

In the High Court of Judicature at Madras

Dated : 01.8.2018

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition No.19760 of 2018 & WMP.Nos.23208 & 23209 of 2018

1.H.B.Saravanakumar

2.T.Gokul Kannan

...Petitioners

Vs

1.The Government of Tamil Nadu,
rep.by its Secretary, Prohibition &
Excise Department, Fort.St.George,
Chennai-9.

2.The Commissioner of Prohibition &
Excise, Chepauk, Chennai-5.

3.The Tamil Nadu State Marketing
Corporation Ltd., rep.by its Managing
Director, Thalamuthu Natarajan
Buildings, Egmore, Chennai-8.

4.The District Collector, Dharmapuri
District-635701.

5.The District Manager, IMFS Department,
TASMAC Ltd., Godown No.2, Compartment
1, Tamil Nadu Warehousing Corporation,
Bharathipuram Collectorate Post,
Dharmapuri-636705.

...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Mandamus directing the
respondents to close liquor shop No.2810, functioning at door
No.5-A, Niva Complex in Srinivas Rao Street, Dharmapuri District
and direct the fourth respondent to shift the liquor shop to an
unobjectionable site forthwith.

For Petitioners

:Mr.P.Ebenezer Paul

For Respondents 1, 2 & 4

:Mr.R.P.Prathap Singh, GA

For Respondents 3 and 5

:Mr.B.Nedunchezhiyan

ORDER

Mr.R.P.Prathap Singh, learned Government Advocate accepts notice for respondents 1, 2 and 4. Mr.B.Nedunchezhiyan, learned Standing Counsel accepts notice for respondents 3 and 5. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The first petitioner is a practicing advocate in Dharmapuri District i.e. before the Subordinate Court, Palacode and is stated to be a member of the Madras High Court Advocates' Association. The second petitioner is a student of the Government Law College, Dharmapuri currently pursuing his second year degree course. The petitioners are aggrieved by the location of a TASMAC wine shop bearing No.2810, which is located at door No.5A, Niva Complex in Srinivas Rao Street, Dharmapuri District.

3. The petitioners would submit that the Municipal Girls High School, Dharmapuri is located within a distance of 50 meters from the liquor shop in question. It is further submitted that the shop in question has been established and is being run by the respondent Corporation in violation of Rule 8 of the Tamil Nadu Liquor Retail Vending Rules, 2003, which prohibits establishment of a liquor shop within a distance of 50 meters in municipal corporation and municipal area from the place of worship or educational institutions. It is also submitted that the shop in question is being run in the basement and the requisite compliance to be done under Rule 14(2) of the said Rules has not been complied with.

4. In this regard, the first petitioner sent a representation dated 28.3.2018 to the fourth respondent and that the same is pending. The learned counsel for the petitioners has produced photographs to show the location of the shop in question and as to how it is within the prohibited distance. It is also pointed out that in the municipality campus, the Government Law College is also functioning and in utter disregard to the public convenience and ignoring the welfare of the girl students in the municipal girls high school as well as the law college students, the shop in question is being continuously run.

5. The learned Standing Counsel for the respondent - Corporation submits that the shop in question is in the said location for over 10 years.

6. In the considered view of this Court, length of time, for which, the shop has been located in a particular area, cannot be the sole reason for the shop to be continued, if it is in

violation of the said Rules. In case it is found that there is a violation of the said Rules, however long the shop has been in existence is not a ground to continue the location of shop in the same place. These issues will have to be considered by the fourth respondent since the representation dated 28.3.2018 given by the first petitioner is pending and is shown to have been received in the office of the fourth respondent on 03.4.2018 vide postal acknowledgment card.

7. In the light of the above, the writ petition is disposed of with the following directions :

(i) The fourth respondent is directed to depute one of his officers to conduct a surprise check of the area, in which, the shop in question is located and after ascertaining the location of the shop in question and the other establishments, which are in the near vicinity, submit a detailed report to the fourth respondent.

(ii) Based on the report of the officer concerned, the fourth respondent shall take a pragmatic decision in the matter especially when there is an allegation that there is a school and a college located within the prohibited distance.

(iii) Though the learned Standing Counsel for the respondent - Corporation has raised a contention that the area is a commercial area and that there is no violation of the distance rule, the other factors shall also be taken into consideration by the fourth respondent and strict mathematical interpretation cannot be given to the distance rule.

(iv) If there is a public nuisance caused in the area, especially when there are educational institutions in the vicinity, the shop is likely to cause prejudice to the local public and a pragmatic view shall be taken.

(v) One of the photographs enclosed in the typed set of papers shows that a line of two wheelers have been parked virtually blocking 40% of the road through which, buses and lorries are passing. Therefore, the fourth respondent shall take a holistic decision in the matter on merits and in accordance with law.

(vi) In order to facilitate the fourth respondent to effectively comply with the above directions, the petitioners are directed to enclose a copy of the said representation dated 28.3.2018 along with a copy of this order and forward the same to the fourth respondent.

(vii) The above exercise shall be completed by the fourth respondent within a period of four weeks from the date of receipt of a copy of this order.

No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to Government of Tamil Nadu, Prohibition & Excise Department, Fort.St.George, Chennai-9.
- 2.The Commissioner of Prohibition & Excise, Chepauk, Chennai-5.
- 3.The Tamil Nadu State Marketing Corporation Ltd., rep.by its Managing Director, Thalamuthu Natarajan Buildings, Egmore, Chennai-8.
- 4.The District Collector, Dharmapuri District-635701.
- 5.The District Manager, IMFS Department, TASMAL Ltd., Godown No.2, Compartment 1, Tamil Nadu Warehousing Corporation, Bharathipuram Collectorate Post, Dharmapuri-636705.

+1cc to Mr.Ebenezer Paul, Advocate Sr.52160
+1cc to Mr.B.Nedunchezhiyan, Advocate Sr.52606
+1cc to the Government Pleader Sr.52890

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srg 20/08/2018