



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.20946 of 2018

and

W.M.P.(MD)No.18721 of 2018

P.Murugavel

... Petitioner

vs.

1.The District Collector,
Madurai District,
Madurai - 625 020.

2.The District Fire and Rescue Services Officer,
Fire and Rescue Services Department,
Madurai District,
Madurai - 625 020.

3.The Station Fire Officer,
Fire and Rescue Services Station,
Tallakulam,
Madurai-625 002.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus calling for the records relating to the order O.Mu.No.10112/2018, dated 26.09.2018 passed by the second respondent and quash the same and consequently direct the second respondent to issue "No Objection Certificate" to the petitioner for grant of temporary licence by the first respondent to run the shop for possession and sale of fireworks at the shop measuring 13 ½' x 11 1/2'in Plot No.45, Vandiyur Main Road, Survey No.129/3C7B in Vandiyur Village, Madurai North Talk, Madurai District within a time limit to be fixed by this Court.

For Petitioner : Mr.T.Sakthikumaran
for Mr.B.Karunanithi

For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

: Mr.I.Murugesan
Advocate Commissioner

**ORDER**

What is challenged in the present writ petition is the order passed by the second respondent refusing permission to the petitioner to run cracker shop for this Deepavali season.

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2. According to the impugned order, adjacent to the location of the cracker shop, there is a TASMAC shop and therefore, it is not safe to locate the cracker shop in that place and on that ground, the authority refused to grant permission to the petitioner. The said order is put to challenge in the present writ petition.

3. When the matter was taken up for admission, the learned Counsel appearing for the petitioner would strenuously urge this Court to appoint an Advocate Commissioner, since according to the Counsel, the location of the cracker shop is situated more than 50 metres away from the location of the TASMAC shop and it is not within the prohibited area as per the relevant provisions. He would draw the attention of this Court particularly to the provisions of Clause (2) of Rule 84 of the Explosives Rules 2008, which reads as under:

"The sheds for possession and sale of fireworks shall be at a distance of at least three metres from each other and fifty metres from any protected work."

4. According to the learned Counsel, the location of TASMAC shop is situated 50 metres away from the cracker shop, as stipulated in the Rules and therefore, the rejection for granting permission to run cracker shop by the second respondent cannot be countenanced either in law or on facts.

5. Since there is a dispute as to the location of the cracker shop, this Court has appointed Mr.I.Murugesan, M.S.608/2014, No.5, 107, Ayothee Complex, Melur Main Road, Y.Othakadai, Madurai-625 107 (Cell No.95000 70595), as an Advocate Commissioner on 11.10.2018 to inspect the place and file a report today.

6. In pursuance of the direction of this Court, the learned Advocate Commissioner visited the said place and filed a report which is taken on file.

7. As per the report of the Advocate Commissioner, the front portion of the cracker shop is located at the distance of 55 metres as between the TASMAC shop and the cracker shop and in the rear portion, there was a distance of 39 metres. The report would also suggest that enough safety measures have been provided in the shop and also the safety measures like two fire extinguisher cylinder and two way exit entrance etc.,. The report would also suggest that the proper sand mine is available and the water tank is also filled with water, in case of any emergency.



8. From the report it could be seen that the location of the shop is properly secured.

9. The learned Additional Government Pleader appearing for the respondents would submit that notwithstanding the Advocate Commissioner's report, his instruction is that the shop is very closely located to the TASMAL shop and bar and therefore, it is not advisable to locate the cracker shop near the bar where several numbers of people would gather.

10. In consideration of the submissions made on behalf of the Counsel and also in consideration of the Advocate Commissioner's report dated 12.10.2018, this Court is of the view that the cracker shop, for which licence is sought, is located at a safe distance as provided in the Rules as extracted above and therefore, there is no legal impediment for licence to be granted in favour of the petitioner. Moreover, the Advocate Commissioner's report would also suggest that all the safety infrastructure are provided in the shop in order to meet any contingency. Although there appears to be rejection from the Government, but from the over all materials as disclosed, this Court is of the view that the petitioner shall be permitted to run the cracker shop in the place where he is seeking licence from the second respondent.

11. For the above stated reasons, the impugned order is set aside and the second respondent is directed to grant licence to the petitioner by imposing any reasonable conditions and also in fulfillment of other requirements in terms of the relevant rules and regulations. The second respondent is directed to pass orders within a period of two days from today.

12. With the above directions, the Writ Petition stands allowed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

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To

1.The District Collector,
Madurai District,

<https://hcservices.ecourts.gov.in/hcservices/>
Madurai - 625 020.



2.The District Fire and Rescue Services Officer,
Fire and Rescue Services Department,
Madurai District,
Madurai - 625 020.

3.The Station Fire Officer,
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+1cc to Mr.B.Karunanithi, Advocate in SR No.90462

W.P. (MD) No.20946 of 2018

NM/RSK/SAR III/12.10.18/4P/5C