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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.07.2019

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THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.6783 of 2019
and
W.M.P.No.7578 of 2019

K.Tamil Maran

..Petitioner

vs

1. The District Manager,
TASMAC,
Chennai Central District
B-58, Ambattur Industrial Estate
Ambattur, Chennai - 600 058.
2. The Senior Regional Manager,
TamilNadu State Marketing Corp.Ltd., (TASMAC)
No.735, LLA Building 4th Floor
Annasalai,
Chennai - 600 002.
3. TamilNadu State Marketing Cort.Ltd., (TASMAC)
Rep.by its Managing Director,
Thalamuthu Natarajan Building
Gandhi Irvin Road
Egmore,
Chennai - 600 008
4. The District Collector,
Chennai District,
Chennai - 600 001

..Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents, their men, servants, agents, etc., claiming through them from either to dispossessing the petitioner from the shop now functioning or opening any further shops in the area without affecting and violating the legal rights of the petitioner.



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For Petitioner : Mr.S.Balasubramanian
for Mr.P.Singaram

For Respondents : Mr.K.Sathish Kumar
Standing counsel
for R1 to R3

Mr.R.P.Pratap Singh
Government Advocate for R4

O R D E R

Mr.S.Balasubramanian, learned counsel representing counsel on record for writ petitioner, Mr.K.Sathish kumar, learned Standing counsel for 'Tamil Nadu State Marketing Corporation Limited' ['TASMAC' for brevity] on behalf of respondents 1 to 3 and Mr.R.P.Pratap Singh, learned Government Advocate on behalf of respondent No.4 are before this Court.

2. With consent of all the learned counsel, main writ petition is taken up, heard out and is being disposed of.

3. Instant writ petition, pertains to a Bar that is attached to a Retail Liquor Vending Shop being Shop No.468 at Door No.23, Senthil Nagar, 100 Feet Road, Choolaimedu, Chennai - 600 094. This Shop No.468, shall hereinafter be referred to as 'said shop' for the sake of brevity, convenience and clarity.

4. Writ petitioner has filed instant writ petition, with a complaint that TASMAC is now intending to open one more shop in the vicinity i.e., at No.9, Senthil Nagar, 100 Feet Road, Choolaimedu, Chennai - 600 094. It is the case of the writ petitioner that this new shop which TASMAC intends to open is within 25 meters from said shop.

5. Complaining that if the new shop is opened by TASMAC in the vicinity and that too within 25 meters from said shop, it would affect the business of the writ petitioner, instant writ petition has been filed.

6. A perusal of the prayer reveals that it is to Mandamus the respondents from dispossessing the petitioner. The prayer is clearly misconceived as question of dispossession does not arise owing to the nature of complaint which constitutes the central theme of instant writ petition.



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7. In the counter affidavit filed by the 1st respondent, it has been made clear that the writ petitioner is not a Licensee qua said shop, but he only has a bar License to run a Bar attached to said shop. Be that as it may, in the counter affidavit, TASMAC has also made it clear that as on the date of counter affidavit i.e., on 30.04.2019, the respondents have no intention of closing said shop.

8. Be that as it may, what is of greater importance is, with regard to the aforesaid intended new shop, which is intended to be opened at aforementioned No.9, Senthil Nagar, 100 Feet Road, Choolaimedu, Chennai - 600 094, this Court is informed that a Public Interest Litigation was filed by one Mr.R.Inbasekaran, this Public Interest Litigation is W.P.No.8759 of 2019 dated 01.04.2019 and a Hon'ble Division Bench, dismissed the writ petition.

9. While dismissing the writ petition, Hon'ble Division Bench has also held that there can be no interference in such matters as long as there is no violation of rules under the Tamil Nadu Prohibition Act. To be noted, the rules which govern TASMAC Retail outlets go by the name the 'Tamil Nadu Liquor Vending (In Shops and Bars) Rules, 2003'[hereinafter 'Liquor Vending Rules' for brevity]. Liquor Vending Rules is subordinate legislation, which has been made by the Government of Tamil Nadu in exercise of rule making powers conferred on Government of Tamil Nadu under various provisions of 'Tamil Nadu Prohibition Act, 1937' (Tamil Nadu Act 10 of 1937) [hereinafter 'Tamil Nadu Prohibition Act' for brevity]

10. Learned counsel for writ petitioner, is unable to show that there is violation of any provision under Liquor Vending Rules or under Tamil Nadu Prohibition Act with regard to the intended opening of the new shop.

11. Besides, the aforesaid judgment of the Hon'ble Division Bench in the aforesaid Public Interest Litigation, another Division Bench to which I was a party (W.P.No.14466 of 2017 dated 13.06.2017) had also held that there can be no interference with regard to opening / closing TASMAC retail shops as long as there is no violation of Liquor Vending Rules. In this order, Hon'ble Division Bench held "In the absence of any allegation of contravention of any statutory rule or regulation, interference of writ court is not warranted."

12. In the instant case, there is nothing to demonstrate that there is any violation of Liquor Vending Rules. In any event, the Hon'ble Division Bench has dismissed the challenge to



the opening of the new shop vide aforesaid order dated 01.04.2019 in W.P.No.8759 of 2019.

13. Mr.R.P.Pratap Singh, learned Government Advocate for respondent No.4 points out that Liquor Vending is only a concession and there cannot be any right in this regard qua the writ petitioner more so when no rule violation has been pointed out. Mr.K.Sathish Kumar, learned standing counsel for TASMAL points out that there is no violation qua Liquor Vending Rules.

14. In the light of the narrative thus far, instant writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To

1. The District Manager,
TASMAL, Chennai Central District
B-58, Ambattur Industrial Estate
Ambattur, Chennai - 600 058.
2. The Senior Regional Manager,
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Thalamuthu Natarajan Building
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4. The District Collector,
Chennai District, Chennai - 600 001

+1cc to Mr.P.Singaram, Advocate, S.R.No.57987

+1cc to Mr.K.Sathish Kumar, Advocate, S.R.No.57752

+1cc to the Government Pleader, S.R.No.58054

W.P.No.6783 of 2019

and

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KS(CO)

CS/03/09/2019