

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.25764 of 2018

Akadu

... Petitioner

vs.

1.The District Collector,
Kancheepuram,
Kancheepuram District.

2.The Managing Director,
TASMAC Ltd.,
Thalamuthu Natarajan Maaligai,
4th Floor, 2nd Block,
Egmore, Chennai - 600 008.

3.The District Manager,
TASMAC,
Kancheepuram North,
Kancheepuram District.

.... 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 to permanently close down the TASMAC Shop No.4157, situated at No.1.A., Masjid Street, Contonment Pallavaram, Alanthur, Chennai - 600 043.

For Petitioners : Mr.G.Mohammed Aseef

For R1 : Mr.T.N.Rajagopalan,
Government Pleader.

For R2 to R3 : Mr.P.Arumugarajan
Standing Counsel for TASMAC

ORDER

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

Instant writ petition is filed for a Writ of Mandamus, directing the respondents to permanently close down the TASMAC Shop No.4157, situated at No.1.A., Masjid Street, Contonment Pallavaram, Alanthur, Chennai.

2. Case of the petitioner is that there was a TASMAC Shop No.4157, situated at 1.A., Masjid Street, Contonment

Pallavaram. The said Shop was closed on 31.03.2017, due to the order of the Hon'ble Supreme Court, dated 31.03.2017, that shops wherever situated in the Highways, were directed to be closed. From that period, TASMAC shop was closed.

3. Petitioner has contended that the said TASMAC shop is located in a densely populated area. There are many educational institutions, namely Kavitha Matriculation Higher Secondary School, Xavier Play School, Francis Xavier English School, Theresa Girls Higher Secondary School, located near to the abovesaid TASMAC Shop. If the shop again opened, it would be nuisance to the general public.

4. Petitioner has further contended that the public experienced nuisance of drunken and brawl caused by the perennial customers visiting the said TASMAC Shop. It would be safety threat to the students and devotees passing through the street, if they opened the shop.

5. Petitioner has further contended that there was an attempt of reopening of TASMAC Shop, immediately, an organization and general public gathered near the TASMAC shop, and held a peaceful agitation. The petitioner has lodged a police complaint dated 24.08.2018 and he has also made a representation dated 21.09.2018, to the first and third respondents for closing of TASMAC Shop. As there is no other remedy, petitioner has filed the instant writ petition, for the relief stated supra.

6. Responding to the notice, District Manager, TASMAC Limited, Kanchipuram, has filed a counter affidavit, which reads thus:-

"1. I submit that the site for proposed TASMAC shop is selected by a team of officers comprising of the Assistant Commissioner of Excise and the District Manager of TASMAC. When the site was selected, the team considered all relevant facts including the guidelines stipulated in Rule 8(1) of Tamil Nadu Liquor Retail Vending (in shops and bars), 2003 and submit a proposal to the District Collector. As per the said Rules, the shops should not be located within 50 meters, from an educational institution or place of worship in respect of Corporation and Municipality and within 100 meters in respect of other places. The said distance is defined in the said Rules in Rule 2 (i) "distance" means the distance by the shortest pathway, lane, street or road, generally used by the members of the public.

2. I submit that the Hon'ble Supreme Court of India by a Judgment dated 15.12.2016 in C.A.NOS.12164 to 12166 of 2016, had prohibited

granting licence for sale of liquor along National and State Highways, that no shop for sale of liquor shall be (i) visible from a national or state highway; (ii) directly accessible from the national or state highway and (iii) situated within a distance of 500 meters of the outer edge of the National or State Highway or of a service lane along with highway.

3. I submit that this order in respect of distance of 500 meters was modified by the Hon'ble Supreme Court by an order dated 31.03.2017, wherein, it has held that the local bodies with a population of less than 20,000/- by restriction of 500 meters is reduced to 220 meters from the National or State Highway.

4. I submit that the Hon'ble Supreme Court by an order dated 11.7.2017 further clarified as follows:

"The purpose of the directions contained in the order dated 15.12.2016 is to deal with the sale of liquor along and in proximity of highways properly understood, which provide connectivity between cities, town and villages, the order does not prohibit licensed establishments within municipal area. This clarification shall govern other municipal areas as well. We have considered it appropriate to issue this clarification to set at rest any ambiguity and to obviate repeated recourse to IAs, before this Court."

