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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2019

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.4136 of 2019

Mallasamy Nachimuthu

... Petitioner

Vs

1 The District Collector
Erode District, Erode.

2 The General Manager
TASMAC, Main Roads
Mylambadi, Bhavani Taluk
Erode District.

3 N.Sasikala

4 The Managing Director
TASMAC, CMDA Tower 2
4th Floor, Gandhi Irwin Bridge Road
Egmore, Chennai - 8.
(R4 impleaded vide order
dated 13.2.2019)

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing the first respondent to consider the representation dated 21.1.2019 made by the petitioner and the villagers of Mylambadi Village, Bhavani Taluk, Erode District to the first respondent and to take action to remove the TASMAC Liquor Retail Vending shop from the agricultural land in S.No.718/1, Mylambadi Village, Bhavani Taluk, Erode District in accordance with law within a time frame as may be fixed by this Court.

For Petitioner

: Mr.P.Rajan



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For Respondents

: Mr.R.Udayakumar
Addl. Government Pleader
for 1st respondent

Mr.K.Sathishkumar
Standing Counsel
for respondents 2 and 4

Mr.Naveen Kumar Murthi
for 3rd respondent

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

We have heard this public interest litigation which raises a vital issue of social importance laced with moral values relating to opening of liquor vending shops throughout the State of Tamil Nadu. The public interest litigation trumpets a laudable object to be considered by way of judicial intervention on the ground that such vending through liquor shops, which is almost in the hands of State, should not be permitted to be carried out in premises which are being rented out by the fourth respondent without having followed the procedure prescribed by law.

2. The petition, when initially entertained, expressed serious concerns about agricultural land having been put to such use which in the opinion of the Division Bench would not be permissible for providing a space to open a liquor shop. We may refer to paragraphs (8) and (9) of the order passed in this petition on 13.2.2019, which are gainfully extracted herein under:

"8. Sanctity of a place which gives food, justice (courts), health (hospitals), worship (Temple/mosque/ church), education (schools, colleges or universities) and such other places are to be preserved for that purpose and should not be used for commercial purpose or for earning revenue. Agricultural field is a place worshipped by farmers and to be respected and not to be used for earning revenue through liquor. For the mere sake of earning money, one may come forward with an offer to provide space, like that of the instant case, an agricultural field. Tomorrow one who owns a marriage hall may come forward to provide space for a liquor shop inside the marriage hall. A society or an association, who owns vast extents of agricultural lands and at the same time, to earn more money may come forward to



provide space for a liquor shop, but it should be the endeavour of the Government, to ensure that people are provided with more employment opportunities than providing more places for drinking, even in the midst of agricultural fields.

9. At this juncture, we are reminded of a proverb "You can lead a horse to water, but you can't make him drink". Now, the action of the District Collector, Erode and General Manager, TASMAC, to make the people drink, but from the IMFL shop in the agricultural field, which is a place gives us food, cannot be approved. Third respondent is only a space provider, in other words, a lessee to whom the respondents 1 and 2 have to pay rent. Prima facie, we have not approved the action of the respondents 1 and 2 in locating IMFL shop in an agricultural field. Instead of directing the respondents to consider the representation dated 21/1/2019 and to take action to remove TASMAC shop, we deem it fit that the petitioner has made a prima facie case for issuing a mandamus for removal. TASMAC is the owner of the shop. No prejudice would be caused to third respondent, in the event of any interim order passed against the respondents 1 and 2, for closure of the shop. Lease is between the TASMAC and third respondent. Hence, notice to the third respondent is waived."

(emphasis supplied)

3. The matter proceeded thereafter and the Bench after taking notice of certain facts proceeded to implead the fourth respondent and call upon the said respondent to file a counter affidavit. The fourth respondent has filed four counter affidavits during the pendency of this writ petition and has proceeded to carry out an exercise keeping in view the observations made by the Division Bench in the order dated 19.2.2019, followed by the orders dated 20.2.2019, 14.3.2019 and 12.6.2019. The essence of these orders was clearly to the effect that the fourth respondent comes out with the entire facts pertaining to the status of the premises that is being rented by the fourth respondent and also as to whether the liquor vending shops could be lawfully housed in such premises or not. The very foundation, therefore, of the premises for



being made available in accordance with the law was investigated and answered by the fourth respondent through its various affidavits that are on record.

