

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.07.2019

Coram

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.17375 of 2019

G.Palani

..Petitioner

vs.

1. The District Manager
TASMAC
SIDCO Industrial Estate, Orikkai
Kanchipuram South District
2. The Managing Director
TASMAC
Thalamuthu Buildings
Egmore, Chennai - 600 008
3. The District Collector
Kanchipuram District
Chennai - 631 501
4. The Deputy Superintendent of Police
DSP Office
Kanchipuram District
5. P.Murugan

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st to 3rd respondents to open the proposed new Tasmac Shop 4404 at S.No.26/6 Thailavaram Village, Chengalpet Taluk, Kancheepuram District.

For Petitioner

:Mr.G. Mohammed Asiff for
Mr.S.Gunasekaran

For Respondents

:Mr.S.Kannadasan
for Mr.Arumugha Raj
Standing Counsel for R1 and R2

Mr.R.P.Pratap Singh
Government Advocate for R3 & R4

ORDER

Mr.G.Mohammed Asiff, learned counsel representing the counsel on record for writ petitioner is before this Court. Mr.Kannadasan, learned counsel representing Mr.P.Arumugaraj, learned Standing Counsel for TASMAL for Respondents 1 and 2 and Mr.R.P.Pratap Singh, learned Government Advocate on behalf of Respondents 3 to 4 are before this Court.

2.This Court, vide order dated 06.06.2019 made in W.No.11067 of 2019, has in a similar matter held that there is no right qua liquor vending and liquor vending is only a concession and there is no legal right. There is no dispute or disagreement before this Court that facts are similar in the instant case also with a minor difference which shall be attended to infra. The location of the shop and names of the parties alone are different.

3.In the light of this undisputed position, this Court took up the main writ petition itself and owing to this undisputed position, this Court is of the view that notice to Respondent No.5, who is a private respondent, is not necessary.

4.With regard to the aforesaid undisputed position, Mr.G.Mohammed Asiff, learned counsel on behalf of counsel on record for writ petitioner pointed out that there is one minor difference with regard to facts. The difference is District Revenue Officer vide proceedings dated 05.03.2019 bearing reference had given a 'No Objection Certificate' and has held that the location is eligible for licence to run a TASMAL outlet. Notwithstanding this position, barely a fortnight later on 22.03.2019 in a Public Interest Litigation filed by the fifth respondent being W.P.No.7440 of 2019, which came up before a Hon'ble Division Bench of this Court, respondent took a stand that they have decided to drop the proposal to open TASMAL outlet in the location concerned.

5.Learned counsel, submitted that this is owing to some collusion between the PIL writ petitioner and the fourth respondent herein. This Court does not express any opinion or view on this allegation. The reason is, Hon'ble Division Bench has entertained a PIL filed by the fifth respondent in the instant writ petition (P.Murugan) and has also passed orders i.e., order dated 22.03.2019. Therefore, embarking upon any exercise of even examining this allegation, will tantamount to re-examining an order made by Hon'ble Division Bench, which is impermissible. This is another reason why this Court is of the view that it is not necessary to issue notice to the fifth respondent, which has already been alluded to supra.

6. In the considered view of this Court, the aforesaid recommendation of District Revenue Officer is of no consequence as subsequently Hon'ble Division Bench has recorded the stated position of the respondents that the proposal to open retail vending shop at the site concerned has been dropped.

7. In the light of the aforesaid narrative, this Court deems it appropriate to extract and reproduce the entire order dated 06.06.2019 made in W.P.No.11067 of 2019. To be noted, this is for ease of reference also and the order reads as follows:

'3. The central theme of the instant writ petition is writ petitioner's right to insist that a retail liquor shop should run by TASMAC in her property.

4. Short facts imperative for appreciating the instant order are that the writ petitioner is owner of a property comprised in Survey.No.11/4B at Papampaadi Village, Omalur Taluk, Salem District, (herein after 'said property' for the sake of brevity, convenience and clarity).

5. It is the case of the writ petitioner that she approached the respondents for having a liquor shop run by TASMAC located in said property, when she came to know that the respondents had decided to open a liquor shop in that vicinity.

6. This liquor shop originally was assigned Shop No.7467.

7. It is the case of the writ petitioner that the jurisdictional Inspector of Police had granted necessary clearance. It is also the case of the petitioner that the 4th respondent had even appointed some employees for running the liquor shop.

