



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P. (MD) No.840 of 2018 and
W.M.P (MD) .No.892 of 2018 and
W.M.P (MD) .No.7650 of 2018

R.Kaliyattam

: Petitioner

Vs.

1. The District Collector,
Madurai District,
Madurai.

2. The District Manager,
TASMAC Limited,
Madurai District,
Madurai.

3. D.Ramesh

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the first respondent dated 08.12.2017 in Na.Ka.No.48074/2017/X3 and quash the same.

For Petitioner	: Mr.K.Govindarajan for Mr.M.Karl Marx
For R-1	: Mr.C.M.Mari Chelliah Probhu Additional Government Pleader
For R-2	: Mr.H.Arumugam
For R-3	: Mr.S.Sankar

ORDER

According to the petitioner, he entered into an agreement with the second respondent for letting out the premises for opening of TASMAC outlet in shop No.16 T.S.No.974/1 of Ward No.26, Ganaolipuram. According to him, he spent huge amount in order to suit the requirement of the second respondent. Pursuant to the agreement, the second respondent started the outlet in June 2017 in the premises owned by the petitioner.

2. While matter stood thus, the third respondent approached this Court in W.P(MD)No.18960 of 2017 seeking a direction for the removal of the TASMAC outlet and this Court vide its order, dated



23.10.2017, has passed the following direction in paragraph 13, which is extracted below:-

"13.As a matter of fact, vending in liquor will undoubtedly increase the coffer of the 'Revenue' of the Government concerned. It is to be termed as 'Res-Extra Commmercium'. However, a serene atmosphere of harmony and peaceful living of the residents cannot be interfered by any one. As such, this Court, without expressing any opinion one way or other on the merits and contents of the representation, dated 7.8.2018 (wherein the petitioner has also affixed his signature), simpliciter directs the First Respondent/The District Collector, Madurai District to look into the representation of the petitioner, dated 7.8.2017 within a period of two weeks from the date of receipt of a copy of this order. Further, the first respondent shall pass a reasoned speaking order on merits in a qualitative and quantitative terms, after providing necessary opportunity to the petitioner and others concerned, if any (if situation so warrants/need be), of course, after adhering to the principles of Natural Justice, within a period of four weeks thereafter. It is open to the petitioner to raise all factual and legal pleas before the First Respondent / The District Collector, Madurai District, who shall advert to the pleas (both Factual and Legal pleas) raised in the petition and to pass a speaking order within the time determined by this Court."

3.In pursuance of the above direction of the Hon'ble Division Bench of this Court in W.P(MD)No.18960 of 2017 dated 23.10.2017, the first respondent passed an order dated 08.12.2017 ordering the removal of the shop in question and shifting of the same. The proceedings of the first respondent, dated 8.12.2017, is put to challenge in the present writ petition.

4.According to the learned counsel appearing for the petitioner, in view of the sudden closure of the shop, the petitioner had suffered a huge loss and the third respondent with *mala fide* intention had approached this Court for removal of the shop in order to help the other adjacent shop owners to gain more business. Therefore, the petitioner is before this Court challenging the impugned proceedings of the first respondent.

5.The learned counsel appearing for the second respondent would submit that the entire action taken by the first respondent is in pursuance of the direction passed by the Hon'ble Division Bench and therefore, it is not open to the petitioner to challenge the said action of the first respondent in the present proceedings. When the Division Bench of this Court has taken a final decision, after affording opportunity to the parties, the same cannot be the subject matter of challenge by the petitioner in this writ petition.



6. This Court has perused the materials and pleadings placed on record and is of the considered view that the impugned action by the first respondent is only in furtherance of the direction of this Court passed in W.P(MD)No.18960 of 2017 dated 23.10.2017. Once the respondent has passed an order complying with the direction of this Court in the aforesaid proceedings, the same cannot be put to challenge in other writ petition by the present petitioner. Even assuming for a moment that the petitioner had suffered a huge loss in view of the sudden shifting of the shop of his premises, it is certainly not open to him to challenge the shifting of the shop, which was done only in pursuance of the direction passed by the Hon'ble Division Bench of this Court as above mentioned. In case, the petitioner has any grievance in regard to the loss suffered by him in view of the action taken by the first respondent by the impugned proceedings, it is always open to him to approach the appropriate and competent court and seek appropriate remedy in a manner known to law and it is certainly not open to the petitioner to challenge the relocation of the shop of the TASMAL outlet from his premises to other place. The averments regarding the huge amount being spent on the premises by the petitioner, is a matter of evidence and therefore, such adjudication of factual dispute cannot be done by this Court, by exercising the extraordinary jurisdiction under Article 226 of Constitution of India. Therefore, this Court is of the considered view that the writ petition is not maintainable and therefore, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The District Collector,
Madurai District,
Madurai.

- + 1 CC TO Mr.M.KARL MARX, ADVOCATE IN SR No. 79708
- + 1 CC TO Mr.H.ARUMUGAM, ADVOCATE IN SR No. 79737
- + 1 CC TO Mr.S.SANKAR, ADVOCATE IN SR No. 79431
- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 79454

SKN

TE/RSK/SAR-2 : 28/09/2018 : 3P/6C