

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.09.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.13478 of 2017
and
W.M.P.No.14551 of 2017

S.Prakash ... Petitioner

vs.

1.The District Collector,
Collectorate Buildings,
Kancheepuram District,
Kancheepuram 631 501.

2.The Superintendent of Police,
Collectorate Compound,
Kancheepuram,
Kancheepuram District.

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

4.The District Manager,
IMFS DEPOT, TASMAR Ltd.,
Plot No.14/18, SIPCOT Industrial Estate,
Kancheepuram District,
Kancheepuram-631 502. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents herein to stop relocating of TASMAR wine shop at MGR street, Kanathur Village.

For Petitioner : No Appearance

For R1 & R2 : Mr.E.Manoharan,
Additional Government Pleader.

For R3 & R4 : Mr.P.Arumugarajan
Standing Counsel.

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Instant writ petition has been filed for a writ of Mandamus, directing the respondents herein, to stop relocating of TASMAC wine shop, at MGR street, Kanathur Village.

2. On 25.09.2018, when the matter came up for hearing, there was no representation on behalf of the petitioner, either in person or through pleader. Hence, we directed the registry to post the matter on 26.09.2018, under the caption for dismissal. Today, also there is no representation.

3. Counter affidavit has been filed.

4. We have perused the writ petition and counter affidavit. The grievance of the petitioner is to stop relocation of two TASMAC wine shops, which were operating near the village of the petitioner i.e. Kanathur Village, Kancheepuram District. As per the direction of the Hon'ble Supreme Court, both the shops were closed down. The authorities have decided to relocate the TASMAC wine shop in the same village. It is the contention of the petitioner that his village is densely populated residential area. Moreover, 15 meters from the proposed site, Church, Amman Temple and Middle School are situated.

4. According to him, AMIT University an educational institution is also located near to the proposed site for the new TASMAC wine shop. That persons who consume alcohol, would create nuisance, spill over the eatables in and around the area and that the villagers do not want the proposed TASMAC wine shop in that place.

5. Notice was issued to the respondents. The District Manager, TASMAC, Kancheepuram, fourth respondent herein, has filed a counter affidavit. Paragraph Nos. 4, 5 and 7 of the counter affidavit, are extracted hereunder:-

"4. I submit that TASMAC Shop No.4175 was originally located at No.37, Kanathur Reddikuppam, Tiruporur Taluk, Kanchipuram District. I further submit that in view of the Hon'ble Supreme Court orders 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 of the outer edge of the National or State Highways or of service lane along the Highway and 220 meters in case of areas comprised in local bodies with a population of 20,000 people or less. As the above Shop No.4175 is located within 500 meters from the National or State Highway, it was decided to relocate the Shop No.4175 to the following address Survey No.45/6E, Kanathur Reddikuppam, Kancheepuram District.

5. I submit that the above site was selected by a team of officers comprising the Assistant Commissioner of Excise and the District Manager, TASMAC. 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. As per the above Rules, the Shop shall not be located within 50 metres from an educational institution and place of worship in respect of Corporation and Municipalities 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 facts placed before him, came to an independent conclusion and approved the place as suitable for relocation of TASMAC shop.

7. I further submit that the school/place of worship mentioned in the writ petition is actually more than 100 metres away from the proposed site. It is also submitted that the shop is located more than 220 meters from the National/State Highway."

8. Perusal of the counter affidavit would show that there is no place of worship or educational institution, within the prescribed limit, under Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003. For brevity, Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops

and Bars) Rules, 2003, is extracted hereunder:-

"8. 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. "

9. Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, states that 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. Therefore, there is no impediment for opening of proposed TASMACH wine shop in that area.

10. The other contention of the petitioner that the proposed TASMACH shop would create nuisance in the locality also cannot be accepted. No concrete material has been given by the petitioner as to what kind of nuisance would create. TASMACH shop functioned, from 2005 onwards. In the absence of any supporting material, apprehension of nuisance likely to be created, cannot be taken into account and mandamus cannot be granted. The petitioner has also failed to substantiate the restrictions proposed in the opening of TASMACH wine shop and the locality of the proposed site. It is well settled law that the Court cannot impose any new condition into the Statute.

11. In view of the above, the writ petition is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

(S.M.K., J.) (S.P., J.)
26.09.2018

Index : Yes/No
Internet : Yes /No

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