

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.15738 of 2017

M.Balasubramaniam

... Petitioner

Vs.

1.The District Collector
Tiruppur District

2.The District Manager
TASMAC Limited,
Tiruppur District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for a writ of mandamus, forbearing the respondents from establishing or re-locating the TASMAC shops in at Vadugapalayam Pudur Panchayat, Palladam Taluk, Tirupur District.

For Petitioner : Ms.V.Krithika for
Mr.S.Sithirai Anandam

For Respondent : Mr.Akhil Akbarali, GA for R1
Mr.K.Sathishkumar, Standing Counsel
for TASMAC Ltd/R2

ORDER

(delivered by S.MANIKUMAR, J)

Petitioner has sought for a writ of mandamus, forbearing the respondents from establishing or re-locating the TASMAC shops in Vadugapalayam Pudur Panchayat, Palladam Taluk, Tirupur District.

2. It is the contention of the petitioner that the respondents have located a new TASMAC shop in Dharapuram Road, near Rajiv Colony, and Alathupalayam Village, Vadugapalayam Pudur Panchayat, Palladam Taluk, Tiruppur. TASMAC shop to be located, is 150 meters from school and residential area and on account of TASMAC shop being opened in the locality, public in the area is facing various problems.

3. Petitioner has further stated that school children, office goers, women have to cross the TASMAC shop. On knowing the proposed TASMAC shop in their area, they are facing various problems. The school children and persons working in nearby companies are targetted by persons who take drinks in the TASMAC shop.

4. Students would be distracted, if TASMAC shop is located in the residential area. The younger generation will get totally ruined. Further the wastage from the TASMAC shop is dumped in the nearby agricultural land, which poses danger for carrying on agricultural operation. Residents and other Youth organizations protested for the opening of the shop in the residential area. Despite the objections and giving a go by to the judgments of this court, the respondents have relocated the shop which is posing danger to the entire villagers. Even the special officer, Vadugapalayam Panchayat had passed a resolution on 1.5.2017 in resolution No.14 as against location of TASMAC shop in the locality.

5. On 23.6.2017, when this matter came up for hearing, another Hon'ble Division Bench of this Court, has passed the following order:

The grievance expressed by the petitioner, from the averments made in the affidavit filed in support of this writ petition, is that the Tasmac shop, which has been opened very recently, is located within the prohibited distance and despite agitations and Dharna, the shop is not closed and the running of the shop continues to cause nuisance as well as health hazards to the residents of the village and therefore, he prays for appropriate orders.

2.Per contra, the learned Standing Counsel appearing for the second respondent / TASMAC, would submit that no schools or temples are in the vicinity from the place where the Tasmac shop is located and he seeks further time to get instructions.

3.A perusal of the typed set of documents would also disclose that a school, namely, Swami Vivekanandha Matric. Higher Secondary School, has given objection dated 25.05.2017 to the first respondent.

4.This Court has also put a question to the learned Standing Counsel appearing for the second respondent as to the steps being taken to keep the tasmac shop and the Bar in hygienic conditions and also to abate the nuisance caused on account of the behaviour of the drunkard and the learned Standing Counsel

undertakes to file a detailed affidavit on the said aspect.

5. List the matter on 04.08.2017.

6. On this day, when the matter came up for further hearing, based on the counter affidavit of the District Manager, TASMAL Limited, Tirupur District, Mr.K.Sathishkumar, learned Standing Counsel for TASMAL Ltd, submitted that shop No.1824 originally was located at No.4, Trichy Main Road, Palladam Taluk, Tirupur District and Shop No.1826 was located at old No.22, New No.55, Panappalayam, Trichy Road, Palladam Taluk, Tirupur District. He further submitted that in view of the Hon'ble Supreme Court's order dated 15.12.2016 and 31.3.2017 in Civil Appeal Nos.12164-12166 of 2016, that no liquor vending shops shall be visible from National or State Highway and situated within a distance of 500 meters of the outer edge of the National or State Highways or of service lane along the Highway and 220 meters in case of areas comprised in local bodies within a population of 20,000 people or less, as the above said shops were located within 500 meters from the National or State Highway, it was decided to relocate Shop No.1824 at S.F. No.88/2, Aluthupalayam, Vadugapalayam Village, Palladam Taluk, Tirupur District and Shop No.1826 at Rajiv Colony, Vadugampalayam Village, Palladam Taluk, Tirupur District. Learned standing counsel further submitted that, while selecting the above places, the Assistant Commissioner of Excise and the District Manager, TASMAL, have considered all the relevant facts including the guidelines stipulated in Rule 8(1) of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 and submitted a proposal to the District Collector.

7. He further submitted that from shop No.1824, an elementary school is located at a distance of 792.6 meters; that a residence is located at a distance of 247.2 meters; that there are two houses at a distance of 142.3 meters and 132.2 meters; that there are four houses located at a distance of 102.4 metres; that the shop owner's house is located near the shop and that the shop is located about 2500 metres away from National and State Highways.

8. Similarly Shop No.1826 is located 1468.2 metres away from Vivekananda Higher Secondary School; that two mills are located at a distance of 251.2 meters from the shop; that a residence is located at a distance of 419 meters from the shop and that the shop is located about 2000 metres away from National and State Highways.

9. Learned standing counsel for the TASMAL Ltd, further submitted that with regard to resolution passed by the Village Panchayat, on 13.6.2017 in W.P.No.14466 of 2017, a Hon'ble Division Bench of this court held that the

resolution is of no consequences, as the setting up of TASMAC shops is governed by the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 and that there was no violation of the said rules.

10. He further contended that in respect of allegations regarding the order of Madurai Bench of Madras High Court, the Hon'ble First Bench of this court held that the 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 the effect.

11. We have gone through the counter affidavit of the respondents and the submission of the learned standing counsel for TASMAC Ltd, is placed on record.

12. In view of the same, there is no need to issue any writ of mandamus. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(Cs)

//True Copy//

Sub Assistant Registrar

asr
To

1.The District Collector
Tiruppur District

2.The District Manager
TASMAC Limited,
Tiruppur District

+1cc to Mr.S.Sithirai Anandam , Advocate SR.No. 19158

+1cc to Mr.K.Sathishkumar , Advocate SR.No. 19215

+1 cc to Government Pleader SR.NO. 19311

W.P.No.15738 of 2017

A.SK(09/04/2019)