

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.16118 of 2017
and WMP No.17409 of 2017

K.Ramadass

... Petitioner

vs.

1. The Tamil Nadu State Marketing Corporation Ltd.,
Rep. by its Managing Director,
735, 4th Floor, LLA Building,
Anna Salai, Chennai
Tamil Nadu - 600 032.

2. The District Collector,
Ariyalur,Ariyalur District.

3. The Superintendent of Police,
Ariyalur,Ariyalur District.

4. The Thasildhar,
Ariyalur,Ariyalur District.

5. The District Manager,
The Tamil Nadu State Marketing Corporation Ltd.,
Ariyalur,Ariyalur District.

6. The Assistant Commissioner,
Excise,
Ariyalur, Ariyalur District.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, to direct the respondent to remove or displace the Government owned liquor shop No.6488 (TASMAC) on the Ravuthanpatti Road, Ravuthanpatti Village, Ariyalur.

For Petitioner : Mr.V.Raghavachari

For Respondents : Ms.Jeevitha (for R1 & R5)
for Mr.K.Satish Kumar
Standing Counsel of TASMAC
Mr.Akhil Akbarali (for R2 to R4 & R6)
Government Advocate

ORDER

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

The instant Public Interest Litigation, has been filed for a mandamus, directing the respondents to remove or displace the Government owned liquor shop No.6488 (TASMAC) on the Ravuthanpatti Road, Ravuthanpatti Village, Ariyalur.

2. The petitioner is the resident of Ravuthanpatti Village and he states that there are about 2000 families residing in and around that area. It is a heavily populated area and there are two marriage halls adjacent to the liquor shop. He would further state that there are two temples viz., Arulmigu Pillaiyar Temple and Lord Prasanna Venkatesa Perumal Temple near the liquor shop. He would state that the people in and around that area are not in favour of the liquor shop being located in that place. He would also state that the shop is located in violation of the orders of the Hon'ble Supreme Court, according to which, no liquor shop can be located within 220 meters from a State / National Highway. According to him, shop is at a distance of less than 200 meters from the Highway. Petitioner, therefore, would pray for the closing down of the liquor shop.

3. On notice, respondents have filed the counter. Paragraph Nos.4, 5, 6 & 7, of the counter affidavit, reads as under.

"4. I submit that TASMAC Shop No.6488 was originally located at Kayarlabath Village. I further submit that in view of the Hon'ble supreme Court's orders dated 15.12.2016 and 31.03.2017 in Civil Appeal Nos.12164-12166 of 2016, no liquor vending shops shall be visible from a National or State Highway and situated within a distance of 500 metres of the outer edge of the National or State Highways or of service lane along the Highway and 200 metres in case of areas comprised in local bodies of 20,000 people or less. As the above Shop No.6488 is located within 500 meters from the National or State Highway, it was decided to relocate the Shop No.6488 to the following address: SF No.146/1A2, Kayarlabath Village, Ariyalur Taluk & District.

5) I submit that the above site was selected by a team of officers comprising the 6th respondent and 5th respondent. While selecting the above place, the team has 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 2nd respondent. As per the above Rules, the Shop shall not be located within 50 metres from an educational institution and place of

worship in respect of Corporation and Municipalities and within 100 metres in respect of other places. The new place is also located 500 metres away from National / State Highway. The 2nd respondent after careful perusal of all the relevant records and facts placed before him, came to an independent conclusion and approved the place as suitable for relocation of TASMAC Shop.

6. I submit that the above proposed location is not in violation to any of the norms laid down by the Hon'ble Supreme Court of India or any rules stipulated in Rule 8(1) of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, framed under Tamil Nadu Prohibition Act, 1937.

7. I further submit that the school / place of worship mentioned in the Writ Petition is actually 190 meters away from the proposed site. It is also submitted that the shop is located 410 meters from the National / State Highway."

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

5. Counsel for the petitioner has reiterated his submissions made in the writ petition. He would state that the people in that area were not in favour of the opening of the liquor shop and the will of the people has also to be taken into consideration, if the Court decides to locate the shop.

6. Rule 8 of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, stipulates the distance criteria, which reads as under:

"8. Location of shop:- (1) No shop shall be established in Municipal Corporations and Municipalities within a distance of 50 (fifty) metres and in other areas 100 (hundred) metres from any place of worship or educational institutions: Provided that the distance restriction shall not apply in areas designated as " Commercial" or " Industrial" by the Development or Town Planning Authorities:

Provided further that no shop shall be established within the premises of any hotel:

Provided also that if any place of worship, educational institution comes into existence subsequent to the establishment of the shop, the provisions of this rule shall not apply: Provided also that no liquor shops shall be established in any tribal areas covered under Integrated Tribal Development Project and Hill

Area Development Project in the Hill area of Vellore, Salem, Namakkal, Dindigul, Tirunelveli and Kanniyakumari districts.

(2) Every shop shall be housed in a pukka building and no part of the shops shall be thatched either on the sides or on the roof.

(3) The shop shall be in the location approved by the Collector before commencing the business in the shops.

7. A perusal of the counter affidavit would show that the temples are located in the distance, which is about 190 metres from the liquor shop and it also states that shop is situated about 410 metres away from the State / National Highway. The TASMAL therefore, has not violated any of the conditions stipulated in Rule 8 of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003.

8. The petitioner has not placed any material or record to show that because of the shops that there had been disturbances in that area, for which judicial notice can be taken by this Court.

9. In the absence of any material and in view of the fact that the proposed shop is not in violation or contravention of the provisions of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, there is no impediment in locating the liquor shop at that place.

10. However, in order to satisfy ourselves we also called for the files. A perusal of the files would show that the District Revenue Officer / Senior Divisional Manager, TASMAL, Thiruchirapalli Division, Thiruchirapalli, has made a proposal identifying the shop, proposed to be located and sent the same to the District Collector, Ariyalur and the District Collector, Ariyalur, after satisfying himself about the location of the shop, has approved the proposal for locating the liquor shop at S.F.No.146/1A2, Kayarlabath Village, Ariyalur Taluk & District.

11. In view of the fact that the District Collector, Ariyalur has approved the proposal for locating the liquor shop at S.F.No.146/1A2, Kayarlabath Village, Ariyalur Taluk & District and that there is no violation or contravention of the provisions of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, the instant writ petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
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The Tamil Nadu State Marketing Corporation Ltd.,
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Ariyalur District.

6. The Assistant Commissioner,
Excise,
Ariyalur,
Ariyalur District.

+lcc to Mr. V.Raghavachari, Advocate, S.R.No. 20628
+lcc to Mr. K.Sathish Kumar, Advocate, S.R.No. 20228
+lcc to the Government Pleader, S.R.No. 20504, 20907

सत्यमेव जयते

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PM(CO)
GN(01/04/2019)

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