

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD
W.P.No.13295 of 2017
and W.M.P.No.14297 of 2017

P.K.Mathiazhagan ... Petitioner

Vs.

1. The District Collector
Salem District, Salem.

2. The Managing Director,
Tamilnadu State Marketing Corporation, 4th Floor,
CMDA Tower, Egmore,
Chennai - 600 008.

3. The District Collector,
District TASMAL Office
Salem

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the respondents to remove the existing TASMAL liquor shop No.7125 in the area of the village based on representation of the Pappampatti villagers dated 09.05.2017, the violation of the order of Hon'ble Supreme Court of India passed in Civil Appeal Nos. 12164 to 12166 of 2016 dated 15.12.2016.

For Petitioner

: Mr.S.Sairaman

For Respondents

: Mr.Akhil Akbarali,
Govt.Advocate for R1

Mr.K.Sathishkumar,
SC for R2 and 3

O R D E R

(Order of the Court was made by SUBRAMONIUM PRASAD, J.)

The petitioner, a resident of Pappampatti Village (P.O), Omalur Taluk, Salem District, has filed this instant petition for Public Interest praying for a direction to the respondents to remove the existing Tasmac liquor shop No.7125 from the village.

2. Petitioner submits that one liquor shop is already functioning outside village Pappampatti. The second respondent has opened one more Tasmac shop No.7125 again, in the village and the same is functioning in a residential area. The villagers had given a representation to close down the shop. Petitioner states that the shop is situated within 200 meters from the State Highway and therefore this is in violation of the judgment dated 15.12.2016 passed by the Hon'ble Supreme Court of India in Civil Appeal Nos.12164 to 12166 of 2016.

3. The respondents have filed a counter affidavit along with the map and a sketch. In the counter affidavit, it is stated that the shop is located about 257 metres away from the State Highways No.86. For better understanding the relevant paragraphs in the counter affidavit are reproduced as under:

3. This respondent submits that the TASMAC sho No.7125 originally functioned at Door No.5/63, Main Road, Pallampatti Village, Attayampatti, Salem District, in the property owned by Tmt.J.Vasantha and the said shop was located within 6 meters from the State Highways SH-86a. Therefore the shop was closed pursuant to the Hon'ble supreme Court order in Civil Appeal Nos.12164 etc of 2016, dated 15.12.2016. Subsequently the State of Tamil Nadu moved application in I.A before the Hon'ble Supreme Court by its order dated 31.03.2017 held in para 22 modifies the earlier order as follows:

" In the case of areas comprised in local bodies with a population of 20,000 people or less, the distance of 500 metres shall stand reduced to 220 metres"

Pursuant to the Hon'ble Supreme Court order dated 31.03.2017, the shop No.7125 was relocated to survey No.96/7, Nathyampatti, Pappampatti, Omalur, Salem District and functioning with effect from 10.04.2017.

4. This respondent submits that as per State Census report 2011, the Pappampatti

village has population of 10284 and therefore this respondent relocated the shop at Survey No.96/7, which is 257 metres away from the State Highways SH No.86. The said distance was once again surveyed by the Taluk Surveyor on 07.03.2019 and filing the report along with this counter affidavit. Further the present locations has not been violates the Rule 8(1) of the Tamil Nadu Liquor and Retail vending Rules, 2003 and there is no worshipful place or educational institutions situated within 100 metres from the shop.

5. This respondent submits that they have sent a proposal to the 1st respondent in Na.Ka.No.603/2017/A-3/C.V dated 04.04.2017 for relocating the shop in survey No.96/7, in turn the 1st respondent has passed in Na.Ka.No.10458/2017/Ka2, dated 08.04.2017 and granted permission to open the shop in the present place. Pursuant to the 1st respondent order the shop was opened and functioning from 10.04.2017 without any hindrance to public and also no visibility from the State Highways.

6. This respondent submits that the present location of shop No.7125 not been violated the Rule 8(1) of the Tamil Nadu Liquor Retail vending Rules, 2003 and also fully in compliance of the orders passed by the Hon'ble Supreme Court in Civil Appeal Nos.12169 of 2016 etc, dated 15.12.2016 and 31.03.2017.

4. A perusal of para 5 of the counter affidavit would show that initially the shop was located at some other place and since the shop was situated within the permissible distance laid down by the Hon'ble Supreme Court, there was a proposal to relocate the shop and that the shop has been relocated to the present place where it has been functioning. The respondent would state that the present shop is not in violation of Rule 8 (1) of the Tamil Nadu Liquor Retail Vending Rules, 2003 and also fully in compliance with the orders dated 15.12.2016 and 31.03.2017 of the Hon'ble Supreme Court of India in Civil Appeal No.12169 of 2016. The petitioner has not filed any rejoinder controverting the same.

5. In the light of the counter affidavit that is filed by the state Government, we do not find any necessity to interfere with the decision of the second respondent to locate the Tasmac shop No.7125 in S.No.96/7, Nathayampatti, Pappampatti, Omalur, Salem District.

In view of the above, this writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector
Salem District
Salem
2. The Managing Director,
TASMAC,
4th Floor, CMDA Tower,
Egmore, Chennai - 600 008.
3. The District Collector,
District TASMAC office
Salem.

+1cc to Mr.K.Sathish kumar, Advocate Sr.22682
+1cc to the Government Pleader Sr.23125

W.P.No.13295 of 2017 and
W.M.P.No.14297 of 2017

sr[co]
srg 23/04/2019

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