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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/7/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR  
and  
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.20076 of 2019

C. Muthusamy ... Petitioner

Vs

1. The State of Tamil Nadu  
rep. By its Secretary to  
Government, Home, Prohibition and  
Excise Department  
Secretariat, Fort St. George  
Chennai 600 009.
2. The Managing Director  
TASMAC Limited  
Gandhi Irwin Road  
Egmore  
Chennai.
3. The District Collector  
Namakkal District Collectorate  
Namakkal District.
4. The District Manager/Sub-Collector  
TASMAC Department  
Tiruchengode Main Road  
Namakkal District.
5. S. Mohan ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of certiorarified mandamus to call for the records pertaining to the issue of an order passed in Proceedings bearing No.Na.Ka.No.259/P1/CV/2019 by the fourth respondent herein dated 20/5/2019 and quash the same and direct the respondents 1 to 4 to close the TASMAC Shop No.5942 now functioning at S.No.13/2D, Near Kalvi Vinayagar temple, Agraharam Venkarai, Poosaripalayam, Pandamangalam,



Paramathi Velur Taluk, Namakkal District and consequently, shift the same to any other place suitable.

For Petitioner ... Mr.C.Thangaraju

For Respondents... Mr.E.Manoharan  
Additional Government Pleader  
for R.R.1 and 3.

Mr.K.Sathish Kumar  
Standing Counsel  
for R.R.2 and 4.

#### O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Instant writ petition has been filed, to quash the Proceedings, bearing No.Na.Ka.No.259/P1/CV/2019, dated 20/5/2019, of the District Manager/Sub-Collector, TASMAL Department, Namakkal District/fourth respondent and direct the respondents 1 to 4, to close the TASMAL Shop No.5942, now functioning at S.No.13/2D, near Kali Vinayagar temple, Agraharam Venkarai, Poosaripalayam, Pandamangalam, Paramathi Velur Taluk, Namakkal District and consequently, shift the same to any other suitable place.

2. Supporting the prayer sought for, petitioner has contended that villagers of Pungampalayam, Paramathi Velur Taluk, Namakkal District and neighbouring villagers are worshipping the deity in Kali Vinayagar temple, at Poosaripalayam, A.Vengarai village. The District Manager/Sub-Collector, TASMAL, fourth respondent, has granted permission to establish TASMAL Shop No.5942, at S.No.13/2D, Patta No.1173, Agrahara Vengarai Village. Hence, petitioner gave a representation, to the Sub-Collector, who is the District Manager, TASMAL Limited, Namakkal, to transfer the TASMAL shop from the said place.

3. Regular customers of TASMAL, have trespassed into neighbouring cultivating lands, destroy the plantains and using the agricultural land, as an attached bar. Since most of them are in inebriated condition, there is a danger that they may fall into open wells, situated in the lands. Stating all these facts, the petitioner has requested the District Collector, Namakkal District, to shift TASMAL shop No.5942, to some other place.

4. District Manager/Sub-Collector, Namakkal District, fourth respondent, by communication, dated 20/5/2019, has



informed that TASMAL shop has been functioning, without any violation of law, as per Rule 8 (1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003. Aggrieved by the same, the petitioner has come forward with the present writ petition, praying for the relief, as stated supra.

5. Heard Mr.C.Thangaraju, learned counsel for the petitioner, Mr.E.Manoharan, learned Additional Government Pleader for the respondents 1 and 3 and Mr.K.Sathish Kumar, Standing Counsel for the respondents 2 and 4.

6. By producing the files pertaining to the location of Shop No.5942, Mr.K.Sathish Kumar, learned Standing Counsel for TASMAL, fairly admitted that TASMAL shop is located in S.No.13/2D, classified as punjai land. In 1/3<sup>rd</sup> portion of the said land, agricultural activity is carried on and the remaining 2/3<sup>rd</sup> portion of the land is remaining vacant. He further submitted that there is a compound wall is around TASMAL shop. He further submitted that temple mentioned in the supporting affidavit to the writ petition is a road side temple and only, once in a year, festival will be conducted.

7. Earlier, consider the location of TASMAL Shop located on agricultural lands, in W.P.No.4136 of 2019, on 13/2/2019, we ordered as hereunder:-

"8. Sanctity of a place which gives food, justice (courts), health (hospitals), worship (Temple/mosque/church), education (schools, colleges or universities) and such other places are to be preserved for that purpose and should not be used for commercial purpose or for earning revenue. Agricultural field is a place worshipped by farmers and to be respected and not to be used for earning revenue through liquor. For the mere sake of earning money, one may come forward with an offer to provide space, like that of the instant case, an agricultural field. Tomorrow one who owns a marriage hall may come forward to provide space for a liquor shop inside the marriage hall. A society or an association, who owns vast extents of agricultural lands and at the same time, to earn more money may come forward to provide space for a liquor shop, but it should be the endeavour of the Government, to ensure that people are provided with more employment opportunities than providing more places for drinking, even in the midst of agricultural fields.



