

IN THE HIGH Court OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.16780 of 2019

and

M.P.No.16386 of 2019

Sri Karivaradharaja Swamy Temple
represented by its Hereditary Trustee
S.Sathikumar

.. Petitioner

Vs.

1. The District Collector
Office of the District Collector
Master Plan Complex,
NH 205, Thiruvallur- 602001.
2. The Licensing Authority
The Assistant Commissioner (Excise)
Thiruvallur District.
3. The Senior Regional Manager
The Tamil Nadu State Marketing
Corporation Limited (TASMAC)
735, IV Floor, L.L.A.Building,
Anna Salai, Chennai- 600 002.
4. The District Manager,
The Tamil Nadu State Marketing
Corporation Limited (TASMAC)
4, Thiruvallur East, IMFS Depot,
Bangalore High Road,
Chembarambakkam Village,
Thiruvallur District - 600 123.

.. Respondents

PRAYER :

Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to shift the TASMAC retail vending shop and bar situated in Reddy Street in S.No.81/1 near Sri Karivaradharaja Swamy Temple in Nerkundram Village, Thiruvallur District to any other place.

For Petitioner : Mr.D.Rajagopal

For R1 and R2 : Mr.A.Zakir Hussain
Government Advocate

For R3 and R4 : Mr.K.Sathish Kumar
Standing Counsel

ORDER

The grievance of the petitioner is that a TASMAC shop No.8855 is situated very close to the petitioner temple which is causing nuisance to the temple authorities, devotees and the general public.

2.The learned counsel for the petitioner by relying upon a decision of the Hon'ble Division Bench by this Court in W.A(MD) No.882 of 2010 dated 23.12.2010 [P.K.Chandrasekar Vs P.Krishnamoorthy and others] submitted that when a shop is situated near the temple premises, which causes public nuisance, the respondents ought to have considered the objections and shifted the shop.

3.The learned Standing Counsel for respondents 3 and 4 submitted that under Rule 8(1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, the prohibited distance is only 50 meters and the present TASMAC shop is about 67 meters from the petitioner's temple and therefore there was no violation of the Rules.

4.The Hon'ble Division Bench in the case of P.K.Chandrasekar Vs.P.Krishnamoorthy (stated supra) had held that eventhough a TASMAC shop is located beyond the distance stipulated in the Rules, it cannot be said that there shall be no nuisance to the people of that area. It is with this observation, the Hon'ble Division Bench came to the conclusion that when the location of the shop could cause public nuisance, the shifting of the shop would be justified.

5.As observed by the Hon'ble Division Bench of this Court, whenever the location of the shop causes public nuisance to the devotees of the nearby temple, the first respondent herein would be justified in looking into the possibilities of shifting the shop to the place, without reference to Rule 8(1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, with regard to the fact that the shop is located away from the prohibited distance.

6.In this case, it is seen that the petitioner had not made

any application to the first respondent raising objections or requesting the Collector to consider relocation of the TASMAC shop away from the temple. In view of the decision of the Hon'ble Division Bench, if the petitioner is granted liberty to approach the first respondent ventilating their grievances and the Collector in turn, is directed to considered such objections by conducting an enquiry, the ends of justice would be secured.

7. In the light of the above observations, the petitioner is granted liberty to approach the first respondent with a representation seeking for relocation of TASMAC shop No.8855 functioning at S.No.81/1 near Sri Karivaradharaja Swamy Temple in Nerkundram Village, Thiruvallur District and on receipt of such representation, the first respondent herein shall conduct a proper enquiry and pass appropriate orders, without reference to the distance prohibition referred to under Rule 8(1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, as expeditiously as possible and in any event, within a period of three months from the date of receipt of such representation from the petitioner.

8. Accordingly, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(J)

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Sub Assistant Registrar

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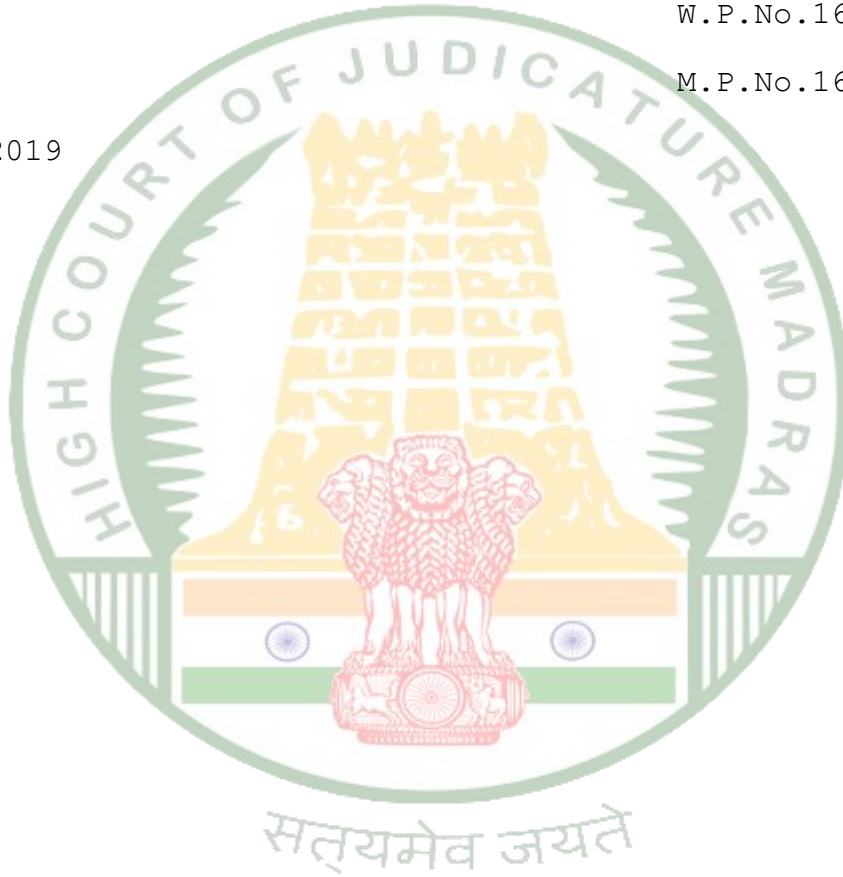
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+1cc to Mr.D.Rajagopal, Advocate, S.R.No.69650
+1cc to Mr.K.Sathish Kumar, Advocate, S.R.No.68845
+1cc to the Government Pleader, S.R.No.69396

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CS/25/09/2019



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