, after careful perusal subject to the rules of TASMAL and Hon'ble Supreme Court directions, there is no violation and confirming by fourth respondent was passed the order to open the liquor retail vending shop No.4530 in the proposed location dated 19/4/2018."

5. Heard the learned counsel for both sides.

6. Perusal of the counter would show that directions passed by this Court, in W.P.No.25917 of 2017, have been carried out. There is no educational institution or place of worship, within the distance, as stipulated, in Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

7. Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, reads thus:-

"Location of shop: (1) No shop shall be established in Municipal Corporations and Municipalities within a distance of 50 (fifty) metres and in other areas 100 (hundred) metres from any place of worship or educational institutions:

Provided that the distance restriction shall not apply in areas designated as "Commercial" or "Industrial" by the Development or Town Planning Authorities:

Provided further that no shop shall be established within the premises of any hotel:

Provided also that if any place of worship, educational institution comes into existence subsequent to the establishment of the shop, the provisions of this rule shall not apply:

Provided also that no liquor shops shall be established in any tribal areas covered

under Integrated Tribal Development Project and Hill Area Development Project in the Hill area of Vellore, Salem, Namakkal, Dindigul, Tirunelveli and Kanniyakumari Districts.

(2). Every shop shall be housed in a pukka building and no part of the shops shall be thatched either on the sides or on the roof.

(3). The shop shall be in the location approved by the Collector before commencing the business in the shops."

8. In view of the fact that, the shop is not located within prohibited distance from any place of worship or educational institutions, and the Collector has taken all necessary steps and carried out the direction of the court in W.P.No.25179 of 2017 and in light of the fact that, he has sent the Assistant Commissioner (Excise), Kancheepuram, to inspect the site, who has thoroughly verified the facts, the instant writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

mvs.

To

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Chennai 600 119.
7. The Assistant Commissioner (Excise)
Kancheepuram.

+1cc to Mr.P.Arumugarajan, Advocate, S.R.No.61973
+1cc to Mr.R.Amizhdhu, Advocate, S.R.No.61641
+1cc to the Government Pleader, S.R.No.61721

W.P.No.12221 of 2018

CA(CO)

rrs 05/09/2018



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