

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11/3/2019

C O R A M

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

W.P.No.33446 of 2018

V. Rajiv

...Petitioner

Vs

1. The District Collector
Collectorate Office
Kancheepuram District.
2. The District Manager
Tamil Nadu State Marketing Corporation
(TASMAC)
Kancheepuram District.

...Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, directing the respondents not to open TASMAC shop at the entrance of Grand Heritage Apartment, Kundrathur Main Road, Kovur Village (Nearer to Government High School Kovur, Joseph Arts and Science College and the Heritage Vinayagar Temple) and to consider the petitioner's representation/letter to the respondents, dated 29/10/2018 and 19/11/2018.

For petitioner : Mr.D.Padmanabhan

For Respondents: Mr.E.Manoharan
Additional Government Pleader
for R1
Mr.P.Arumugarajan
for R.2.

O R D E R

(Order of the Court was made by S.Manikumar, J)
Mr.V.Rajiv, claiming himself to be a public interest litigant and a resident of Grand Heritage Apartment, Kundrathur main road, Kovur Village, is stated to have submitted a

representations, dated 29/10/2018 and 19/11/2018, to the District Collector, Kancheepuram District and the District Manager, Tamil Nadu State Marketing Corporation (TASMAC), Kancheepuram District, respondents 1 and 2 respectively, not to open TASMAC shop, on the proposed site, on the grounds inter alia that it would lead to law and order problem, children and women would not be in a position to freely commute.

2. Material on record discloses that Grand Heritage Apartment, Kundrathur main road, Kovur Village, has also made a similar representation, dated 19/11/2018, opposing the location of the shop, on the grounds inter alia that there are 40 houses in the said apartment. Further, contending inter alia that the said representations remain unanswered, instant writ petition has been filed for a mandamus, to direct the respondents, not to open TASMAC shop at the entrance of Grand Heritage Apartment, Kundrathur Main Road, Kovur Village (Nearer to Government High School Kovur, Joseph Arts and Science College and the Heritage Vinayagar Temple) and to consider the petitioner's representations, dated 29/10/2018 and 19/11/2018.

3. Material on record discloses that on 2/1/2019, a Hon'ble Division Bench of this Court, has passed the following orders:-

"The matter in issue pertains to opening of a TASMAC shop, which is said to be in violation of the relevant Norms and Rules.

2 The learned counsel for the petitioner would submit that after obtaining necessary planning permission and permit, he has put up a Multi-storeyed building to house very many tenements and right at the entrance, a new TASMAC shop is sought to be opened and within 400m away from the proposed place in which the present TASMAC shop is going to be opened, another TASMAC shop is located and since the same is in violation of the relevant Rules and Norms, prays for interim orders.

3 Notices to the respondents through Court as well as privately returnable on 28.01.2019.

4 Mr.E.Manoharan, learned Additional Government Pleader accepts notice on behalf of the 1st respondent and Mr.P.Arumugarajan, learned Standing counsel accepts notice on behalf of the 2nd respondent.

5 In the light of the submissions made and on going through the materials placed, this Court

is of the considered view that a prima facie case has been made out for grant of interim orders.

6 Hence, there shall be an order of ad-interim direction, forbearing the respondents from opening a new TASMAL Shop at the entrance of the Grand Heritage Apartment, Kundrathur Main Road, Kovur Village, Kancheepuram District, till 28.01.2019.

7 Call on 28.01.2019. Counter affidavits of the respondents with supporting documents, if any, with photographs by then."

4. Thus, there is an interim injunction, forbearing the respondents, from opening a new TASMAL shop, at the entrance of the Grand Heritage Apartment, Kundrathur Main Road, Kovur Village, Kancheepuram District.

5. On instructions, from the District Manager, TASMAL Limited (North) Kancheepuram District, in R.C.No.4192/A1/18, dated 31/1/2019, Mr.P.Arumugarajan, learned counsel for the District Manager, TASMAL Limited, Kancheepuram submitted that Shop No.4192, was earlier located at Mudichur Road, Tambaram and sought to be relocated. A survey has been conducted and finding that the proposed relocation was not within the prohibited distance, proposals were made to locate the shop, at the subject place. At this juncture, Grand Heritage Apartment, Kundrathur Main Road, Kancheepuram District, submitted an objection, as stated supra.

6. Considering the objection, vide proceeding, in R.C.No.3130/A1/2018, dated 7/11/2018, Grand Heritage Apartment, Kundrathur Main Road, Kancheepuram District, was instructed to appear at 11.00 a.m., on 16/11/2018.

7. On the said date, nobody appeared. District Manager, Kancheepuram (North) District has stated that location of the proposed shop, is within Rule 8 (1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003.

8. Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, reads thus:-

"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."

9. According to the District Manager, Kancheepuram (North) District, the proposed TASMACHOP is not within the prohibited distance and there is no educational institution or place of worship. Further, proposed location of the shop is in terms of G.O.Ms.No.32, dated 21/5/2018.

