

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.08.2019

C O R A M

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

W.P.No.31296 of 2018
and
W.M.P.No.36479 of 2018

Dhanancheyan

... Petitioner

Vs.

1.The District Collector,
Villupuram District.

2.The Assistant Commissioner,
The Department of Prohibition,
The District Collector office Campus,
Villupuram District.

3.The Managing Director,
TASMAC, CMDA Building,
Egmore, Chennai.

4.The Senior Zonal Manager,
TASMAC, Trichy.

5.The District Manager,
TASMAC, Villupuram,
Villupuram District - 605 602.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 2nd Respondent to consider the petitioner's Representation dated 21.10.2018 and further direct the Respondents 2 to 5 to make alternate place for TASMAC Shop No.11519 Situated at V.Palayam to Thirukovilur Main Road, Villupuram, Shop No.11520 Situated at Railway Station Bus Stop, Pondicherry Main Road, Villupuram, Shop No.11521 Situated at Trichy to Chennai Main Road, Villupuram Katpadi Railway Overbridge Downstair, Villupuram, Shop No.11524 Situated at Trichy Main Road, Villupuram, Villupuram District.

For Petitioner	: Mr.S.Silambu Selvan
For R1 and R2	: Mr.Akhil Akbar Ali
	Government Advocate.
For R3 to R5	: Mr.K.Sathishkumar

ORDER
(Order of the Court was made by S.MANIKUMAR, J)

Petitioner has sought for a Writ of Mandamus, directing the Assistant Commissioner, Department of Prohibition, Villupuram District/the 2nd respondent, to consider his representation, dated 21.10.2018 and to direct the respondents 2 to 5, to make alternate place for TASMAL Shop No.11519 situated at V.Palayam to Thirukovilur Main Road, Villupuram; Shop No.11520 situated at Railway Station Bus Stop, Pondicherry Main Road, Villupuram; Shop No.11521 situated at Trichy to Chennai Main Road, Villupuram Katpadi Railway Overbridge Downstair, Villupuram and Shop No.11524 situated at Trichy Main Road, Villupuram, Villupuram District.

2. In the supporting affidavit petitioner has contended that in Villupuram Municipality, many TASMAL shops, are functioning. Some shops are being operated in the residential area, causing great hardship, to lead peaceful life by the residents, viz., TASMAL Shop No.11519, situated at V.Palayam to Thirukovilur Main Road, Shop No.11520 situated at Railway Station Bus Stop, Pondicherry Main Road, Shop No.11521 situated at Trichy to Chennai Main Road, Villupuram Katpadi Railway Overbridge Downstair, Shop No.11524 situated at Trichy Main Road, Villupuram District.

3. He has further contended that the above mentioned shops, are located on the main road abutting the residential area and causing nuisance and disturbances to the public. Many tipplers in an inebriated condition, are creating high ruckus. Public and transportation, who pass through that area, are highly scared. Many of them, park their two wheelers and four wheelers, and create trouble in that area.

4. He has further contended that within 10 metres distance, from the above shops, main roads going to Ulundhurpet, Thindivanam, Thirukovilur, Pondicherry are situated.

5. He has further contended that near Shop No.11524 within the radius of 50 metres, an Adhidraavidar Ladies Hostel is there. Moreover, "Sri Ramakrishna Higher Secondary School, is also nearby.

6. Based on the judgment of the Hon'ble Supreme Court in M.A Nos.489 to 491 of 2018 and other connected MAs/IAs in Civil Appeal Nos.12164 to 12166 of 2016, dated 23.02.2018 and orders of the Hon'ble Supreme Court of India in Special Leave to Appeal No.11581 of 2018, dated 14.05.2018, guidelines have been issued

by Government of Tamil Nadu in G.O.(Ms)No.32 Home, Prohibition and Excise (VI) Department, dated 21.05.2018, regarding the issue of new/renewal of licenses to various establishments, under Tamil Nadu Liquor (License and Permit) Rules, 1981 and Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, in which it was clearly mentioned that,

"(v) No Shop for the sale of Liquor shall be (i) Visible from a National or State Highway; (ii) directly accessible from a National or State Highway and (iii) situated within a distance of 500 Metres of the outer edge of the National or State Highway or of a service lane along the Highway."

