

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 09.08.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.23458 of 2019

R.Sivaprakasam

.. Petitioner

Vs.

1. The Collector  
Tiruvallur District  
Collectors Office  
Thiruvallur - 602 001

2. The District Manager  
TASMAC No.G-29 and 30  
Sidco Industrial Estate  
Kakkalur Village  
Tiruvallur - 602 003

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus directing the respondents to re-locate the TASMAC Shop No.8743 and Bar at Padiyanallur to any other location not harmful to the public or public interest.

For Petitioner : Mr.K.S.Sundar

For Respondents : Mr.R.P.Pratap Singh  
Government Advocate for R1

K.Sathish Kumar  
Standing Counsel for R2

ORDER

Mr.K.S.Sundar, learned counsel on record for writ petitioner is before this Court. Mr.R.P.Pratap Singh, learned Government Advocate accepts notice on behalf of first respondent and Mr.K.Sathish Kumar, learned Standing Counsel for 'Tamil Nadu State Marketing Corporation' ('TASMAC' for brevity), accepts notice on behalf of second respondent.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Writ petitioner has filed the instant writ petition seeking re-location of TASMAC Shop No.8743 and the Bar attached thereto at Padiyanallur. To be noted, even according to the affidavit filed in support of the writ petition, writ petitioner resides in Kilpauk, Chennai, whereas writ petitioner has sought re-location of a TASMAC shop in Padiyanallur. It is writ petitioner's case that he owns lands adjacent to the site where aforesaid TASMAC shop being TASMAC Shop No.8743 is located. A perusal of the affidavit filed in support of the writ petition reveals that no violation of any specific Rule of 'The Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003' ('Liquor Vending Rules' for brevity) has been pointed out. A general submission that there is breach of Tamil Nadu Public Building Licence Act, 1966 has been made, but neither the Act nor any specific provision under the Act was pressed into service in the hearing.

4. Writ petitioner, besides saying that he owns lands that are situate adjacent to the site where the aforesaid TASMAC shop is situate, has also predicated the writ petition on public interest. Specific averment in this regard in the affidavit filed in support of the writ petition reads as follows:

'It is not possible to monitor the entire activities, which are mostly against Public Interest.'

However, suffice to say that this writ petition is not a public interest litigation and leave it at that.

5. As already mentioned supra, writ petitioner has not pointed out violation of any specific rule of Liquor Vending Rules and has only made a general averment that on both sides of the aforesaid TASMAC shop, schools being Government Boys School and Saint Marry's School are located. To be noted, this averment has been made without any specificity. There is no averment about the distance between the site / location of aforesaid TASMAC shop and the schools and therefore, there is no averment with specificity regarding violation of any specific rule of Liquor Vending Rules.

6. In similar circumstances, in W.P.No.18164 of 2019 seeking re-location of a TASMAC Shop and a Bar attached thereto, this Court, relying on an order made by a Hon'ble Division Bench of this Court, had passed an order dated 01.07.2017, which reads as follows:

'This writ petition pertains to opening of a retail liquor outlet by 'Tamil Nadu State Marketing Corporation' ('TASMAC' for brevity).

2. Writ petitioner, stating that he is a resident of the locality where the TASMAC shop is proposed to be opened, has filed the instant writ petition with a

prayer to restrain the respondents from opening the liquor shop at Plot No.A-16, Church Road, Mogappair Industrial Estate, Mogappair East, Chennai - 600 037 ('said location' for brevity).

3. Ms.R.Shase, learned counsel for writ petitioner submits that said location is in a congested area. Learned counsel also submits that there are already many liquor shop run by TASMAL in the said area. In the synopsis filed by the writ petitioner, which forms part of the case file, learned counsel submits that there are already 5 TASMAL liquor shops with attached bars in the area.

4. Mr.R.P.Pratap Singh, learned Government Advocate accepts notice on behalf of first respondent.

5. Learned State counsel submits that location of the liquor vending shops i.e., retail outlets of TASMAL are governed by 'The Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003' ('Liquor Vending Rules' for brevity).

6.Though in the hearing, learned counsel submits that the proposed liquor vending shop is objectionable within the meaning of Rule 8 of Liquor Vending Rules, no data or details as to how and why it is objectionable has been given. In other words, there is no plea with specificity in this regard.

7.Suffice to say that said location has to be in accordance with the aforesaid Liquor Vending Rules and suffice to say that it should not be in violation of said liquor vending rules.

