



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.A (MD)No.906 of 2015
and
MP(MD)No.1 of 2015

S.Padmanaban

... Appellant

vs.

1. The Tamil Nadu State Marketting,
Corporation (TASMAC) Ltd,
Rep.by its Chairman cum Managing
Director, Thalamuthu Natarajar Building,
Egmore, Chennai - 600 008.
2. The District Collector, Nagercoil,
Kanyakumari District.
3. The District Manager,
Tamilnadu State Marketing
Corporation (TASMAC) Ltd,
Konam, Nagercoil,
Kanyakumari District.
4. Mr.Joseph Kalaiarasu

...Respondents

Prayer : Writ Appeal is filed under clause 15 of the Letters Patent, to set aside the order in WP(MD)No.3738 of 2012 dated 18.02.2015 on the file of this Court.

Prayer in WP(MD). 3738/ 2012 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of mandamus , directing the respondents to pay a compensation of Rs. 1,00,000/- to the petitioner for the loss caused to properties of the petitioner by a fire broke out at the TASMAC shop NO. 4754 and bar run by the Respondents in vicinity of the petitioner s residential house situated at No.17/66B , Velagam, Vivekanadapuram, Kanyakumari District.



For Appellants : Mr.T.Lajapathi Roy
For Respondents : Mrs.S.Srimathy,
Special Government Pleader for R2

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Mr.B.Jameel Arasu for R1 and R3

JUDGMENT

**(Judgment of the Court was delivered by
G.R.SWAMINATHAN, J.)**

This intra court appeal is directed against the order dated 18.02.2015 dismissing WP(MD)No.3738 of 2012 filed by the appellant herein.

2.The appellant is a permanent resident of Vivekanandapuram, Kanyakumari. Adjacent to his house, the TASMAL located their liquor shop bearing No.4754. The fourth respondent herein was running a bar in the upstairs of the building which was covered with a thatched roof and tin sheets. While so, on 29.01.2012 at about 2.15 p.m, a fire broke out in the said liquor outlet. The fire spread to the appellants dwelling house and before it could be put out, it caused considerable damage to the appellants articles. In particular, the air conditioner machine, electrical wiring and trees got totally burnt. The appellant quantified the damage suffered by him at Rs.1.00 lakh and called upon the third respondent to make good the loss. He sent a representation in this regard. Since it was not considered, he filed WP(MD)No.3738 of 2012. The learned Single Judge was of the view that the writ petition raised disputed questions of fact which can be decided only by the competent civil court after considering the evidence adduced before it. Therefore, the writ petition suffered a dismissal. Aggrieved by the same, this writ appeal has been filed.

3.Heard the learned counsel appearing for the petitioner and the learned standing counsel appearing for the respondents 1 and 3 and the learned Special Government Pleader for the second respondent.

4.It is not in dispute that the bar had only a thatched roof and enclosed by tin sheets. On the very face of it, the breach of the requirements set out in Rule 10 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 is evident. Rule 10(3) states that every bar shall be housed in a pukka building and no part of the bar shall be thatched either on the sides or on the roof.

5.This Court has no doubt in its mind that thatched roof must have been the cause for spread of the fire. In such matters, this Court will have to necessarily apply the principle of absolute liability. From the materials placed before us, it is seen that the fire that caused damage to the petitioner's building and



articles originated only from the bar attached to the TASMAL shop. Therefore, the first respondent will have to necessarily bear the liability.

6. The occurrence had taken place on 29.01.2012. Since the respondents contest the valuation of damage made by the appellant, this Court indicated that the appellant can reduce his claim from Rs.1.00 lakh to Rs.50,000/-. The learned counsel appearing for the appellant submitted that while the appellant would be satisfied with a sum of Rs.50,000/- awarded as damages, he pleaded that the said amount should be paid with 9% interest. We are of the view that this request of the appellant is reasonable and acceptable. We, therefore, direct the first respondent to pay a sum of Rs.50,000/- as damages with interest at the rate of 9% per annum to be calculated from 29.01.2012 till the date of payment. We give liberty to the first respondent to proceed against the fourth respondent for recovery of the sum paid by the first respondent to the appellant.

7. The writ appeal stands partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The District Collector, Nagercoil,
Kanyakumari District.

+1cc to Mr.T.Lajapathi Roy ,Advocate Sr.No.95810

+1cc to Mr.B.Jameel Arasu ,Advocate Sr.No.95712

SKM

KM/BK/SAR2/26.12.2018/3P/4C

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and
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15.11.2018