

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.16975 of 2017

Suyam Prakasan

... Petitioner

Vs.

1. The Managing Director
The Tamil Nadu State Marketing
Corporation Limited
CMDA Tower II, IV Floor
Gandhi Irwin Bridge Road
Egmore, Chennai

2. The District Collector
Ariyalur District
Ariyalur

3. The District Manager
The Tamil Nadu State Marketing
Corporation Limited
SH 157, Super Nagar
Perambalur

... 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 TASMAR shop 6411 in Perambalur - Manamadurai National Highways NH Veerakavalur village, Thirumanur Union, Ariyalur District.

For Petitioner : Mr.S.Mahesh

For Respondents: Mr.B.Nedunchezhiyan,
Standing Counsel for R1 and R3
Mr.Akhil Akbarali, Govt. Advocate
for R2

ORDER

(delivered by S.MANIKUMAR, J)

Petitioner has filed the instant public interest litigation petition for a writ of mandamus, forbearing the respondents from establishing or re-locating the TASMAC Shop No.6411 in Perambalur - Manamadurai National Highways NH Veerakavalur village, Thirumanur Union, Ariyalur District.

2. It is the contention of the petitioner that TASMAC Shop No.6411 was originally situated at Perambalur - Manamadurai National Highways, Veerakavalur Village, Thirumanur Union, Ariyalur District. Pursuant to the guidelines issued by the Hon'ble Supreme Court and the subsequent clarification order passed on 31.3.2017 in C.A. No.12164-12166, the respondents have merely shifted the said shop, from one place to another place, which is not in compliance of the order passed by the Hon'ble Supreme Court. It is the further contention of the petitioner that, presently TASMAC Shop No.6411 is located abetting the National Highways at Veerakavalur Village via Kunnathapuram - Killvattankurichi Road, which is 170 meters from National Highways.

3. It is the further contention of the petitioner that the shop is located in a residential area, which is very near to a bus stop, agriculture field, well and Marriage hall. He has further submitted that there is a thick residential population, in and around the shop. Moreover, the shop is situated within 170 metres from the State Highways.

4. It is the further contention of the petitioner that objecting to the same, general public has made a representation on 18.4.2017. As the said representation was not considered or disposed of by the respondents, petitioner has made another representation dated 1.6.2017, to all the respondents, highlighting the above aspects. As there was inaction on the part of the respondents in considering/disposing of the representation, instant public interest litigation has been filed for the relief stated supra.

5. On behalf of the respondents 1 and 3, District Manager, Tamil Nadu State Marketing Corporation Limited, Perambalur, has filed counter affidavit.

6. On the averments, Mr.S.Mahesh learned counsel for the petitioner, made submissions, for the relief prayed for.

7. Based on the counter affidavit, Mr.S.Nedunchezhiyan, the learned standing counsel for TASMAL Ltd, submitted that the shop in question is situated in Viragalur Village, as per the guidelines issued by the Hon'ble Supreme Court that the population of the said village is 6391 and that as per the guidelines issued by the Hon'ble Supreme Court, where the population is 20,000 or less, the distance between the shop and the National/State Highways should be 220 meters. But this shop is located at a distance of 355 meters from National Highways.

8. It is the further contention of the learned standing counsel for TASMAL Ltd/Respondents 1 and 3 that the shop is located in Viragalur Village Panchayat, and that there is no residential area, bus stop, worship place, educational institutions around 500 meters on all the sides. It is the further submission of the learned standing counsel for TASMAL Ltd/R1 and R3 that there is no thick residential population in and around 2 Kms from the shop. He further submitted that the shop is located as per Rule 8(1) of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003 and that residents of Viragalur village have not made any objection against the TASMAL shop and that there is no merit in the writ petition and that the same be dismissed.

9. We have gone through the counter affidavit of the respondents 1 and 3. Submission of the learned standing counsel for TASMAL Ltd/R1 and R3, made in line with the counter affidavit, is placed on record. There is no rejoinder, rebutting the same. That apart, there is a factual dispute. Courts cannot go into factual disputes.

10. 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/-

सत्यमेव जयते Assistant Registrar (CCC)

//True Copy//

asr

Sub Assistant Registrar

To

1. The Managing Director
The Tamil Nadu State Marketing
Corporation Limited
CMDA Tower II, IV Floor
Gandhi Irwin Bridge Road
Egmore, Chennai

2. The District Collector
Ariyalur District
Ariyalur

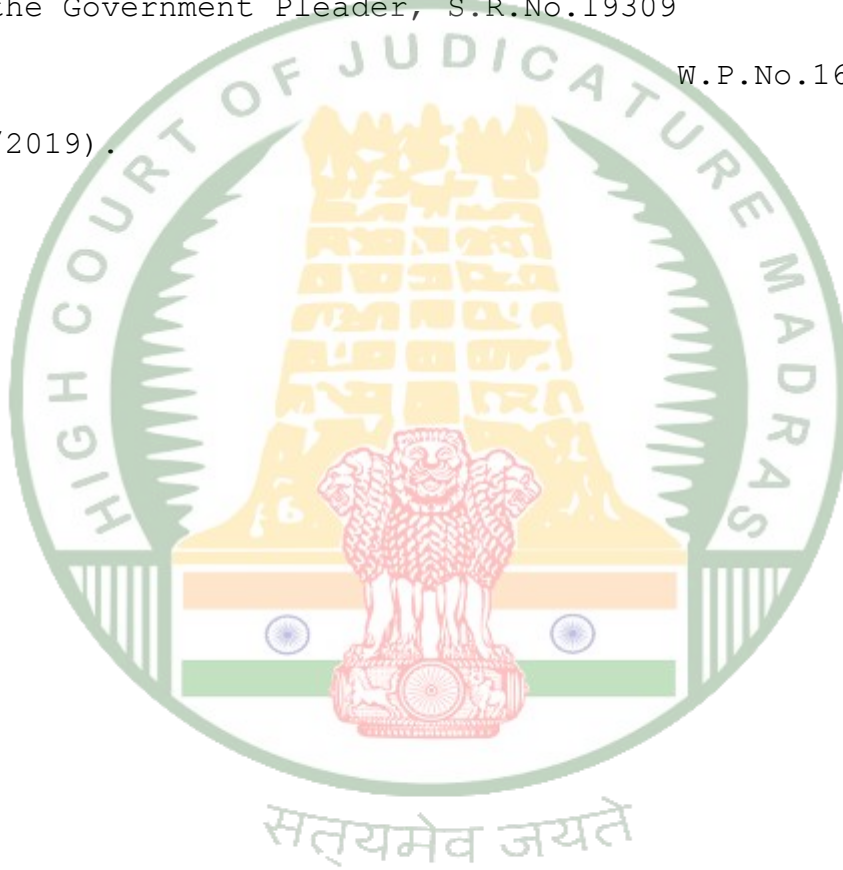
3. The District Manager
The Tamil Nadu State Marketing
Corporation Limited
SH 157, Super Nagar
Perambalur

+1 cc to M/s.K.Sathishkumar, Advocate, S.R.No.19218

+1 cc to the Government Pleader, S.R.No.19309

RR(CO)
SSM(15/04/2019).

W.P.No.16975 of 2017



WEB COPY