

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.6828 of 2019
and WMP No.7603 of 2019

T.Minor

... Petitioner

vs.

1. The District Collector,
Thiruvarur District,
Thiruvarur.

2. The Superintendent of Police,
Thiruvarur District,
Thiruvarur.

3. The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Thiruvarur District, Thiruvarur.

4. The Tahsildar,
Needamangalam Taluk,
Thiruvarur District.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents to close down the TASMAC shop located on the side of Vannankulam Pond in Vaduvor Pattukkottai Village, Vaduvor Post, Needamangalam Taluk, Thiruvarur District based on the representation submitted by the petitioner dated 6.12.2018.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.Akhil Akbarali (for R1, R2 & R4)

Government Advocate

Mr.N.Damodaran (for R3)

Standing counsel

ORDER

(Order of the Court was made by SUBRAMONIUM PRASAD, J)

The petitioner, a permanent resident of Vaduvor-Pudukkottai Village, Needamangalam Taluk, Thiruvarur District, has filed this public interest litigation with a prayer to close down the TASMAC shop located on the side of Vannankulam Pond in Vaduvor

Pattukkottai Village, Vaduvor Post, Needamangalam Taluk, Thiruvarur District, based on his representation dated 06.12.2018.

2. According to the petitioner, Vaduvor Pattukkottai Village is located on the side of Pudukkottai-Kattakudi main road/highways road. The village is comprised of agriculturists and agricultural coolies. Originally, TASMAC shop was located in the village, but it was removed on the orders of the Hon'ble Supreme Court dated 15.12.2016 and 31.03.2017 made in Civil Appeal Nos.12164-12166 of 2016. Subsequently, it has been located on the side of Vannankulam Pond in Vaduvor Pattukkottai Village, Vaduvor Post, Needamangalam Taluk, Thiruvarur District.

3. The petitioner challenges the relocated shop on the ground that the said place is amidst residential area and is covered by agricultural / cultivating lands. It is also contended that the entire village is against the opening of the shop and the Panchayat has passed a resolution opposing the opening of the shop at that place. The petitioner also states that it is very near to a pond and opening of the shop would cause nuisance in the area.

4. It is pertinent to mention here that apart from the representation and objection, no other material has been filed to substantiate the contentions made in the writ petition.

5. Mr.N.Damodaran, learned standing counsel for TASMAC has produced the files. A reading of the file would show that a proposal was made by the District Manager, TASMAC, Tiruvarur District to the District Collector, Tiruvarur with a check list.

6. Heard the learned counsel for the parties and perused the materials available on record.

7. Learned counsel for the petitioner reiterated the averments made in the writ petition.

8. On a perusal of the file, we find that a proposal has been sent by the District Manager, TASMAC, Tiruvarur District to the District Collector, Tiruvarur with the check list, which reads as under.

Sl.No.	Particular	Remarks
1.	Whether the newly proposed/selected shop has been inspected	Yes

Sl.No.	Particular	Remarks
2	If yes, Officer, who inspected	District Manager, TASMAL, Tiruvarur
3	Date of Inspection	11.10.2018
4	Time of Inspection	04.00 PM
5	Address of the newly proposed / selected shop	Keezh Theru, Pudukottai, Vadoovur, Needamangalam
6	whether construction of new shop has been over	Yes
7	If yes, type of building	RCC Building
8	Area of the building	Length: 16 ft. Breadth: 13 ft. Area: 208 sq.ft
9	Whether there is road facility for transportation of liquor by Lorry	Road facility available
10	Whether the building has electricity supply connection	Yes
11	Whether Iron shutter is provided in the building	Yes
12	Whether the shop is situated in a safe area	Yes
13	Building is situated at Village / city	village
14	Whether there is any place of worship or school within 100 mtrs distance as per the Government Norms	No. (There is no place of worship or school within 100 mtrs distance.
15	Owner of the building	Mr.T.Manimaran S/o.Thangarasu
16	Whether consent letter has been obtained from the owner of the building	Yes. Enclosed.
Whether copies of the following documents submitted.		