10. It is trite law that the public interest writ petition is filed to espouse the cause of poor and others who cannot approach the Courts. Even otherwise, public interest litigation can also be filed when there is a genuine public interest. On the facts of this case, it could be deduced that the petitioner is one of the residents of Grand Heritage Apartment, Kundrathur Main Road, Kovur Village, Kancheepuram District and is only espousing his personal interest and not the entire public at large.

11. In one of the decisions made in WP No.3666 of 2019 between Kongu Nadu Saandror Kula Nadar Munnetra Sangam, rep. by its President Vs. State, rep. by the Chief Secretary, Fort St. George, Chennai and 3 others, dated 7/2/2019, this Court has summarised the pronouncements of the Hon'ble Supreme Court, which we deem it fit to reproduce.

" 4. Of late, we can notice a growing trend in the abuse of public interest litigation. Public Interest Litigation was intended to secure the justice for poor and the weaker section of the community, who

were not in a position to protect their own interests.

5. The Hon'ble Supreme Court, has time and again, observed that there is, in recent years, a feeling which is not without any foundation that public interest litigation is now tending to become publicity interest litigation or private interest litigation and has a tendency to be counterproductive. PIL is not a pill or a panacea for all wrongs. It was essentially meant to protect basic human rights of the weak and the disadvantaged and was a procedure which was innovated where a public-spirited person files a petition in effect on behalf of such persons who on account of poverty, helplessness or economic and social disabilities could not approach the court for relief. {Refer BALCO EMPLOYEES' UNION (REGD) Vs. UNION OF INDIA AND OTHERS {2002 (2) SCC - 333}.

6. The present writ petition cannot be said to be in public interest. This petition seems to be purely motivated by a desire to seek publicity. In fact, the Hon'ble Supreme Court, has held that by filing vexatious and frivolous petitions, the queue standing outside the doors of the Court never moves which piquant situation creates frustration in the minds of the genuine litigants and resultantly, they lose faith in the administration of judicial system.

7. A reading of instant writ petition would show that there is nothing in this petition which can be said in public interest. It does not advance any cause of the poor and down trodden. ..."

12. In the light of the decisions of the Hon'ble Supreme Court, we are of the view that instant writ petition has to be dismissed. Accordingly, instant writ petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

mvs

sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

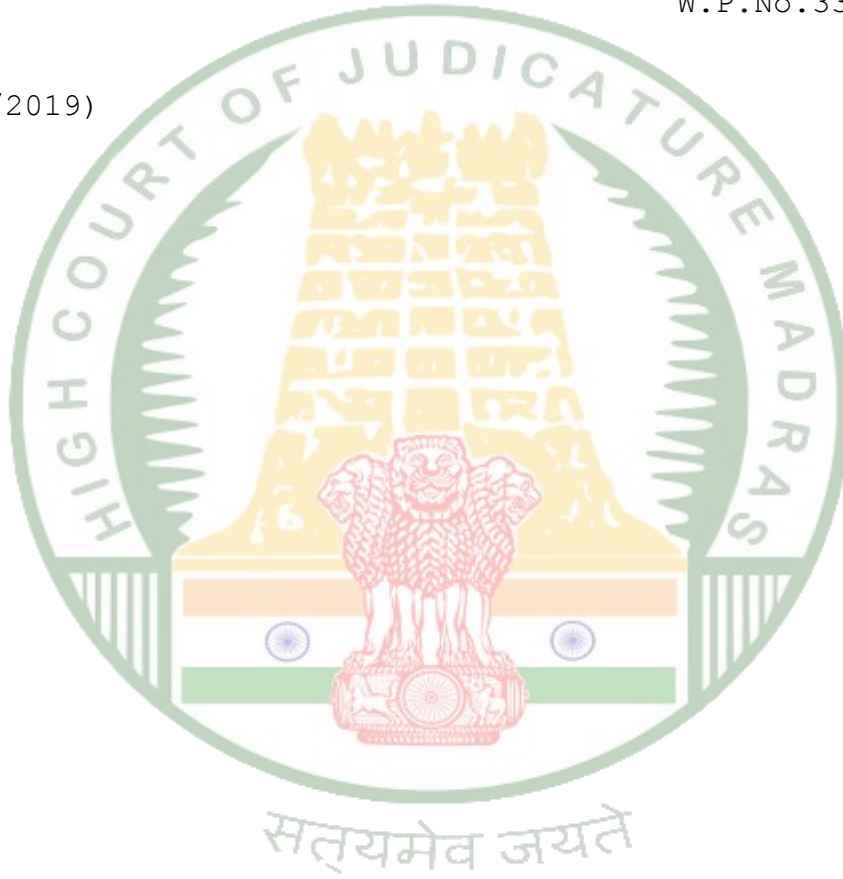
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+1cc to Mr.P.Arumugarajan, Advocate, S.R.No.22357
+1cc to the Government Pleader, S.R.No.23123

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kak(15/03/2019)



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