

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.06.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.8418 of 2019
and WMP.Nos.8938 & 8939 of 2019

J.Sankar ... Petitioner

vs.

1. The Chairman of TASMAL Limited,
Secretariat, Chennai - 600 009.

2. The Director,
The Additional Chief Secretary to Government,
Finance Department,
Secretariat, Chennai - 600 009.

3. The Collector,
Collectorate,
Kancheepuram, Tamil Nadu.

4. Sub Collector / Revenue Divisional Officer,
Kancheepuram District.

5. The District Manager,
TASMAL,
District Level Miscellaneous Offices,
Kancheepuram.

6. The Sub Inspector of Police,
Pallikaranai Police Station,
Kancheepuram District.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the records of the 3rd and 5th respondents in the rejection petition intimation vide ref.No.4067 dated 04.03.2019 and quash the same and consequently direct the respondents and their subordinate to close or shift the newly established TASMAL Shop No.4069 at Sunnambu Kulathur, Kovilambakkam, Tambaram Taluk, Kancheepuram District.

For Petitioner : Mr.F.Terry Chella Raja

For Respondents : Mr.E.Manoharan
AGP (for R2 to R4 & R6
Mr.P.Arumugarajan
SC for TASMAC (for R1 & R5)

ORDER

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

Claiming himself to be a public interest litigant, petitioner has filed the instant writ petition for a writ of certiorarified mandamus to call for the records of the Collector, Kancheepuram and the District Manager, TASMAC, District Level Miscellaneous Offices, Kancheepuram, in the rejection petition intimation vide Ref.No.4067 dated 04.03.2019 and quash them and consequently direct the respondents to close or shift the newly established TASMAC shop No.4069, at Sunnambu Kulathur, Kovilambakkam, Tambaram Taluk, Kancheepuram District.

2. The writ petitioner would contend that the Sunnambu Kulathur area is predominantly a residential area. Over 3000 families reside in that area. The petitioner states that a TASMAC Shop No.4069 is functioning near S.Kulathur Bus stand behind the traffic signal of Pallavaram-Thuraipakkam link road. The petitioner states that the said shop is established within 50 meters from S.Kulathur bus stand and there are schools like SAN Academy, Kamakshi Hospital and Temples within 500 meters of the shop. The petitioner also states that there is a church, which is 85 meters away from the TASMAC shop. The petitioner states that the area, where the TASMAC shop is located is prone to accidents and since, it is in residential area and near schools, the people of the locality are facing difficulties. The petitioner also states that Grama Sabha has already passed a resolution against the opening of the TASMAC Shop.

3. It is stated by the learned counsel for the petitioner that the shop had two gates. The front gate at the Northern side of 200 feet Highways, is now closed. If the distance is measured from the back gate, which was opened earlier, the Church is at a distance of 100 meters from the shop.

4. On notice, learned counsel for the respondents denied the averments made by the petitioner. Since there was a dispute as to whether there are religious / educational institutions within 100 meters of the TASMAC shop, this Court directed appointment of an Advocate Commissioner for finding out the correct situation. This Court directed the Head Surveyor, office of the Collector, Kancheepuram to measure the distance from the TASMAC shop to the religious institutions. This Court further

directed that survey should be undertaken in the presence of the District Legal Services Authority. The order dated 27.03.2019 appointing the surveyor reads as under.

"On the basis of the files pertaining to the order of the District Collector in RC.No.84672/2018/V1 dated 25.12.2018, Mr.P.Arumugarajan, learned standing counsel for TASMAC submitted that there is no educational or place of worship within 100 meters from the TASMAC Shop No.4069 at Sunnambu Kulathur, Kovilambakkam, Tambaram Taluk, Kancheepuram District. Files further disclose a sketch drawn by Mr.Balasundar, Civil Engineer and Consultant & Licenced Surveyor, Pallavaram Municipality, Chennai.

2. Mr.F.Terry Chella Raja, learned counsel for the petitioner submitted that though a representation has been made to the authorities that location of the shop is within 100 meters from a church and to that effect averment has also been made in the supporting affidavit, respondents have not mentioned anything about the church, but given a general statement that there is no educational or place of worship within 100 meters from the shop.

3. Learned counsel for the petitioner submitted that respondents have not given the correct picture about the location of the shop and church and therefore, an Advocate Commissioner may be appointed for measuring the distance. According to him, church is within 85 meters from the TASMAC shop. He further submitted that the petitioner is willing to bear the costs, if the fact is otherwise.

4. Distance be measured in accordance with 2(i) of the Tamil Nadu Liquor Retail Vending (In shops and bars) Rules, 2003 with the assistance of the Head Surveyor, office of the Collectorate, Kancheepuram, in the presence of the District Legal Services Authority. Notice be given to the District Legal Services Authority.

