

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

WP.No.23916 of 2019

M.Elumalai

.. Petitioner

Versus

- 1.The Commissioner (Excise)
Excise Department
Thattanchavady,
Puducherry-9.
- 2.The Deputy Commissioner Excise,
Excise Department
Thattanchavady,
Puducherry-9.
- 3.The Assistant Commissioner Excise,
Excise Department,
Thattanchavady,
Puducherry-9.
- 4.The Inspector of Police,
Villianur Police Station,
Villianur, Puducherry.

5.R.Ayothi

.. Respondents

PRAYER:- Writ petition filed under Article 226 of the Constitution of India prays to issue a Writ of Mandamus directing the 3rd respondent to consider the petitioner representations submitted to the 3rd respondent on 01.08.2019 and 02.08.2019 and the 5th respondent to shift the arrack shop No.IV (V) Uruvaiyur to its original location namely arrack shop NO.IV (V) in the Government Poromboke land bearing T.S.NO.39/14 of Uruvaiyar Revenue Village to the west of the Government Poromboke pond.

For Petitioner : Mr.M.Gnanasekar

For Respondents: Mrs.N.Mala,
Additional Government Pleader (Pondicherry)
for R1 to R4

Mr.A.Muthukumar for R5

ORDER

[Order of the Court was made by M.SATHYANARAYANAN,J.,]

The writ petition, styled as a Public Interest Litigation, is filed by a resident of Uruvaiyar, Mangalam Post, Villianur Commune, Puducherry. The petitioner would submit that the 5th respondent was granted license to locate Arrack shop in T.S.NO.39/14 of Uruvaiyar Revenue Village and the location of the said shop in Mangalam Main Road is nearby to washroom and also a residential area and that apart, there is also a Girls School nearby and the Girl students, who are attending the School, were also subjected to humiliation and harassment.

2. The petitioner, on an earlier occasion, filed W.P.No.4263 of 2014 as a public interest litigation praying for the issuance of Writ of Mandamus directing the Assistant Commissioner Excise, Excise Department to consider his representation dated 13.11.2013 and shift the Arrack shop No.(V) Uruvaiyar to his original location namely Arrack Shop No.(V) in the Government Poromboke land bearing T.S.No.39/14 on the very same Village and it was disposed of on 12.09.2014 by taking into consideration the submission of the learned Government Advocate (Puducherry) that fresh auction has been conducted and the Arrack Shop.V, from August 2014 is now functioning at the location which was infact being the place suggested by the petitioner. In the light of the development, nothing survived for further adjudication in that writ petition and disposed of the writ petition.

3. Mr.M.Gnanasekar, learned counsel appearing for the petitioner would submit that the 5th respondent started running arrack shop on the land belonging to one Mr.M.K.Palani, which was located as per the original notification and the said shop is located right in the middle of the residential locality and the same is also prohibited by the provisions of Rule 113 of the Pondicherry Excise Rules, 1920 and though serious objections were raised in the form of representations by the residents of that locality, the 3rd respondent had stated as if no objections have been received and hence prays for appropriate orders.

4. Mrs.N.Mala, learned Additional Government Pleader (Puducherry) has invited the attention of this Court to the

counter affidavit of the 2nd respondent, which was adopted by the respondents 1 to 4 and would submit that the auction was conducted on 09.07.2019 for arrack shop no.4(V) Uruvaiyar of Villianur Commune, wherein the 5th respondent became the successful bidder and as per the Gazette Notification No.117 dated 25.06.2019 notified places of the shop should be in the Government Poromboke land bearing R.S.No.39/14 of the same Village to the west of the Government poromboke pond or to be set up in the land bearing R.S.No.39/13 of the same Village belongs to Palani and with regard to the location of the shop in Government poromboke land bearing R.S.No.39/14, objections were raised by the local villagers as it is abutting the pond and therefore, for the current lease year 2019-20, in respect of S.No.39/13, the owner viz., Mr.Palani had reported to have raised objections. Thereafter, the 5th respondent seeking alternate site or else at R.S.No.39/7 identified by him which belongs to one Mr.Velumurugan. Accordingly, the Site Selection Committee after causing inspection has submitted a views, based on which the 5th respondent was allowed to locate the shop in R.S.No.39/7 belongs to one Velumurugan and since the location of the said arrack shop is not prohibited in terms of the Pondicherry Excise Rules, 1970, the petitioner may not have any objection and prays for dismissal of this petition.

