

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.2.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.34283 of 2018 and
W.M.P. Nos.39845 of 2018 and 4488 of 2019

S.P.Gandhi

.. Petitioner

Vs.

1. The District Collector
Kancheepuram District
Kancheepuram

2. The Tamil Nadu State Marketing
Corporation Limited (TASMAC)
Rep. by its Managing Director
Thalamuthu Natarajan Maaligai
Gandhi-Irwin Road
Egmore, Chennai-08

3. The District Manager
The Tamil Nadu State Marketing
Corporation Limited (TASMAC)
Kancheepuram District
Kancheepuram

4. The Inspector of Police
Pallavaram Police Station
Chennai 600 043

5. G.Kuppan
(Impleaded vide order of the court
dated 12.2.2019)

.. Respondents

Writ petition filed under Article 226 of the Constitution of India, for a Writ of Mandamus, forbearing the 2nd and 3rd respondents from opening a TASMAC Shop No.4076 in Railway Station Road, Pallavaram and close the TASMAC Shop No.4514 which was opened on 3.12.2018 in the premises of Pallavaram Bus stand based on the petitioner's representation dated 4.12.2018 and consequently to direct the respondents to ensure that not to

open the TASMAL shops in Pallavaram Bus Stand and Pallavaram Railway station road.

For Petitioner : Mr.M.Rajendiran

For Respondents: Mr.E.Manokaran,
AGP for R1 and R4
Mr.P.Arumugarajan for R2&R3
Standing Counsel for TASMAL

ORDER

(Delivered by S.MANIKUMAR, J.)

Contending inter alia that opening of TASMAL shop No.4514 located inside Pallavaram Bus stand and another TASMAL shop No.4074 which is proposed to be opened in Railway Station Road, Pallavaram, would cause inconvenience to the passengers, public, students and others, petitioner, has sent a representation dated 4.12.2018 for closure of TASMAL Shop No.4154, and sought for a restraint order, in respect of shop No.4074.

2. Contending that there was inaction on the representation dated 4.12.2018, petitioner has sought for a Writ of Mandamus, forbearing the 2nd and 3rd respondents from opening TASMAL Shop No.4074 in Railway Station Road, Pallavaram and close TASMAL Shop No.4514, opened on 3.12.2018 in the premises of Pallavaram Bus stand and consequently, sought for a direction to the respondents not to open TASMAL shops in Pallavaram Bus Stand and Pallavaram Railway station road.

3. Earlier, when the matter came up for hearing, we perused the photographs submitted by the petitioner who contended that TASMAL shop is located inside Pallavaram bus stand and observed that TASMAL shop No.4514 though does not fall within the prohibited distance in terms of Rule 8(1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, but found that there is proximity with a big bus stand, and likely to cause nuisance and inconvenience to the passengers, students and general public. Location of shop No.4154 is just behind the bus stand at a distance of 10 to 15 feet.

4. Having regard to the observation made by this court, District Manager, Kancheepuram (North) District, TASMAL Ltd./respondent No.3 has issued a proceedings in reference No.4514/A6/2018 dated 9.2.209, permanently closing TASMAL Shop No.4514 situated at Door No.1/23, GST Road, Esa Pallavaram, Pallavaram Taluk. Proceedings dated 9.2.2019 of the District Manager, Kancheepuram (North) District, TASMAL Ltd, is reproduced.

PROCEEDINGS OF DISTRICT MANAGER, KANCHEEPURAM (NORTH)
DISTRICT, TAMIL NADU STATE MARKETING CORPORATION
LIMITED

Presented by: Tm.Maheswari, M.B.A.,

Ref. No.4514/A6/2018

Date: .02.2019

Subject: TASMAC Ltd., - Kancheepuram (North) Dt. -
Permanently closure of TASMAC Shop No.4514
located in GST Road, Esa Pallavaram, Pallavaram
Taluk and relocate to some other place - order
issued - Regarding.

Ref: 1. Proceedings of District Collector,
Kancheepuram District Collector, Kancheepuram
vide Ref. No.22337/2018/V1 dated 27.11.2018.

2.WP No.34283/2018 filed before the Hon'ble High
Court, Madras.

Order

As stated in the proceedings of District
Collector, Kancheepuram cited in the above 1st
reference, TASMAC Shop No.4514 was opened in Door
No.1/23, GST Road, Esa pallavaram, Pallavaram Taluk on
03.12.2018. In view of Public Objection regarding the
location of the said Shop in the above said address
and a Public interest litigation cited in the above
2nd refernece, been filed before the Hon'ble High
Court Madras, the said shop had been temporarily
closed from 4.2.2019. Now it has been decided that
TASMAC Shop No.4514, situated at Door No.1/23, GST
Road, Esa Pallavaram, Pallavaram Taluk, shall be
permanently closed in the above address and relocated
to some other suitable place with effectively.

District Manager
Kancheepuram (North) Dt.,
TASMAC Ltd.

Copy to

Concerned Shop Supervisor.