7. In this regard, petitioner has sent a representation dated 21.10.2018 to the respondents 1 to 4. Respondents did not take any action. For the abovesaid reasons, petitioner has filed the instant writ petition, for the prayer, as stated supra.

8. Responding to the notice, the District Manager, TASMAC, Villupuram/the 5th respondent, has filed a counter affidavit, dated 28.12.2018, which reads thus:-

"(i) District Manager, TASMAC, Villupuram/the 5th respondent has submitted that there are totally 9 retail vending shops in Villupuram Municipality, and all shops are located, as per rules.

(ii) 5th respondent has further submitted that TASMAC Shop Nos.11519, 11520, 11521 and 11524, all are located, as per G.O.(Ms).No.32, Home, Prohibition and Excise (VI) Department, dated 21.05.2018. The Hon'ble Supreme Court, vide Special Leave to Appeal (C) No.11581 of 2018, dated 23.05.2018, issued order that, the Tamil Nadu State Government, is free to give effect to this G.O.(Ms).No.32, Home, Prohibition and Excise (VI) Department, dated 21.05.2018. The said 4 TASMAC shops, are located in Villupuram Municipality limit, as per the Rule 8(1) of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

(iii) He has further submitted that the abovesaid TASMAC shops, functioning at Mambazhapattu Road, Villupuram, was only reopened, at the present address, on 11.06.2018. In this building, TASMAC shop was functioning since 2006 within 50 meters, there is no place of worship and educational institutions, near to TASMAC Shop No.11519. Government High School is located 1500 meters away, a Balamurugan Temple, is located 600 meters away and a mosque, is located 550 meters away from the said TASMAC shop.

(iv) TASMAC Shop No.11520, is functioning at Jawaharlal Nehru Road, Villupuram, from 01.10.2018. Since November 2003, adjacent to the above location the retail vending shop, had functioned and closed, due to dilapidated condition of the building.

(v) Within 50 meters, there is no place of worship and educational institutions near to TASMAC Shop No.11520. Muthu Mariamman Temple, is located 303 meters away from TASMAC Shop No.11520. Further, a bus stop, is located 100 meters away from the retail vending shop and the said TASMAC shop, is not visible to the public and there is no hindrance to the public, to access the bus stop.

(vi) TASMAC Shop No.11521, is reopened on 02.06.2018 in the existing location and this shop has been functioning, in the same location, since 2005. Within 50 meters, there is no place of worship and educational institutions near to the said TASMAC shop. Murugan Temple, is located 287 meters away.

(vii) TASMAC Shop No.11524, is located at Trichy road, Villupuram, from 06.10.2018. In this same locality a retail vending shop was functioning since 2006 to March 2017, without any hindrance to the public. Within 50 meters there is no place of worship and educational institutions nearby to TASMAC shop number 11524. An ECI Church is located 192 meters away, a Ganabathya temple is located 290 meters away, a Ramakrishna matriculation school is located 605 meters away and Aadhi Dravida ladies hostel is located 130 meters away.

(viii) TASMAC Shop Nos.11520, 11521 and 11524, are located in business and commercial area. In Villupuram Municipality, there are 9 retail vending shops functioning and all the shops, are within the norms. Writ petitioner personally chose these 4 shops alone only for the reason that he was motivated by the third parties.

(ix) The abovesaid 4 TASMAC shops are functioning as per Rule 8(1) of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, G.O.(Ms).No.32, Home, Prohibition and Excise (VI) Department, dated 21.05.2018 and as per the order of the Hon'ble Supreme Court and no hindrance to the petitioner business, without any reasonable data with mala fide intention the petitioner had approached the Hon'ble Court for his personal cause.