4. The fourth respondent has come up with a plea that an extensive survey was made in respect of all the shops that had been opened and has also placed on record the statistics which were made the basis for carrying out the survey indicating the availability of the nature of the land that was required for the purpose of setting up any such liquor vending shops on rent. This extensive exercise has been detailed in all the four affidavits. Apart from this, specific investigations having been made with regard to each of the liquor vending shops ultimately resulting in the closure of 110 liquor vending shops and a positive report with regard to 22 shops has been submitted on behalf of the respondent authorities. For the remaining shops a relocation exercise has been directed to be undertaken under the various directions issued from time to time. In the ultimate affidavit dated 19.6.2019 that has been filed by the fourth respondent, the status of the shops and the sites, including that of the Nilgiris Hill Area has been indicated in paragraphs (15) to (18), which are gainfully extracted herein under:

"15. It is respectfully submitted that based on the orders of the Hon'ble Madras High Court, 29 Retail Vending Shops which have been closed in The Nilgiris District alone, there are number of practical difficulties in relocating these closed shops in The Nilgiris district, the District Manager of The Nilgiris district in his letter dated 16.03.2019, addressed to the Managing Director, TASMAL, has stated that most of the closed shops located in the Village Panchayats are alongside the road. They are located in uncultivated lands. A large proportion of the land in village panchayat areas of The Nilgiris district are under reserve forest and Gudalur Jenman lands, where relocation is not possible. There are a number of instances of man - animal conflict in The Nilgiris district in the interior areas and if we have to relocate from the present location we may have to look for alternative sites only in interior areas where safety of consumers and the shop personnel is a concern due to man - animal conflicts. The Nilgiris being a hill station, closure of such proportion of shops (almost 70%) in rural areas, would mean that consumers would have to trek for long distances in inhospitable terrain and there's a danger that despite our best efforts, spurious liquor may find it's way in those areas



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where shops are closed. The District Manager, The Nilgiris district in his letter dated 07.06.2019 has stated that the process for obtaining building planning approval in hill areas is very elaborate, he has stated as follows:

'Documents for obtaining building approval are routed through various Panchayat Development Departments of the Panchayat Development Section. The Development Department forwards the documents to GEO Tech (Mines), Agriculture Department and Forest Department for obtaining no objection certificate from them. After obtaining No Objection Certificate from the said departments, the documents are forwarded to the committee of Building approval committee headed by District Collector. If the building to be constructed upto 300 Sq. Metre (for both Residential and Commercial), the committee at District Collectorate Office grants sanction and forward it to AAA (Architectural Aesthetics Aspects) Committee. If the building is more than 300 Sq. Metre, the committee forwards the same to HACA (Hill Area Conservation Authority) Committee. After obtaining the remarks of Surveyor, Building Inspector of the respective local body does the spot inspection and then forwards the same for Director of Town and Country Planning (DTCP). The DTCP again forwards the same to AAA Committee for its approval, AAA Committee after its approval forwards the same to Local Planning Authority. Finally the Local Planning Authority grants the Building Plan Approval.'

He has stated that the building owners have taken earnest efforts to obtain the Building Plan Approval, the process is at an advanced stage and is pending for report from the Geology and Mining department.

16. It is respectfully submitted that the District Manager, The Nilgiris District will be able to obtain building plan approval after following the above procedure for 14 shops out of 29 Retail Vending shops closed on 14.3.2019, in the same location, as it is very difficult to identify suitable sites in The Nilgiris district. Hence, it



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is respectfully submitted that in the case of The Nilgiris district, the District Manager, TASMAL may kindly be permitted to reopen these 14 shops after obtaining the building plan approval. For the remaining 15 shops, the District Manager has identified 15 sites for relocation of Liquor Retail Vending Shops for which the Building Plan Approval has been obtained.