5. Ms.S.Maheswari, Manager, TASMAC/respondent No.3 is
present. On instructions, from him, Mr.P.Arumugarajan, learned
standing counsel for respondents Nos.2 and 3, submitted that a
decision has also been taken by the said authority to relocate

the proposed shop No.4076 in Railway Station Road, Pallavaram, to some other place.

6. Mr.G.Kuppan, who has been granted licence to run a bar alongside the proposed Shop No.4514, has filed W.M.P. No.4488 of 2019 in W.P. No.34283 of 2018 for impleading him as one of the party respondents in W.P. No.34283 of 2018 on the grounds inter alia that the relief prayed for in the said writ petition if granted, his rights to run the bar would be affected. According to him, respondent No.3 has already sent proposals to locate shop No.4074 in Railway Station Road and that the District Collector, Kancheepuram District/respondent No.1, has accepted the proposals. But due to pendency of W.P. No.34283 of 2018, no order was issued. Hence the proposed impleading party was constrained to file W.P. No.33123 of 2018 for a mandamus directing the respondents to forthwith implement the order of the District Collector dated 27.11.2018 in Na.Ka.2236/2018/VI and the consequential order of the Respondent dated 29.11.2018 in Na.Ka.No.4074/A6/2018 to open the TASMAC Shop No.4074 in the petitioner premises bearing Door No.26/11 Survey Nos.373 373/6 and 373/7 (Part) Railway Station Road Jameen Pallavaram, Pallavaram Taluk Kancheepuram District, and that the said writ petition is pending before a learned single Judge.

7. Earlier, when the matter came up for hearing, learned counsel for the proposed party submitted that the learned single Judge is awaiting the orders made in W.P. No.34283/2018. Today, it is the contention of the learned counsel for the proposed party that as per Rule 8(1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, District Manager, Kancheepuram (North) District, Tamil Nadu State Marketing Corporation Limited (TASMAC), is not the competent authority to decide the location of the shop and it is only the District Collector, who can decide, we are not inclined to accept the said submission for the reason that the District Manager, TASMAC, the said authority has proposed the location of the shop and ultimately, the District Collector can decide. Inasmuch as the learned counsel for the proposed party made submissions, on the merits of the case, in W.P. No.34283/2018, filed, we are to delve into the merits and answer the submissions. On the averments and submissions, we deem it fit to implead the proposed party as one of the respondents in the present W.P. No.34283 of 2018, W.M.P. No.4488 of 2019 (impleading petition) is ordered. Registry is directed to make necessary amendments. Though on an earlier occasion, there is no other alternative except, a decision has been taken by the District Manager, Kancheepuram (North) District, proposing the location and that the District Collector has passed an order, the proposer can always change the decision and resubmit a fresh proposal. That apart, when a fresh proposal is made by the

District Manager, TASMAC, for relocation, writ petitioner, as a matter of right, cannot insist that the District Collector, should take a decision only as per the proposals made and not independently decide where the shop should be located. Such a direction if any to be issued would amounting to interfering with the powers of the District Collector, to act independently. De hors the report/proposal of the District Manager, still the District Collector, can decide independently, based on materials on record.

8. Yet another factor to be considered is that the proposed party, who seeks to implead himself has not even been issued with a licence. Licence to run the bar goes along with the location of the shop. It is well known that IMFL shops are run by TASMAC and the place is chosen according to the sale potential, place to locate the bar, in terms of Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003. In any event, bar licensee has no right to insist that a shop should be located at a particular place and accordingly seek for a mandamus. In view of the above discussion, we do not find any fault on the part of the District Manager, Kancheepuram (North) District, TASMAC Ltd./respondent No.3 in the instant writ petition to take a decision to relocate the shop in Railway Station Road.

In the result, writ petition is disposed of as observed. No costs. Consequently, W.M.P. No.39845 of 2018 is closed. After passing of orders in this writ petition, Mr.V.Srikanth, learned counsel for the impleaded party submitted that W.P. No.33123/2018 filed for a mandamus, directing the respondents to forthwith implement the order of the District Collector dated 27.11.2018 in Na.Ka.2236/2018/VI and the consequential order of the Respondent dated 29.11.2018 in Na.Ka.No.4074/A6/2018 to open the TASMAC Shop No.4074 in the petitioner premises bearing Door No.26/11 Survey Nos.373 373/6 and 373/7 (Part) Railway Station Road Jameen Pallavaram, Pallavaram Taluk Kancheepuram District, would be withdrawn. Submission is placed on record.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

Asr

To

1. The District Collector
Kancheepuram District
Kancheepuram
2. The Tamil Nadu State Marketing
Corporation Limited (TASMAC)
Rep. by its Managing Director
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The Tamil Nadu State Marketing
Corporation Limited (TASMAC)
Kancheepuram District
Kancheepuram
4. The Inspector of Police
Pallavaram Police Station
Chennai 600 043

+1cc to M/s.M.Rajendran, Advocate in sr.no.12363
+1cc to M/s.R.Vijayakumar, Advocate in sr.no.14203
+1cc to Government Pleader, in sr.no.12335

W.P.No.34283 of 2018 and
W.M.P. No.39845 of 2018
and W.M.P. No.4488 of 2019

SJ(CO)
CS/27/06/2019

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