(x) He has denied the averments made in paragraph No.3 of the affidavit. Before opening of the retail vending shops the location field inspected by the Excise Officials, Revenue Department and after fulfilling Rule 8(1) of Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 and G.O.(Ms) No.32, Home, Prohibition and Excise (VI) Department, dated 21.05.2018. District Collector, Villupuram District, has finally issued order for location of the retail vending shop, in the abovesaid place."

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

10. G.O.(Ms)No.32 Home, Prohibition and Excise (VI) Department, dated 21.05.2018, is extracted hereunder:-
Order:

The Hon'ble Supreme Court of India in its order dated 15.12.2016 in T.P.(C) Nos. 739-741 of 2016 in SLP (Civil) Nos. 12164-12173 of 2016 issued the following directions:-

(i) All States and Union Territories shall forthwith cease and desist from granting licences for the sale of liquor along National and State highways.

(ii) The prohibition contained in Para 29.1 above shall extend to and include stretches of such highways which fall within the limits of a municipal corporation, city, town or local authority;

(iii) The existing licences which have already been renewed prior to the date of this order shall continue until the term of the licence expires but no later than 1-4-2017;

(iv) All signage and advertisements of the availability of liquor shall be prohibited and existing ones removed forthwith both on National and State highways;

(v) No shop for the sale of liquor shall be (i) visible from a national or State highway; (ii) directly accessible from a national or State highway; and (iii) situated within a distance of 500 m of the outer edge of the national or State highway or of a service lane along the highway.

(vi) All States and Union Territories are mandated to strictly enforce the above directions. The Chief Secretaries and Directors General of

Police shall within one month chalk out a plan for enforcement in consultation with the State Revenue and Home Departments. Responsibility shall be assigned, inter alia, to District Collectors and Superintendents of Police and other competent authorities. Compliance shall be strictly monitored by calling for fortnightly reports on action taken.

(vii) These directions issue under Article 142 of the Constitution.

2. In a Modification Petition filed by the State of Tamil Nadu, the Hon'ble Supreme Court of India, by order dated 31.03.2017 in IA Nos.4-42 in Civil Appeal Nos. 12164-12166 of 2016 has modified the direction (v) above as follows:

"In the case of areas comprised in local bodies with a population of 20,000 people or less, the distance of 500 metres shall stand reduced to 220 metres".

3. In this connection, in his letter ninth read above, the Commissioner of Prohibition and Excise (i/c) has stated that, pursuant to the directions of the Hon'ble Supreme Court, all District Collectors were instructed to close the FL1, FL2, FL3, FL3A, FL3AA and FL11 licenses located within a distance of 500/220 metres (as the case may be) from the outer edge of National / State Highways / service lane along the highways with effect from 01.04.2017. The compliance reports have also been received in this regard.

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5. In view of the order of the Hon'ble Supreme Court dated 11.07.2017 in SLP (Civil) No.10243/2017 and based on the legal opinion received from the Advocate General of Tamil Nadu, appropriate instructions were issued by the Commissioner of Prohibition and Excise to the District Collectors vide letter No.P&E 2(4)/12740/2016, dated 01.09.2017 to permit all FL1 to FL11 licensed establishments which are located within the limits of Municipal Corporations, Municipalities and Town Panchayats to function with immediate effect.

.....