17. It is respectfully submitted that the many educational institutions, clubs and industries are functioning in Agricultural land (both Wet Land and Dry Land). A few pattas (Record of rights) of educational institutions, clubs and industries have been downloaded from the website <http://eservices.tn.gov.in> of the Government of Tamil Nadu, namely SRM Institute of Science and Technology - Irungalur Village, Manachanalur Taluk, Tirhcy, Vellammal Medical College, Hospitals and Research Institute - Anuppanadi Village, Madurai, Neyveli Lignite Corporation India Limited - Kamuthi Village, Ramanathapuram, Mohammed Sathak Trust - Mayakulam Village, Ramanthapuram, RVS Agro Tech Industries Private Limited - Sivaathipatti Village, Palayamkottai, Tirunelveli, Motors Sports Club - Irunkattukottai Village, Sriperambalur, Kancheepuram, Zak Industries - Senneerkuppam Village, Ponnammalle, Tiruvallur, The Hindustan Motors - Melnallattur Village, Tiruvallur, and Caterpillar India Private Limited - Melnallattur Village, Tiruvallur and have been enclosed in the typed set of papers. These institutions have been established in agricultural land as can be seen from the revenue records. It is humbly submitted that Article 19(1)(g) of the Constitution of India provides for right to practice any profession, or to carry on any occupation, trade or business. The land owner can obtain a Building Plan Approval and construct a building, the law does not prohibit the land owner from using agricultural land for non agricultural purpose, it would be a denial of a person's Fundamental right if he cannot let out his shop even after obtaining a plan approval.

18. It is respectfully submitted that the Hon'ble Court may kindly permit TASMAL to relocate 3 of the closed shops in Natham Lands, reopen 22 closed shops in existing location where building plan approval has been obtained from the land owners, permit the District Manager of Nilgiris District to



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reopen 14 out of the 29 closed shops in The Nilgiris in the same location after obtaining the building plan approval. In all future cases of relocation of retail vending liquor shops in village panchayat areas, the District Managers, TASMAL will be instructed to give first priority for relocation of shops in Natham lands in the village panchayats and only if Natham lands are not available in the village panchayat or if there are public objections to location of shops in Natham lands in the village panchayat, they may be permitted to select other lands and ensure that there's a Building Plan Approval for the proposed building."

5. It is in the background of the aforesaid facts and the entire exercise undertaken during the pendency of this writ petition that submissions have been advanced by the learned counsel for the respective parties.

6. The main grievance of the land owners, as projected through the fourth respondent, is that there cannot be a total ban or prohibition of the location of a liquor vending shop over agricultural land inasmuch as under the Tamil Nadu Prohibition Act, 1937 (for brevity, "the 1937 Act") read with the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 (for brevity, "the 2003 Rules"), no such prohibition stands incorporated so as to exclude a premises from being used as a liquor vending shop in the event it is situate over an agricultural land. Rule 8 of the 2003 Rules recites the prescription of the location of the shop and the same is extracted herein under:

"Rule 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,



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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."

7. A perusal of the above Rule would leave no room for doubt that there is no such prohibition contained under the Excise Laws for the time being in force either placing a total prohibition or a restriction for the opening of a liquor vending shop located over an agricultural piece of land.

8. But, at the same time, we find that the provisions of the Tamil Nadu Town and Country Planning Act, 1971 coupled with the relevant government orders and the Rules do require a permission from the local authority for changing the nature of the user of land by getting a permission of reclassification. Thus, there are permissible limits prescribed in law for user of land otherwise including agricultural land.

9. For this purpose, it would be appropriate to refer to the stand taken by the fourth respondent in their affidavits, where it has been pleaded that the law does not prohibit the land owner from using agricultural land for non agricultural purpose, provided the owner applies for and abides by the rules laid down by the procedure prescribed relating to reclassification of land and the permission required for raising constructions in respect thereof.

10. Several government orders have been referred to in the affidavit filed by the fourth respondent in February, 2019. We are not referring to each and every government order, the details whereof have been given therein, but suffice it to say that the relevant government orders and the aforesaid Act and Rules were taken notice of by the Division Bench, whereafter



interim directions were issued for carrying out the exercise in accordance with the said Rules in order to ascertain the status of the land as also the building plan approval orders in order to justify or otherwise the location of the liquor vending shops. It is after undertaking this exercise that shops which did not comply with the said conditions were closed down by the respondent authorities themselves, about which details have been given in the affidavit, the extract whereof has been reproduced herein above.