Sl.No.	Particular	Remarks
17	Consent letter of the owner of the building	Enclosed.
18	Copy of Sale Deed	Enclosed.
19	Copy of Village Records	Enclosed.
20	Inspection report	Enclosed.
21	Tax Receipt	Enclosed.
22	Remarks	Shop No.9733 at Elmelaiyur has been closed on the objections of the public on 26.07.2018. Hence, the said shop has to be shifted to the newly proposed place and it is as per the government guidelines. Therefore, I recommend to shift Shop No.9733 to the newly proposed location.

9. A Perusal of the check list and the file would make it clear that the District Collector has applied his mind as to whether there is any restriction in opening of the TASMAL shop.

10. Rule 8 of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, stipulates the distance criteria, which reads as under:

"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, 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.

11. Check list as found in the file and Rule 8 of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, would show that there is no impediment in the opening of the TASMAC shop in the place where it is located.

12. In the absence of any other material showing that the shop is located in agricultural land, this Court cannot accept a mere ipse dixit of the petitioner. Hence, writ petition is dismissed. No costs. WMP is Closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ars/dm

To

1. The District Collector,
Thiruvarur District,
Thiruvarur.

2. The Superintendent of Police,
Thiruvarur District,
Thiruvarur.

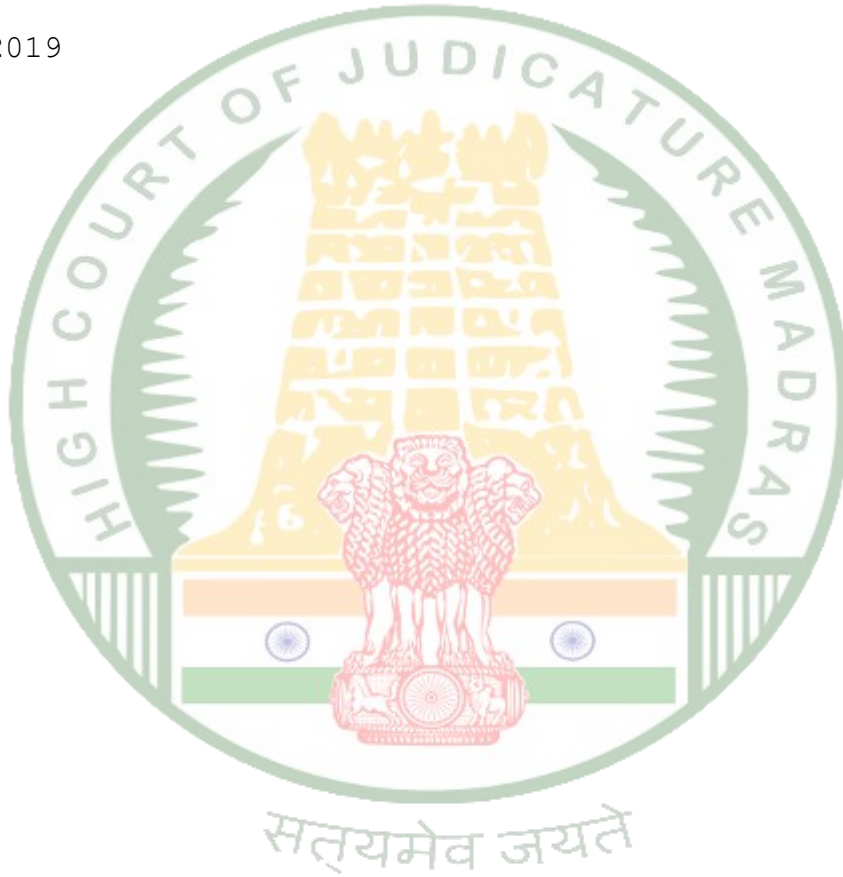
3. The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Thiruvarur District, Thiruvarur.

4. The Tahsildar,
Needamangalam Taluk,
Thiruvavarur District.

+1cc to Mr.G.Sankaran, Advocate sr.no.24995
+1cc to Mr.N.Damodaran, Advocate sr.no.24074
+1cc to Government Pleader sr.no.24659

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spd(co)
nr 09/04/2019



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