5. I further submit that in pursuant to the above said clarification, the Commissioner of Prohibition and Excise issued a letter dated 1.9.2017 addressed to the District Collector, to permit all FL1 to FL11 licensed establishments which are located within the limits of Municipal Corporations, Municipalities and Town Panchayats to function with immediate effect.

6. I submit that the above said instructions/directions was challenged in W.P.No.23974/2017 before this Hon'ble Court. While the said writ petition was pending, the Hon'ble Supreme Court by an order dated 13.11.2017 had issued the following clarification which reads as follows:

"The purpose of the directions contained in the order dated 15.12.2016 is to deal with the sale of liquor along and in proximity of highways properly understood, which provide connectivity between cities, towns and villages, the order does not prohibit licensed establishments within municipal area. This clarification shall govern other municipal areas

as well. We have considered it appropriate to issue this clarification to set at rest any ambiguity and to obviate repeated recourse to IAs, before this Court.

7. I submit that on 28.04.2018, the Hon'ble First Bench of this Court, allowed the writ petition in W.P.No.23974 of 2017 on the sole ground that the earlier notification was a general direction and not on case to case basis. Challenging the same, the Government of Tamil Nadu filed SLP(C) No.11581 of 2018, before the Hon'ble Supreme Court. On 14.05.2016, the Hon'ble Supreme Court directed the State of Tamilnadu to pass appropriate orders in terms of its order dated 23.02.2018. Considering the same, the State of Tamilnadu passed G.O.Ms.No.32 Home, Prohibition and Excise (VI) Department dated 21.05.2018 in terms of the orders passed by the Hon'ble Supreme Court. On 23.05.2018, the Hon'ble Supreme Court has taken the said G.O. and permitted the State Government to give effect to the same.

8. I submit that the said G.O. deals with instructions to the District Collectors while issuing licence for liquor vending in Municipal areas (which are in the highways or within such distance from the highways as laid down by the Hon'ble Supreme Court by its order dated 15.12.2016 and 31.03.2017. The said G.O. applies to areas within Municipal Corporation, Municipalities and Town Panchayats and also areas within Local Self-governing bodies forming a part of statutory development authority and Census towns.

9. A Mosque is situated 183 Mtrs. away from the proposed place and Theresa Girls Higher Secondary School, Pallavaram is situated 162 Mtrs. away from the proposed place. St. Francis Xavier English Primary School and St. Joseph Primary School are within the campus of the above said St. Theresa Girls Higher Secondary School. Kavitha Matriculation Higher Secondary School is situated more than 200 Mtrs. away from the proposed place. After considering the above said facts and circumstances, the 1st respondent passed an order dated 05.07.2018 permitting to locate Shop No.4157 at No.11, Mosque Street, Pallavaram, Chennai. 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.

10. I further submit that this Hon'ble First Bench of this Court on 13.04.2017 in W.P.No.8902/2017 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 Tamil Nadu Prohibition Act, 1937 taking into consideration the judgment of the Supreme Court and of this Hon'ble in this regard".

7. We have heard learned counsel for both the parties and perused the materials available on record.

8. Though the petitioner has referred Rule 8(1) of Tamil Nadu Liquor Retail Vending (in shops and bars) Rule 2003, relied on the judgment of the Hon'ble Division Bench of this Court in Tamil Nadu State Marketing Corporation Limited Vs. R.M.Shah and others, reported in 2010(2) CWW 337, and also submitted that there are educational Institutions and Mosque, namely Pallavaram Jamia Masjid, averments made in the counter affidavit discussed, that there is no violation of 8(1) of Tamil Nadu Liquor Retail Vending (in shops and bars) Rule 2003, and that there is no place of worship or educational institutions within 50 meters from the proposed site.

9. A Mosque is situated 183 meters away from the proposed place and Theresa Girls Higher Secondary School, Pallavaram is situated 162 meters away from the proposed place. St.Francis Xavier English Primary School and St.Joseph Primary School are within the campus of the above said St.Theresa Girls Higher Secondary School. Kavitha Matriculation Higher Secondary School is situated more than 200 meters away from the proposed place. Respondents have also considered the Judgment of the Hon'ble Supreme Court 15.12.2016 and 31.03.2017 respectively.

10. Having regard to the clarification issued by the Hon'ble Supreme Court and G.O.Ms.No.32, Home, Prohibition and Excise (VI) Department dated 21.05.2015, shop proposed to be relocated, is within the Municipal Limits.