8.In this regard, a judgment being Hon'ble Division Bench judgment dated 13.06.2017 in W.P.No.14466 of 2017 is of relevance. Paragraph 6 of the same reads as follows:

'6. Learned counsel appearing on behalf of the petitioner has cited a Division Bench judgment of this Court in V.Ravichandran v. The District Collector, Tirunelveli and another (Order dated 16.11.2016 in W.P. (MD) No.20063 of 2015). This judgment was rendered having regard to the particular facts of the case. The judgment is not an authority for the proposition that a liquor shop can in no circumstances be set up if there is an objection from the residents or a resolution of Panchayat Grama Sabha to that effect.'

9. It is also to be noted that in aforesaid judgment of Hon'ble Division Bench it was held that in the absence of any allegation of contravention of any

statutory rule or regulation, interference of writ Court is not warranted. This is articulated in Paragraph 2 of Hon'ble Division Bench judgment, which reads as follows:

'2. On the face of the averments in the writ petition, the petitioner has not been able to show infringements of any provision of law in running the liquor shop in the village of the petitioner. In the absence of any allegation of contravention of any statutory rule or regulation, interference of writ court is not warranted.'

(Underlining made by Court to supply emphasis and highlight)

10. In the light of the narrative thus far, this Court deems it appropriate to dispose of this writ petition with the observation that as long as the location is in accordance with the aforesaid Liquor Vending Rules and not in breach of limitations therein, it does not warrant interference.

This writ petition is disposed of with the above observation. No costs. Consequently, the connected miscellaneous petition is closed.'

7. In the considered view of this Court, aforesaid order applies in all force to the instant case and as already mentioned above, the aforesaid order has been made by relying on an order made by a Hon'ble Division Bench of this Court.

Owing to all that have been set out supra, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gpa

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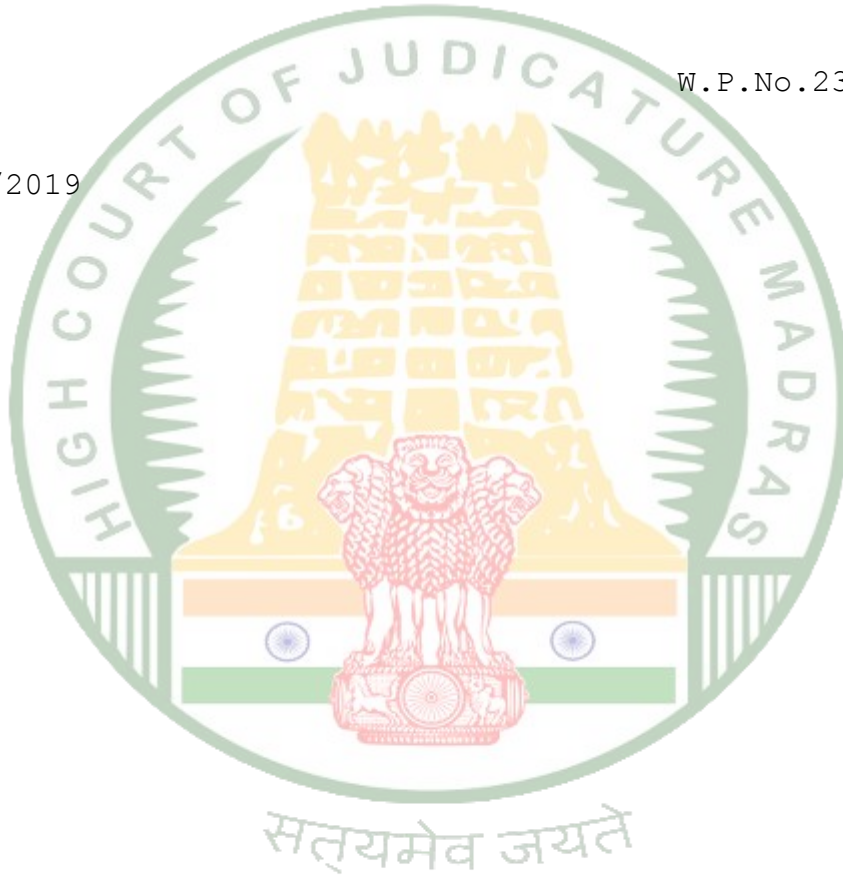
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+1cc to Mr.K.S.Sunder, Advocate Sr.68429  
+1cc to the Government pleader Sr.68947  
+2cc to Mr.K.Sathishkumar, Advocate Sr.68844 & 68416

W.P.No.23458 of 2019

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