8. It is the further case of the writ petitioner that she put up superstructure i.e., building in the said property to suit the needs of running a liquor shop. Under such circumstances, a writ petition came to be filed in this Court. The writ petition was filed as a 'Public Interest Litigation' ('PIL' for brevity). This PIL is W.P.No.13311/2017, it had come up before a Hon'ble Division Bench and the Hon'ble Division Bench disposed of the PIL on 24.05.2017, after recording the statement of the Additional Advocate General on instructions that the respondents have taken a decision to drop the proposal of opening the aforesaid shop.

9. The prayer in the PIL writ petition is as follows:

Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, forbearing the respondents from opening the TASMAL liquor shop No.7467 in the area of the Village based on the representation of the Pappampatti Villagers dated 08.05.2017.

10. Order in the PIL writ petition is as follows:

'When the matter was taken up for hearing, the learned Additional Advocate General, on instructions produced the proceedings in Na.Ka.No.468/2017/A5/C.V dated 23.05.2017, by which a decision has been taken to drop the proposal to open the shop in the place for which objection has been given by the petitioner.

2. In view of the above submission, nothing survives for adjudication in this matter.

Accordingly, the writ petition is closed. No costs. Connected miscellaneous petition is closed'.

11. After the aforesaid order made by a Hon'ble Division Bench of this Court in the said PIL writ petition an alternate shop was opened.

12. It may not be necessary to advert to those proceedings in great detail. Suffice to say that these proceedings culminated in an order dated 19.03.2019 bearing Ref.No.br/K/e/f/vz;/169-m 5-2019-rp/tp made by the 1st respondent i.e., District Collector, Salem (herein after 'impugned order' for the sake of brevity, convenience and clarity).

13. Vide the impugned order by the 1st respondent District Collector, Salem, after obtaining legal advice from the State counsel, passed the orders to close the aforesaid Shop.

14. What is to be noted is, in the interregnum i.e., between the aforesaid order of the Hon'ble Division Bench dated 24.05.2017 and the impugned order dated 19.03.2019, the shop which was originally assigned No.7467 was relocated and was assigned the Shop No.7104.

15. Today, on instructions, learned State Counsel for respondents 1 and 2 as well as standing counsel for TASMAL i.e., respondents 3 and 4 submit that the shop no.7104 also has now been closed.

16. It is, under the aforesaid circumstances, that the instant writ petition has been filed with a prayer to quash the impugned order and consequently direct the respondents to run the liquor shop No.7104 in the said property of the petitioner.

17. Learned State counsel for respondents 1 and 2 submits that the liquor vending is a concession and petitioner cannot insist that a TASMAL should open a liquor shop more so in a particular survey number i.e., said property, which is owned by the writ petitioner.

18. Learned Standing counsel for TASMAL assailed the locus standi of the writ petitioner and submitted that the impugned notice came to be passed after taking into account orders passed by a Hon'ble Division Bench in the aforesaid PIL.

19. In the aforesaid backdrop, the learned counsel for writ petitioner pressed into service an order dated 28.07.2017 in W.P.No.19181 of 2017 and an earlier order reported in 2011 (1) CTCOL 810 (Mad) (A.Thirumaran Vs. Inspector of Police Law and Order and others).

20. The aforesaid two judgments were relied upon to emphasize that none of the provisions of the Liquor Vending Rules have been violated, as the said property is not in any manner located within objectionable distance from religious institutions, Schools, Hospitals etc., and therefore there is no impediment in opening liquor shop in the said property. In other words, it is the specific and emphatic submission of learned counsel for the petitioner that if the liquor shop is opened and run in the said property, it would not be objectionable and it would not be hit by the provisions of Liquor Vending Rules.

21. In the considered opinion of this Court, aforesaid judgments do not help the writ petitioner advance her case in the instant writ petition, as they pertain to the issue, as to the particular location is objectionable or not. To be noted, in the instant case, it is not a question of whether a particular location is objectionable or not.

22. Pursuant to the orders passed by the Hon'ble Division Bench in the PIL writ petition 1st respondent District Collector has passed an order directing

closure of a liquor shop ie., Shop No.7104, open in lieu of Shop No.7467. The pivotal question is whether, the writ petitioner as owner of the said property can assail this order and seek to mandamus TASMAL to open the shop in the said property. In the considered opinion of this Court, the writ petitioner has no right to seek such mandamus and the petitioner has no locus with regard to certiorari limb to challenge the impugned order as this Court has no difficulty in accepting the submission of State counsel that liquor vending itself is mere concession. Such a prayer more so at the instance of the owner of the property i.e., prayer to the effect that the liquor shop should be opened and run in her property is clearly unacceptable and this prayer cannot be acceded to.