5. Post on 03.04.2019."

5. Pursuant to the order the area was surveyed by the Deputy Taluk Surveyor, Sholinganallur Taluk in the presence of the Chairman, District Legal Services Authority / PDJ, Kancheepuram District @ Chengalpattu, District Manager, TASMAC and the Thasildar, Sholinganallur. The report reads as under.

"In the presence of the Chairman, District Legal Services Authority / PDJ, Kancheepuram District @ Chengalpattu, District Manager, TASMAC, the Thasildar, Sholinganallur and the Deputy Taluk Surveyor, Sholinganallur, TASMAC Shop at Survey No.386/2D1, 387 was surveyed and on measuring from the front gate of

TASMAC shop, which is on the Northern side of 200 feet Highways, the Church is at 108.8 meters and on measuring from the backside gate of TASMAC Shop, the Church is at 150 meters."

6. Learned Counsel for the respondents submitted that the back gate of TASMAC Shop, is now closed.

7. A perusal of the report would show that none of the conditions contained in Rule 8 of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 has been violated. The allegations of the petitioner is therefore, wrong. Averments made by the writ petitioner in the writ petition is not correct.

8. In the absence of any violation of Rule 8 of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 this Court is not inclined to issue a writ as prayed for, by the petitioner. However it is made clear that the gate which stands closed, shall not be opened. Writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman of TASMAC Limited,
Secretariat, Chennai - 600 009.

2. The Director,
The Additional Chief Secretary to Government,
Finance Department,
Secretariat, Chennai - 600 009.

3. The Collector,
Collectorate,
Kancheepuram, Tamil Nadu.

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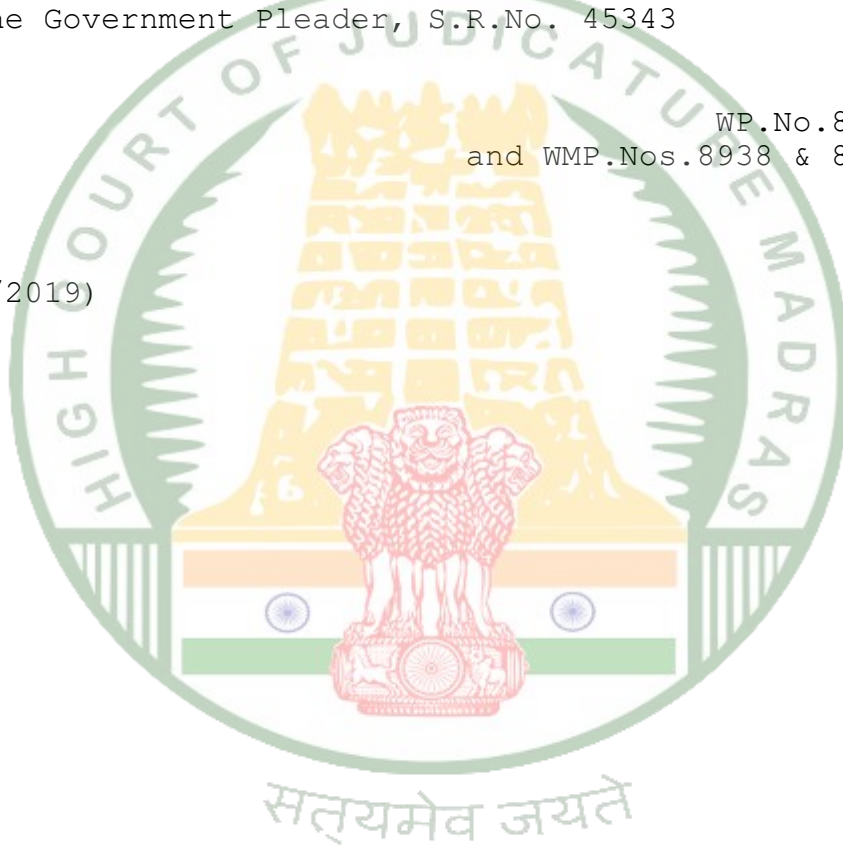
5. The District Manager,
TASMAC,
District Level Miscellaneous Offices,
Kancheepuram.

6.The Sub Inspector of Police,
Pallikaranai Police Station,
Kancheepuram District.

+1cc to Mr.M.Malar, Advocate, S.R.No. 45134
+1cc to Mr.P.Arumugarajan, Advocate, S.R.No. 44808
+1cc to the Government Pleader, S.R.No. 45343

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KS (CO)
RMP (02/07/2019)



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