5. Mr.A.Muthukumar, learned counsel for the 5th respondent has invited the attention of this Court to the counter affidavit dated 17.09.2019 and would submit that for the year 2019-20, the 5th respondent became the successful bidder and in the light of the objections raised, he sought to locate the arrack shop in a land bearing R.S.No.39/7 belong to Mr.Velumurugan and the Site Inspection Committee granted permission to the 5th respondent to locate the shop and as on date, he is carrying on the business. It is the further submission of the learned counsel for the 5th respondent that the writ petitioner has also got an axe to grind for the reason that initially Mr.Palani also bid in the auction through his relative Malar / wife of Ravi especially in R.S.No.39/13 and on account of non furnishing the Bank Guarantee, the license was cancelled. In the reauction the said Palani obtained license in the name of Ravi, son of Palanisamy, who once again committed default in furnishing the bank guarantee and consequently the license was cancelled within 3 months and the Malar, Ravi and Shanthi are all close relatives of the said Mr.Palani, the owner of R.S.No.39/13 and therefore, with an oblique motive only, the present writ petition has been filed styled as a Public Interest Litigation, which is nothing but an abuse of process of law and prays for dismissal of this writ petition with exemplary costs.

6. This Court has considered the rival submission and also perused the materials placed before it.

7. The counter affidavit of the 2nd respondent would disclose that in the light of the request made by the 5th respondent to locate the arrack shop in R.S.No.39/7, belonging to Mr.Velumurugan, the Site Selection Committee, caused inspection and also submitted their written views / comments and it is relevant to extract the same:

The Commissioner Villianur Commune Panchayat:

No objections received from anybody by Villianur Commune Panchayat till date.

The Tahsildar, Villianur Taluk:

I am to submit that the existing and proposed location are situated in the same area as well as in the same Re-survey No.(i.e., R.S.No.39) and also till date there is no issue or dispute in this area from the public side, Hence, shifting of location of shop may be considered.

The Superintendent Of Police (West):

There is no specific objections against the proposed location to run the arrack shop No.4(V)-Uruvaiyar in the land bearing R.S.No.39/7 of Uruvaiyar Revenue Village, which belongs to Thiru. Velmurugan S/o Murugesan to the east of Sivapragasam Land, to the west of Murugesan and Annamalai Land, to the South Gurusamy Mudaliar Land and to the North of Mangalam Road.

8. The Primordial submission made by the learned counsel appearing for the petitioner is that the location / running of the arrack shop, being run by the 5th respondent, is in midst of the locality and there is continuous objections as to the location of arrack shop and on an earlier occasion, when the petitioner has approached this Court in the form of Public Interest Litigation, based on the submission made by the learned Government Advocate (Puducherry), the shop in question has been relocated and closed and now sought to be located in the midst of the residential locality and it is also pointed out that despite two representations submitted by the locality people objected to the location of the arrack shop licensed to the 5th respondent, the Site Selection Committee totally ignored the same, as if there was no objections.

9. Though it is averred by the petitioner that it is located near the Washroom and the School is also located nearby, the Site Selection Committee, which has been constituted under the Pondicherry Excise Act and Rules framed thereunder, caused inspection and submitted it's opinion which has been extracted supra. It is also the stand of the 5th respondent that on account of the objections raised by one Palani, he has an axe to grind against the 5th respondent. After causing inspection only, he was

allowed to run the arrack shop and as such it cannot be found fault with.

10. The location of arrack shop or liquor shop is always a vexed issue. Repeatedly objections are raised objected to the location of the shop on account of the fact that it is located near the places of worship, schools and residential localities. It is also the stand of the learned counsel for the official respondents that the location of the shop run by the 5th respondent is in an unobjectionable place.