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9. At this juncture, we are reminded of a proverb "You can lead a horse to water, but you can't make him drink". Now, the action of the District Collector, Erode and General Manager, TASMAL, to make the people drink, but from the IMFL shop in the agricultural field, which is a place gives us food, cannot be approved. Third respondent is only a space provider, in other words, a lessee to whom the respondents 1 and 2 have to pay rent. Prima facie, we have not approved the action of the respondents 1 and 2 in locating IMFL shop in an agricultural field. Instead of directing the respondents to consider the representation dated 21/1/2019 and to take action to remove TASMAL shop, we deem it fit that the petitioner has made a prima facie case for issuing a mandamus for removal. TASMAL is the owner of the shop. No prejudice would be caused to third respondent, in the event of any interim order passed against the respondents 1 and 2, for closure of the shop. Lease is between the TASMAL and third respondent. Hence, notice to the third respondent is waived.

10. For the reasons stated supra, District Collector, Erode District and the General Manager, TASMAL, Mylambadi, Bhavani Taluk, Erode District, are hereby directed to close the shop No.3571, forthwith and report by 14/2/2019.

11. We do not know as to how many TASMAL shops are located in agricultural fields. In the light of what we have discussed and observed, we deem it fit that the Managing Director, TASMAL should be impleaded as a party respondent in the writ petition, so as to issue suitable orders to TASMAL Limited, regarding the shops located in agricultural lands. In exercise of powers under Article 226 of the Constitution of India, Managing Director is impleaded as a party to the instant writ petition as fourth respondent. Registry is directed to make necessary amendments wherever required. Managing Director, TASMAL/fourth respondent, is directed to furnish the details of TASMAL shops, located in agricultural fields, by 20/2/2019.

12. Post on 14/2/2019.



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13. Mr.Akhil Akbar Ali, learned Government Advocate and Mr.M.K.Sathish Kumar, learned Standing Counsel for TASMAL, will communicate the orders of this Court to the respondents 1 and 2, for implementation forthwith."

8. Subsequently, on 14.03.2019, in the same writ petition, we ordered closure of TASMAL shops located on agricultural lands.

9. Following the directions, about 110 shops, on agricultural lands, without building planning permission, have been closed. Whether such TASMAL shops had building planning permission or not, we have categorically observed that there should not be any TASMAL shop on an agricultural land.

10. Admittedly, in the case on hand, TASMAL Shop No.5942 is stated to be on an agricultural land. Whether agricultural is actually carried on in a portion of the land or not, fact remains it is an agricultural land. Directions issued in W.P.No.4136 of 2019, dated 13/2/2019, is squarely applicable to the facts on hand.

11. Accordingly, instant writ petition is allowed and the impugned proceedings, bearing No.259/P1/CV/2019, dated 20/5/2019, of the District Manager/Sub-Collector, TASMAL Department, Namakkal District/the fourth respondent herein, is set aside. The Managing Director, TASMAL Limited, Chennai and the District Manager/Sub-Collector, TASMAL Department, Namakkal District, respondents 2 and 4 respectively, are directed to close down TASMAL Shop No.5942, at S.No.13/2D, near Kali Vinayagar temple, Agraharam Venkarai, Poosaripalayam, Pandamangalam, Paramathi Velur Taluk, Namakkal District, forthwith. Respondents 2 and 4 are further directed to take steps, for relocation, in consonance with Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar



To

1. The Secretary to Government, Home, Prohibition and  
Excise Department  
State of Tamil Nadu  
Secretariat, Fort St. George  
Chennai 600 009.
2. The Managing Director  
TASMAC Limited  
Gandhi Irwin Road  
Egmore  
Chennai.
3. The District Collector  
Namakkal District Collectorate  
Namakkal District.
4. The District Manager/Sub-Collector  
TASMAC Department  
Tiruchengode Main Road  
Namakkal District.

+lcc to Mr.A.Sathish Kumar, Advocate Sr.62059  
+lcc to the Government Pleader Sr.62076  
+lcc to Mr.K.Sathish Kumar, Advocate Sr.61658

Writ Petition No.20076 of 2019

mg[col]  
srg 31/07/2019