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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2019

CORAM:

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

W.P.No.17217 of 2017
and W.M.P.No.18720 of 2017

Veera. Sundaram

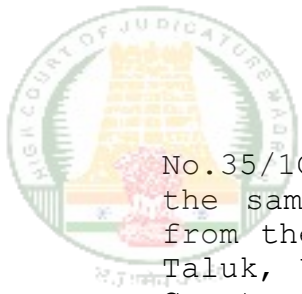
... Petitioner

vs.

1. The Managing Director,
Tamilnadu State Marketing
Corporation Ltd., (TASMAC)
4th Floor, C.M.D.A. Tower II,
Egmore, Chennai - 600 008.
2. The Commissioner of Prohibition
and Excise,
Chepauk, Chennai - 600 005.
3. The District Collector,
Villupuram District.
4. The District Manager,
TASMAC Retail Vending Shops,
TASMAC Ltd.,
Villupuram District.
5. The Superintendent of Police,
Villupuram District.
6. The Tahsildar,
Tindivanam.
- 7.Mannu (alias) Mani

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, forbearing the respondents particularly the District Manager, TASMAC Retail Vending Shops, TASMAC Villupuram District, the Superintendent of Police, Villupuram, the respondents 3 and 5 from opening the TASMAC shop in Survey



No.35/1C1B7 in the agricultural land of the 7th respondent since the same is situated within the prohibited distance 190 meters from the State Highway S.H. 136 in Theevanur Village, Tindivanam Taluk, Villupuram District and also in violation of the Supreme Court order in Civil Appeal Nos.12164 to 12166 of 2016 dated 31.03.2017 and the order in W.P.No.1669 of 2017.

For Petitioner : Mr.K.Balakrishnan
For Respondent Nos.1 & 4 : Mr.K.Sathish Kumar
For Respondent Nos.2, 3, 5 & 6: Mr.Akhil Akbar Ali
Government Advocate
For Respondent No.7 : Mr.J.Karthikeyan

O R D E R

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

A resident of Agoor Village and Post, Tindivanam Taluk, Villupuram District has filed the instant public interest litigation and he has prayed for a writ of mandamus, forbearing the respondents from opening TASMAC shop in Survey No.35/1C1B7 in the agricultural land of the 7th respondent, for the reason that the same is situated within the prohibited distance of 190 meters from the State Highway S.H. 136 in Theevanur Village, Tindivanam Taluk, Villupuram District and also in violation of the Supreme Court order in Civil Appeal Nos.12164 to 12166 of 2016 dated 31.03.2017 and the order in W.P.No.1669 of 2017.

2. It is the case of the petitioner that the respondents have proposed to open a TASMAC shop in Survey No.35/1C1B7 in an agricultural land of the 7th respondent. According to the petitioner, the said shop is in violation of the orders of the Honourable Supreme Court, inasmuch as the shop is a distance of 190 meters from the State Highway S.H. 136. According to the petitioner, no TASMAC shop can be located within 220 meters of the State Highway. It is further stated that the District Collector has not approved location of the shop, as per Rule 8(3) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

3. This Court, by order dated 17.06.2019, directed the District Collector, Villupuram District, the 3rd respondent, to make arrangements to conduct a fresh inspection of the shop by the Taluk Surveyor and submit a report with sketch and measurements.

4.The contesting respondent no.4, has filed his counter. Relevant portion of Paragraph no.7 of the counter, reads as under;



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"7. It is respectfully submitted that the Hon'ble Supreme Court of India have ordered vide Judgment dated 15.12.2016 for the closure of Tasmac shops in National and State Highways and clarified in Civil Appeals No.12164-12166 of 2016 dated 31.03.2017. According to such orders and as provisions contained in Rule 8(i) of the Tamil Nadu Liquor Retail Vending Shops and Bars Rule, 2003, that no such shops shall be established in municipal corporation and municipalities within a distance of 50 meters and in other areas 100 meters from any place of worship or educational institution. In obedience to the orders of the Hon'ble Supreme Court of India stated supra, the existing Retail Vending Shop No.11569 pertaining to Theevanur Village which was functioning in the National Highway N.H.66 Tindivanam to Tiruvannamalai might have been shifted to some other place from the prohibited area. As such and accordingly, immediate steps were taken by the respondents 1 to 6 to relocate the shop to a building away from the prohibited area. The building owned by Thiru.Ashok Kumar, S/o. the 7th Respondent in Survey No.35/1C1B (dry land) of Theevanur Village was traced out. The extent of the building is 192 sq. feet and found to be suitable for relocating the shop. The place was visited by the 4th respondent along with the Village Administrative Officer and a report was submitted by the 4th Respondent to the District Collector, Villupuram District (who is the 3rd respondent herein) for orders (vide letter dated 17.06.2017). The distance between the Retail Vending Shop No.11569 (proposed to be relocated to the house of the Thiru.Ashok Kumar, S/o.Mani. The 7th Respondent) and the educational institution and also the places of worship is more than 100 meters as detailed below:

(1) From the Government High School, Theevanur is 2000 meters.

(2) From the Temple is 1000 meters

(3) From the Church and Mosque is more than 1000 meters.

It is further submitted that in the report it is stated that the building is constructed in the Dry land in Survey No.35/1C1B to the extent of 16 X 12 = 192 Sq.ft. No Educational



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Institutions or worship places are found within 100 meters from that building. The distance between the State Highways Road, Theevanur to Vellimedupettai is 228.6 meters. The village is having a population of below 2000 only. There are no Government or Private Educational Institutions, Place of worship etc. nearby to the building at which the shop No.11569 is proposed to be relocate. No any disturbance or hindrance would be caused to the students or public by relocating the shop to the proposed building. The villagers have also not made any objection at the time of inspection of the spot. On considering the facts contained in the report submitted by the 4th Respondent, and 3rd Respondent issued a order for opening the Shop No.11569 by his proceedings in Na.Ka.L.1/8341/2017, dated 30.09.2017 and the same was opened from 03.10.2017."

5. A perusal of the report of the Deputy Collector would show that the shop is situated beyond the prohibited distance, as laid down in G.O.(Ms.)No.32, Home, Prohibition & Excise (VI) Department, dated 21.05.2018. There is no reason to disbelieve the Survey Report. In the absence of any violation of Rule 8 of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, this Court is not inclined to issue a writ as prayed for, by the petitioner.

6. In view of the above, there is no merit in the Writ Petition. Hence, instant Writ Petition is dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

sri
To

1. The Managing Director,
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5.The Superintendent of Police,
Villupuram District.

6.The Tahsildar,
Tindivanam.

+1 CC to Mr.K.Balakrishnan, Advocate sr 51870.
+1 CC to Mr.K.Sathish Kumar, Advocate sr 51546.
+1 CC to Mr.J.Karthikeyan, Advocate sr 51610
+1 CC to Govt. Pleader sr 52362.

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and W.M.P.No.18720 of 2017

BR(CO)
SP(02/08/2019)