

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.2.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.14978 of 2017 and
W.M.P. No.16219 of 2017

D.Sundaramoorthy

... Petitioner

Vs.

1.The District Collector
Collectorate
Puducherry

2.The Commissioner of Puducherry (Excise)
Puducherry

3.The Deputy Collector (Excise)
Office of the Deputy Collector (Excise)
Puducherry

4.The Tahsildar
Villianur Revenue Department
Puducherry

5.P.Murugan

6.G.Amirtharaj

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for a writ of mandamus, directing the respondents 1 to 4 to forbear the respondents 5 and 6 from opening the liquor shop and bar on the pathway of Andiyarpalayam village, Puducherry.

For Petitioner : Mr.D.Lakshmipathy

For Respondent : Mr.A.Gandhi Raj
Govt. Pleader (Pondy)
for R1 to R4
Mr.G.Rajan for R5

ORDER

(delivered by SUBRAMONIUM PRASAD, J)

Resident of Andiyarpalayam village, has filed the instant public interest litigation for a mandamus directing the respondents 1 to 4, to forbear the respondents 5 and 6 from opening the liquor shop and bar on the pathway of Andiyarpalayam village, Puducherry.

2. The contention of the petitioner is that the location of the liquor shop is in a residential area and within 50 feet from Vinayagar Medical College. Area is thickly populated. Location was opposed on 24.4.2017 by more than 100 villagers. Opposing the location, petitioner sent a representation dated 26.4.2017 to the authorities. On 24.04.2017, there was also a procession from Anna Square to the Junction of Ambur Salai and Sait Ange Street via Anna Salai, J.N.Street, Missions Street and Saint Street. In the above circumstances instant writ petition has been filed for the relief as stated supra.

3. Inviting the attention of this court to Rule 113(2) (i) of Puducherry Excise Rules, 1970, Mr.A.Gandhiraj, learned Government Pleader for Puducherry, submitted that the location of the shop is within the permissible distance. Mr.G.Raju, learned counsel for the respondent No.5 reiterated the same.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. Rule 113(2) (i) of Puducherry Excise Rules, 1970, is reproduced hereunder:

"(i) No shop shall be established in Municipal areas within a distance of 50 (fifty) metres and in other areas 100 (hundred) meters from any place of worship or educational institution:

Provided that the distance restriction shall not apply in areas designated as "Commercial" or "Industrial" by the Town Planning Authorities:

Provided further that if any place of worship or educational institution comes into existence subsequent to the establishment of the shop, the distance restrictions specified in this rule shall not apply.

6. Deputy Commissioner (Excise), Puducherry, namely the third respondent has filed the counter affidavit. Paragraph Nos.7 and 8 of the counter affidavit read thus:

7. I further submit that Andiyarpalayam is a small hamlet within Kalitheerthalkuppam revenue village. The Andiyarpalayam village hamlet is located at about 1.5 km away from the National Highway NH-45A which is connecting Villupuram and Puducherry. The village is well connected with the National Highway by means of two wider roads one on the eastern side and another on the southern side.

8. I humbly submit that contrary to the averment of the petitioner, these roads are not pathways but they are 30 feet wide well laid roads. Moreover, most of the habitations in Andiyarpalayam village are concentrated in the centre of the village and the outer areas remain as vacant or agricultural lands devoid of any habitations. An FL.2 retain liquor shop namely M/s.S Wines which was located along the National highway in Madagadipet area and was closed down owing to Hon'ble Supreme Court's ruling, has already been granted permission to shift the licensed premises to R.S. No.175/10 of Kalitheerthalkuppam Revenue Village, Mannadipet Commune, Puducherry along the Andiyarpalayam road on 2.5.2017 at the land owned by the 6th respondent herein, which is located at a distance of 300 metre from the nearest habitation area of the Andiyarpalayam village without any hindrance to the main road traffic and in compliance with the provisions contained under the Puducherry Excise Act and Rules, 1970 and the rulings of the Hon'ble Supreme Court. Further, the liquor shop is not located in a residential area and it is surrounded by vacant lands and an old industry's compound. The licensed premises being located in a non-municipal area, no religious or educational institution is located within 100 metre distance and it is also located at a distance more than 220 metre as prescribed by the Hon'ble Supreme Court, as the premises is comprised in Kalitheerthalkuppam village Panchayat area which has a population of 4375 people which is less than 20,000 population criterion stipulated by the Hon'ble Supreme Court."

7. Based on the above, the learned Government Pleader for Puducherry, submitted that the IMFL shop is located in a non-municipal area, and that no religious or educational institution

is located within 100 metres distance and it is also located at a distance more than 220 metres as prescribed by the Hon'ble Supreme Court.

In view of the above, the writ petition is dismissed. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

asr

To

- 1.The District Collector
Collectorate, Puducherry
- 2.The Commissioner of Puducherry (Excise)
Puducherry
- 3.The Deputy Collector (Excise)
Office of the Deputy Collector (Excise)
Puducherry
- 4.The Tahsildar
Villianur Revenue Department, Puducherry.

+1 cc to M/s.d.Lakhsmipathy, Advocate Sr.No.19576
+1 cc to M/s.G.Rajan, Advocate Sr.No.19102
+1 cc to The Government Pleader, (Puducherry),
Advocate Sr.No.19562

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AD(CO)
CSL/01.04.2019

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