17. The Commissioner of Prohibition and Excise has further stated that FL1 and FL11 licenses are issued for retail vending of liquor in shops. He has requested the Government to issue instructions

to the District Collectors that wherever the shops are located / proposed to be located within the municipal areas (i.e., Municipal Corporations, Municipalities and Town Panchayats) and areas mentioned in Para 15 above, the District Collectors can grant approval for location of the retail vending liquor shops on a case by case basis after causing filed inspection, if they are in accordance with Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003. They must also ensure that these shops (which are in the highways or within such distance from the highways as laid down by the Hon'ble Supreme Court in its orders dated 15.12.2016 and 31.03.2017) should fall in any one of the following categories:-

a) Where By-passes for Municipal area (i.e., Municipal Corporations, Municipalities and Town Panchayats) and areas mentioned in Para 15 above have been constructed, long distance travelers take the by-pass road while commuting from one city/town/village to another city/town/village. Even though by-passes have been constructed, the stretches of Highways passing within such areas continue to be classified as Highways for the purpose of maintenance from the maintenance allotment of Government funds. These stretches of roads essentially provide connectivity within the local self-governing body. There are a number of traffic regulations and speed regulations within these areas. In cities, heavy vehicles like trucks are not allowed to enter the city limits during the day time. Hence, wherever by-passes have been constructed for a municipal area (Corporations, Municipalities and Town Panchayats) or an area mentioned in Para 15 above, the roads classified as Highways and passing within such local self-governing body can be considered for location of shops.

b) There are roads classified as Highways which originate and terminate within the limits of a local self-governing body or a Statutory Development Authority. These are short stretches of road which essentially provide connectivity within the local self-governing body or the Statutory Development Authority. These stretches of road are subject to traffic regulations and speed regulations like any other city/town road. They do not connect one city/town with another city/town. Hence, in a municipal area (Corporations,

Municipalities and Town Panchayats) or an area mentioned in Para 15 above, wherever the highways road originates and terminates within the local self-governing body or the statutory development authority, applications for new/renewal of licenses can be considered on these roads.

c) As per G.O.Ms.No.451, Transport Department, dated 12.04.1984, whenever a by-pass is formed or if there is an re-alignment of National Highways, the old National Highways stretches which are abandoned are handed over to the State Highways Department for maintenance and re-classified as State Highways (Urban stretches). These are essentially roads which have been abandoned by the National Highways after formation of by-pass/re-alignment. These roads are of very short length, most of them are below 20 kilometers. Long distance travelers and heavy vehicles do not use these roads for travel. These roads provide connectivity within a city/town. These roads have been classified as State Highways (Urban stretches) for the purpose of maintenance from the maintenance allotment of State funds. Hence, applications for location of a shop in a State Highways (Urban Stretches) road in a municipal area (Corporations, Municipalities and Town Panchayats) or an area mentioned in Para 15 above can be considered for locations of shops.

d) Areas within a Municipal area (Corporations, Municipalities and Town Panchayats) or an area mentioned in Para 15 above, which are classified as 'Commercial' in an approved Development plan can be considered for grant of licenses, since these are commercial centres and market places essentially catering to the needs of the residents of the nearby areas of the concerned local self-governing body.

18. The Commissioner of Prohibition and Excise has further suggested that, in the case of FL1 and FL11 (retail vending shops) licensees who are not located in a municipal area or an area mentioned in Para 15 above, the distance criteria on/from the Highways, laid down by the Hon'ble Supreme Court in its orders dated 15.12.2016 and 31.03.2017 needs to be followed."

11. Though the District Manager, TASMACH, Villupuram/the 5th respondent in his counter affidavit, dated 28.12.2018, has stated that, location of the above 4 TASMACH Shops, is

permissible, as per Rule 8(1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 and prayed for dismissal of the writ petition, on this day, when the matter came up for further hearing, on the basis of the instructions furnished in R.C.No.A1/11524/2019, dated 20.08.2019, by the Deputy Collector/District Manager, TASMAC, Villupuram, Mr.K.Sathishkumar, learned counsel appearing for respondents 3 to 5, submitted that out of four TASMAC Shop Nos.11519, 11520, 11521 and 11524, in view of the construction of railway overbridge and usage thereof and also the law and order problem, TASMAC Shop Nos.11521 and 11524 have been closed on 06.01.2019 and 19.06.2019 respectively. He further submitted that other TASMAC Shop Nos.11519 and 11520 are functioning, in accordance with the rules.