11. Therefore in the light of the stand taken, this Court cannot issue any positive direction in favour of the petitioner for the closure of the arrack shop run by the 5th respondent. The petitioner in this regard has submitted series of representations dated 23.07.2019, 30.07.2019, 01.08.2019 and 02.08.2019 and one of the representations dated 30.07.2019 has been addressed to the 2nd respondent.

12. In the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner in his representation or in this writ petition, this Court directs the 2nd respondent to put the petitioner as well as the 5th respondent on notice and thereafter consider and dispose of the representation dated 30.07.2019 in accordance with law within a period of four weeks from the date of receipt of a copy of this order and communicate the decision taken to the petitioner as well as to the 5th respondent.

13. The writ petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar(CS-III)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1. The Commissioner (Excise)
Excise Department
Thattanchavady,
Puducherry-9.

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2.The Deputy Commissioner Excise,
Excise Department
Thattanchavady,
Puducherry-9.

3.The Assistant Commissioner Excise,
Excise Department,
Thattanchavady,
Puducherry-9.

4.The Inspector of Police,
Villianur Police Station,
Villianur, Puducherry.

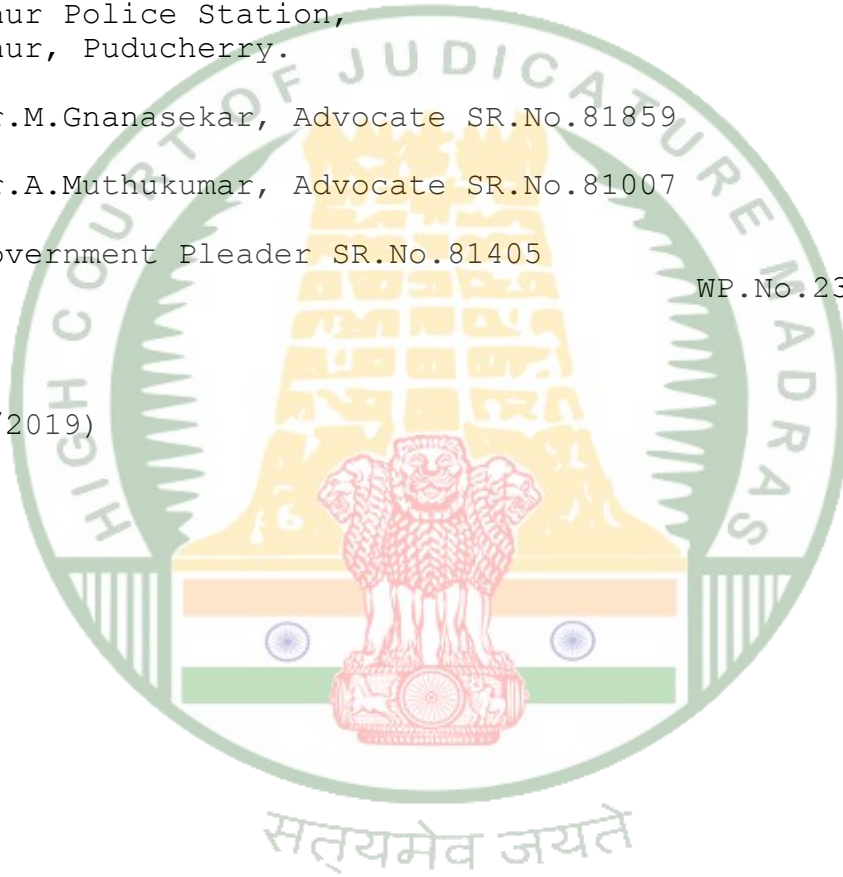
+1cc to Mr.M.Gnanasekar, Advocate SR.No.81859

+1cc to Mr.A.Muthukumar, Advocate SR.No.81007

+1cc to Government Pleader SR.No.81405

WP.No.23916 of 2019

SS (CO)
GMY (23/10/2019)



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