11. Counter affidavit further states that the Hon'ble Division Bench of this Court in similar circumstances, in W.P.No.8902 of 2017, dated 13.04.2017, held as follows:-

This writ petition filed in public interest relates to the relocation of the liquor shop pursuant to the judgment dated 31st March, 2017 of the Supreme Court of India in Civil Appeal Nos.12614 - 12616 of 2016.

restraining the respondents from relocating the TASMAC Shop No.3624 to the village of the petitioner i.e., Agasthilingampalayam, as there are temples and schools nearby.

3. After hearing the learned counsel appearing on behalf of the petitioner and the learned Government Pleader appearing on behalf of the respondents, we dispose of the writ petition by directing respondent No.2/District Collector, Tiruppur to consider the representation of the petitioner dated 8th April, 2017 at page No.1 of the typed set of papers in accordance with law. No costs. Consequently, W.M.P.No.9821 of 2017 is closed.

4. Needless to mention that the liquor shop shall only be relocated in accordance with law and in particular the Tamil Nadu Liquor Retail Vending (Inshops 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.

12. Considering the facts and circumstances, we are of the view that there is no illegality or irregularity in locating the TASMAC Shop No.4157, situated at No.1.A., Masjid Street, Contonment Pallavaram, Alanthur, Chennai.

13. Writ Petition is dismissed. No Costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

dm/asr
To

1.The District Collector,
Kancheepuram,
Kancheepuram District.

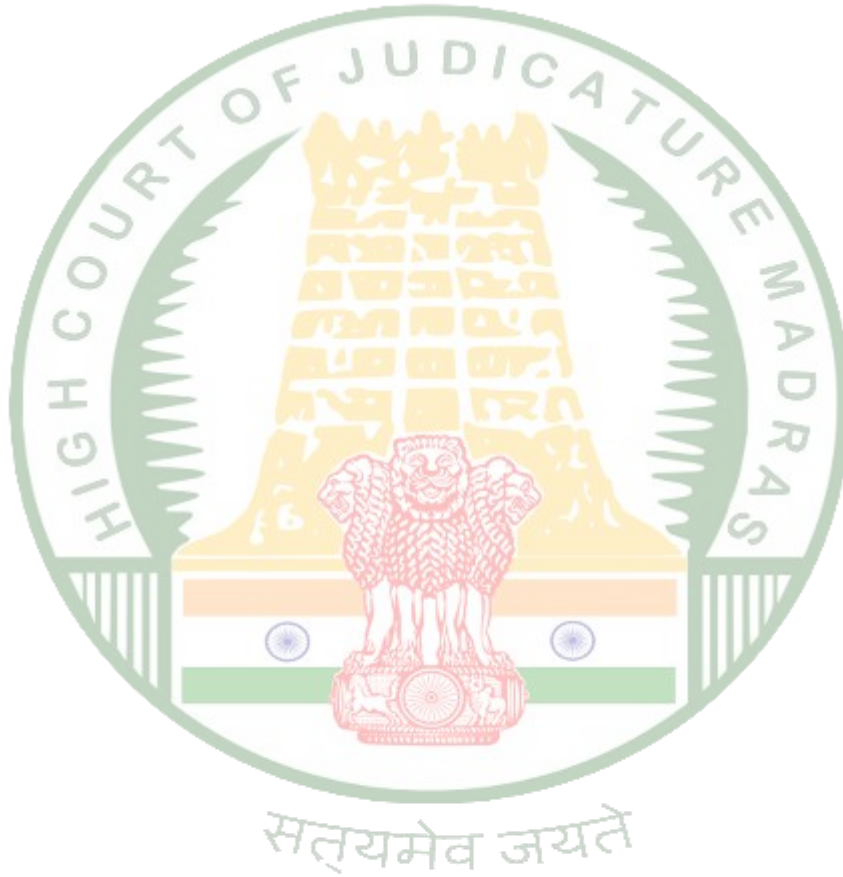
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3.The District Manager,
TASMAC,
Kancheepuram North,
Kancheepuram District.

+ 1 cc to Mr. P. Arumugarajan, Advocate SR.73694
+ 1 cc to Mr. Government Pleader Sr.73456

W.P.No.25764 of 2018

KJ(CO)
EU(23/11/2018)



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