23. Be that as it may, a careful perusal of the impugned order of the 1st respondent reveals that there is no infirmity whatsoever in the said order as after taking into account all facts and circumstances, more particularly the order of the Hon'ble Division Bench in the aforesaid PIL as well as in the legal opinion given by the Government Pleader for 1st respondent has passed the impugned order directing to close the relocated liquor shop i.e., shop no.7104.

24. As a last desperate submission, learned counsel for the petitioner pressed into service a judgment rendered by a Hon'ble Single Judge in W.P.Nos.3828 & 4444 of 2019 dated 30.04.2019.

25. The learned counsel for the petitioner drew the attention of this Court to Paragraph Nos.14 to 17 of the said order which read as follows:

14. I now address the prayer sought for in the writ petition. A preliminary objection raised by the respondents is that the petitioners in both cases are landlords and have no locus to come forward with these Writ Petitions. As landlords, I am of the view that it is for them to pursue the letting out of their properties profitably and thus I see no difficulty per se for the petitioners in approaching this Court, particularly in the light of the orders of the District Collector and Tasmal passed initially directing the opening of the shops.

15. Reference is made to a decision of this Court in the case of K.Moovendran, Vice

President, Kadupatti Panchayat, Kadupatti Vadakadupatti Vikiramangalam Post, Mullipallam via, Vadipatti Taluk, Madurai District v. The District Collector, Madurai District, Madurai and others (2014 SCC OnLine Mad 8446) where, while addressing a similar objection to the locus of the landlord in filing a writ petition, this Court has stated in para-14 as follows:

'14. With regard to the contention of the owner that as lawful owner, he is entitled to let out his property to profitable use, we deem it fit to remind him the basic principle of Law of Tort that 'one's liberty ends, where other man's nose starts'. He may be owner of the flat, that does not mean that only with a view to generate income, he can do whatever he likes, particularly at the cost of safety and security of others. Therefore, this contention raised on the part of the flat owner is also rejected.'

16. There is no quarrel that concerns of safety and security of the neighbourhood have to be taken extremely seriously and I have dealt with this issue separately, but this does not extend to a bar of maintainability of a writ petition filed by the landlord as is sought to be made out in this case. The writ petitions are maintainable.

17. There is however, no question in my mind that the views of the public in the neighbourhood of the Tasmac shops should be taken into account along with the specific bars set out in Rule 8 of the Rules in deciding the question of grant or otherwise of approval. The gross flaw in the present case is committed by the police in granting an NOC prematurely, and in a slipshod manner, even without causing proper enquiry with the residents/all relevant stakeholders prior to doing so.

26. This Court is unable to persuade itself to believe that the aforesaid order helps the writ petitioner. The aforesaid order is only for the principle that it is open to the individual or Entity which owns immovable property to put to use the property in a manner deemed appropriate as long as it is legal to do so. This principle does not help the writ petitioner as this is a case where the writ

petitioner is insisting that respondent TASMAC should open the liquor shop in the property owned by the writ petitioner.

27. One aspect of the matter which was projected by writ petitioner was the fact that the writ petitioner has spent substantial sums of money in building superstructure to suit the needs of the liquor shop. This can hardly be a ground for the Court to accede to the prayer in the writ petition as this in the light of narrative supra, is of the considered view that the writ petition is bereft of merits and it is liable to be dismissed.

28. Accordingly, the writ petition is dismissed. Consequently connected miscellaneous petition are closed.'

In the light of the narrative thus far, instant writ petition is also dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

gpa
To

Sub Assistant Registrar

1. The District Manager
TASMAC, SIDCO Industrial Estate, Orikkaik
Kanchipuram South District
2. The Managing Director
TASMAC, Thalamuthu Buildings
Egmore, Chennai - 600 008
3. The District Collector
Kanchipuram District
Chennai - 631 501
4. The Deputy Superintendent of Police
DSP Office, Kanchipuram District

+1 cc to Mr.P.Arumugarajan, Advocate, S.R.No.56298

+1 cc to the Government Pleader, S.R.No.56507

W.P.No.17375 of 2019

NRL(CO)
SSM(01/08/2019).