11. On submissions raised, we find that the issues which require consideration are broadly three-fold:- Firstly, as to whether the inclusion of agricultural lands for the purpose of utilizing them for establishing liquor vending shops is either expressly or impliedly prohibited under the 1937 Act and the 2003 Rules framed thereunder. Secondly, as to whether under the relevant laws for the time being in force, such premises have been permitted to be used in accordance with the relevant permissions and approvals relating to their location and the nature of the building where a liquor vending shop can be housed and thirdly, as to whether the respondents, particularly the fourth respondent, while renting out such premises have undertaken the exercise of locating the shops in accordance with the Rules and the restrictions that are in vogue for the time being in force.

12. On the first issue, we have examined the provisions of the 1937 Act and the 2003 Rules and in view of the disclosures made in the affidavits of the fourth respondent, we do not find any such prohibition or restriction of the utilization of premises established/ constructed over agricultural land for the said purpose. The State Government has the power to impose reasonable restrictions that may fall within the scope of Article 19(2) read with 19(6) of the Constitution of India. But, in the present case, while prescribing the location of shops under the 2003 Rules, we do not find any such restriction having been imposed and, therefore, it may not be possible for this Court to imply the existence of any such restrictions regarding liquor vending shops in rented premises situate over agricultural land.

13. We are, therefore, of the clear opinion that a liquor vending shop can be housed in a premises that may be situate over an agricultural piece of land, subject to the conditions and restrictions which are required for the utilization of such land in accordance with the Rules and Regulations, referred to herein above, and as detailed in the affidavits filed by the fourth respondent.



14. On the second issue, the argument advanced on behalf of the petitioner deserves acceptance, inasmuch as vending of liquor is an obnoxious trade and has also social and moral dimensions and consequently the restrictions placed by law have to be abided by in the strict sense in order to ensure that liquor vending shops are not located in a premises, even if situate over agricultural land, unless an appropriate permission under the law for the time being in force, including a building plan approval exists. To that extent, the authorities are bound to take measures before finally renting out any premises, which we find is the process now adopted after issuance of directions by this Court.

15. We, therefore, further direct the respondent authorities that henceforth the location of liquor vending shops in rented premises shall be permitted and located in only such premises that exist by virtue of a valid permission and have a building plan approval in accordance with law. It shall be the obligation of the authority concerned to verify the status of both the land and the premises, as to whether they comply with the said conditions or not.

16. Coming to the third issue involved, we find that an extensive exercise has been undertaken by the fourth respondent in coordination with the authorities for identifying such premises that subscribe to and are in conformity with the Rules and Regulations and those shops or premises that were not in conformity with the Rules have been ordered to be closed down. It is also indicated in the affidavits that an exercise has been undertaken, which has not been finalized, for relocating the shops. We direct that unless such exercise is concluded in the light of the observations made herein above, the respondent authorities shall not allow the renting of any liquor vending shop in a premises that does not conform to the Rules and Regulations that are required to be observed in the manner prescribed and as admitted by the fourth respondent itself in the affidavit filed before this Court.

17. We, therefore, dispose of this public interest litigation with the aforesaid observations and directions leaving it open to the fourth respondent or any aggrieved person to represent its cause before the appropriate forum in the event any further orders that may be required in this regard.



18. The fourth respondent shall pass appropriate orders in respect of any pending matters that may be necessary for the purpose of granting permission or otherwise, subject to what has been indicated herein above. No costs. Consequently, W.M.P.No.4645 of 2019 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To:

- 1 The District Collector
Erode District, Erode.
- 2 The General Manager
TASMAC, Main Roads
Mylambadi, Bhavani Taluk
Erode District.
- 3 The Managing Director
TASMAC, CMDA Tower 2
4th Floor, Gandhi Irwin Bridge Road
Egmore, Chennai - 8.

+1cc to the Government Pleader Sr.102548
+1cc to M/s.P.Raja, Advocate Sr.102144
+1cc to M/s.S.Varsha, Advocate Sr.102017
+1cc to M/s.K.Sathishkumar, Advocate Sr.101971

W.P.No.4136 of 2019

sj[col]
srg 31/12/2019