

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/9/2018

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.24254 of 2018

K.Gangadharan

...Petitioner

Vs

1. The District Collector
Chennai District
Chennai 1.
 2. The Managing Director
Tamil Nadu State Marketing
Corporation Ltd
Talamuthu Natarajar Maaligai
Egmore
Chennai 8.
 3. The Senior Divisional Manager
Tamil Nadu State Marketing
Corporation Ltd
LLA Building
Anna Salai
Chennai 2.
 4. The District Manager
Tamil Nadu State Marketing Corporation Ltd
Bengaluru National Highways
Thamizhisai
Tiruvallur West
Thiruvallur District.
- ..Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the respondents to pass orders on the representation dated 4/9/2018 seeking not to locate TASMAC shops in and around Anna Street, Thiruvallur Street, VOC Street, Mettukuppam, Vanagaram, Chennai District.

For petitioner ... Ms.N.R.Jasmine Padma
for Mr.K.Chandrakumar
For respondents... Mr.T.N.Rajagopalan
Government Pleader
for R.1.
Mr.P.Arumugarajan
Standing Counsel
for TASMAC/R.R.2 to 4.

O R D E R

(Order of the Court was made by SUBRAMONIUM PRASAD,J)

Instant writ petition is filed for a writ of mandamus, directing the respondents, seeking not to locate TASMAC shop, in and around Anna Street, Thiruvallur Street, VOC Street, Mettukuppam, Vanagaram, Chennai District.

2. Petitioner states that he is the President of Anna Street, Thiruvallur Street, VOC Street Kudiyirupor Podhu Nala Sangam, Mettukuppam, Vanagaram. The respondents are proposing to locate a TASMAC shop in the area. According to the petitioner, there are number of temples like Sri Varagi Temple, Sivan Temple, Sri Angala Parameswari Temple, Subramaniam Temple, near the proposed shop. The residents in the area are mostly daily wage earners and many women old and young reside in the area. Alleging that TASMAC shop is being located, without taking into account the public sentiment, the instant writ petition is filed.

3. Learned counsel appearing for TASMAC was asked to file his reply. Relevant portion of the counter affidavit is reproduced hereunder:-

"12. I submit that the shop is proposed to be opened at S.No.103/1, Mettukuppam Main Road, Kuppasamy Nagar, Sivabootham, Vanagaram, Chennai 600 095 falls within the limits of the Chennai Corporation. It is pertinent to note that earlier a TASMAC shop was functioning in the same place and it was closed consequent to the orders of the Hon'ble Supreme Court, dated 15/12/2016, on account of its proximity to a highway. I submit that consequent to the clarifications issued by the Hon'ble Supreme Court and the above said G.O., and in view of the fact that the present proposed place is within the limits of Chennai Corporation. Since there is a bypass road for Chennai Corporation, long distance travelers would be using the bypass road while commuting from one place to another, hence as per para 17 (a) of the above mentioned G.O (which has been upheld by the Hon'ble Supreme Court) all the roads passing within such Corporation can be considered for locating retail vending liquor shops. This shop is also eligible as per 17 (b) of the above mentioned G.O., since the inner ring road starts from Madhavaram and terminates at Perugulathur as such it is a short stretch which provides connectivity within Chennai Metropolitan Development Area

and does not provide connectivity between two cities/towns. Hence the proposed shop is eligible to be located both as per 17 (a) and as per 17 (b) of the above mentioned G.O. The Mettukuppam main road where the proposed site is situated within the limits of Chennai Corporation and there are number of traffic regulations and speed regulations and heavy vehicles are not allowed during day time.

13. It is submitted that the proposal was initiated and the Tahsildar, Maduravoyal inspected the site and found there is no Rule 8 (1) violation, i.e., no place of worship or educational institution within 50 meters from the proposed site. It is further submitted that the above location is not in violation to any of the norms laid down by the Hon'ble Supreme Court or any rules stipulated in Rule 8 (1) of the Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003, framed under Tamil Nadu Prohibition Act, 1937."

4. Heard the learned counsel for the parties and perused the materials available on record.

5. Learned counsel appearing for the writ petitioner has filed a map. As per the Map, the proposed site is about 65 meters from Sri Maha Varahi Amman Koil.

6. Learned counsel for the petitioner, placed reliance on a Division Bench judgment, dated 19/7/2010, passed by this Court in W.A No.1353 of 2010, in particular, he relies on paragraph Nos.9 and 15, which are reproduced hereunder.

"9. It is true that the retail vending rules provide that no shops shall be established within a distance of 50 metres in Municipal Corporations and Municipalities and 100 metres in other areas, from any place of worship or educational institutions. However, that does not mean that the liquor shops so established would get a licence automatically to cause nuisance to the local people. The prescription of distance for opening the Bar is a matter between the state and the excise licensees. Merely because the shop is situated beyond the distance stipulated in the rules it cannot be said that there would be no nuisance to the people of the area. The distance rule takes care of only the place of worship or educational institutions. It does not say that the liquor shops should be away from residential houses. The nuisance created by the drunkards would extend even beyond the safety area prescribed under the rules. Therefore it all depends upon the facts and circumstances of each case. The factum of location of the shop beyond the

prohibited distance would not come to the rescue of the licensee of liquor shops in the event of there being perennial nuisance to the residents of the area.

.....

15. The right to life guaranteed under Art. 21 would include every aspect of life so as to make the life real and meaningful. The right to lead a peaceful life without any kind of nuisance has to be considered as one among the many facets of Article 21. India is a welfare state. The state is expected to promote the well being of its people. It is true that the State have to generate funds for undertaking welfare measures. The trade in liquor otherwise known as Res-extra-commercium is a major source of revenue to the state. But the generation of revenue should not be at the expense of the peaceful life of the people."

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. Reading of the files and the counter would show that Rule 8 has not been violated and that there is no impediment in TASMAC shop being located in the place where it is to be opened. Mere apprehension that there is likely to be nuisance in the area is no ground to restrain the respondents from opening a TASMAC shop. Public sentiments can be taken note of only in case specific instances of nuisance. It is settled law that, Courts cannot read into a legislation and introduce a new condition, which has not been stipulated in the legislation. This would amount to legislation by judiciary which is not permitted. With due respect on facts, the Division Bench judgment in Writ Appeal No.1353 of 2010, dated 19/7/2010 is distinguishable.

9. In view of the above, writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The District Collector, Chennai District, Chennai 1.
2. The Managing Director
Tamil Nadu State Marketing Corporation Ltd
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LLA Building , Anna Salai, Chennai 2.
4. The District Manager
Tamil Nadu State Marketing Corporation Ltd
Bengaluru National Highways
Thamizhisai, Tiruvallur West, Thiruvallur District.

+ 1 cc to Mr. P. Arumugarajan, Advocate Sr.64831
+ 1 cc to M/s. L. Chandrakumar, Advocate sr.64888

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AK(CO)
EU(30/10/2018)