12. Though the petitioner has sought for a Mandamus, to consider his representation, dated 25.10.2018, to close down the abovesaid four TASMAC Shops, taking note of the averments made in the counter affidavit and the rules stated supra, two TASMAC shops have been closed from the dates, as stated supra and other two TASMAC shops are functioning in accordance with rules. In such view of the matter, there is no need to issue any mandamus, as prayed for. However, this Court is of the view that if closure of TASMAC Shop Nos.11521 and 11524 respectively, has resulted in peace in the particular area, there is no need to open TASMAC shop afresh, in the said place.

13. With the above observation, instant writ petition is disposed of. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The District Collector,
Villupuram District.
- 2.The Assistant Commissioner,
The Department of Prohibition,
The District Collector office Campus,
Villupuram District.

3.The Managing Director,
TASMAC, CMDA Building,
Egmore, Chennai.

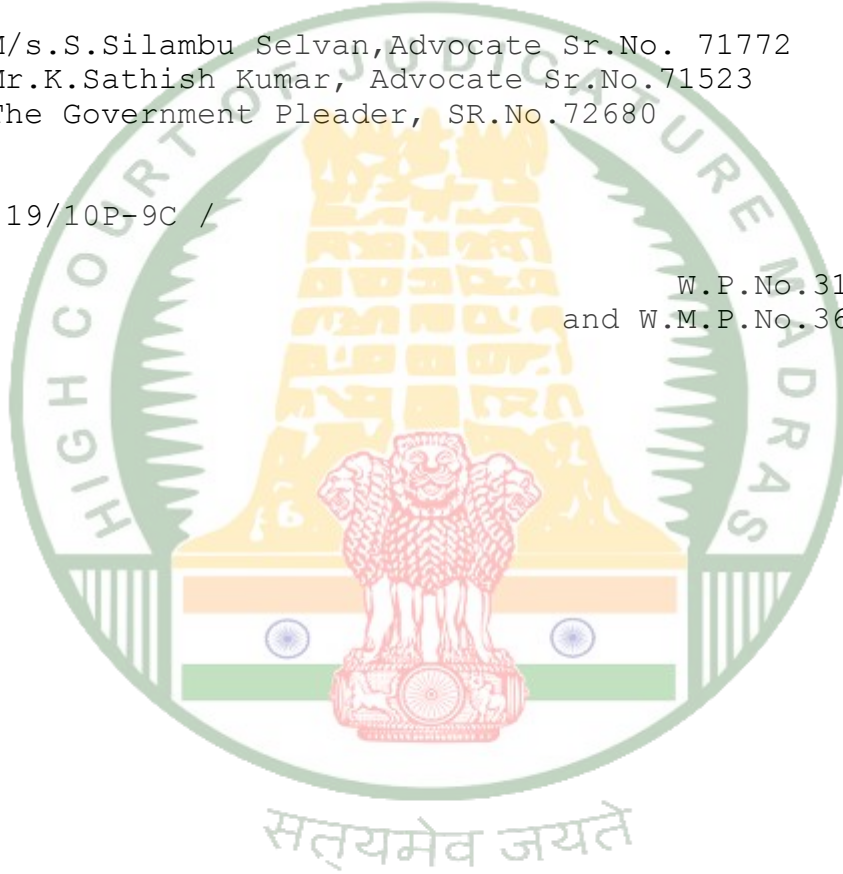
4.The Senior Zonal Manager,
TASMAC, Trichy.

5.The District Manager,
TASMAC, Villupuram,
Villupuram District - 605 602.

+1 cc to M/s.S.Silambu Selvan,Advocate Sr.No. 71772
+1 cc to Mr.K.Sathish Kumar, Advocate Sr.No.71523
+1 cc to The Government Pleader, SR.No.72680

AKM/23.09.19/10P-9C /

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