

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.NO.34200 OF 2018

PGPM Welfare Trust
Represented by its President
S.Ganesan, S/o. P.Sengottaiyan
No.19/7, Velusamy Street
Municipal Colony, Erode - 638 004

..Petitioner

.Vs.

1.The Collector
Collectorate Building, Erode

2. Executive Officer
Kilambadi Village
Vattakal Valasu Main Road
Malayapalayam (PO)
Erode

3.The District Manager
IMFS Depo, TASMAL Ltd.,
TASCO Building
Suriyampalayam, Erode

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the respondents to close the TASMAL Shop No.3557 in S.F.No.93/1 of Kilambadi Village, Shalangapalayam, Erode District to consider the petitioner's representations dsated 22.09.2018 and 21.11.2018.

For Petitioner : Mr.S.A.Sayed Shuhaibb

For Respondent : Mr.R.P.Pratap Singh
Government Advocate for R1

Mr.I.Sathish Kumar for R2
Mr.K.Sathish Kumar for R3

ORDER

Mr.S.A.Sayed Shuhaibb, learned counsel representing the counsel on record for writ petitioner is before this Court. Mr.R.P.Pratap Singh, learned Government Advocate on behalf of

first respondent and Mr.K.Sathish Kumar, learned counsel for 'Tamil Nadu State Marketing Corporation Limited' ('TASMAC' for brevity) on behalf of third respondent are before this Court. Mr.I.Sathish Kumar, learned counsel has entered appearance on behalf of second respondent.

2. With consent of all the learned counsel, main writ petition is taken up and is being disposed of.

3.Writ petitioner, which claims to be a Trust, has filed the instant writ petition.

4.Considering the trajectory of the instant writ petition thus far, the question of locus qua writ petitioner is left open. To be noted, locus of writ petitioner is assailed by the respondents.

5. Be that as it may, considering the trajectory of the hearing thus far and more particularly the hearing today, suffice to say that instant writ petition pertains to a TASMAC retail vending shop being 'TASMAC Shop No.3557 in S.F.No.93/1 of Kilambadi Village, Shalangapalayam, Erode District' (hereinafter 'said location' for brevity).

6. Instant writ petition pertains to objections qua said location.

7. Though several averments have been made in the affidavit filed in support of the writ petition, no specific rule violation has been pointed out in the hearing.

8. Opening of retail vending outlets by TASMAC is governed by a set of Rules, i.e., 'The Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003' being a set of Rules made by the State Government in exercise of Rule making power under various provisions of Tamil Nadu Prohibition Act, 1937 (Tamil Nadu Act X of 1937).

9. The aforesaid parent Act shall hereinafter be referred to as 'Tamil Nadu Prohibition Act' and the aforesaid set of Rules shall hereinafter be referred to as 'Liquor Vending Rules'. The places where retail vending shops of TASMAC akin to said shop could be located and restrictions in this regard have been adumbrated in Rule 8 of Liquor Vending Rules. As already alluded to supra, in the instant case, no specific Rule violation has been pointed out.

10. A Hon'ble Division Bench of this Court vide order dated 13.06.2017 in W.P.No.14466 of 2017 had held that in the absence of any allegation of contravention of any statutory rule or regulation, interference of writ court is not warranted. Adverting to V.Ravichandran's case [V.Ravichandran v. The District Collector, Tirunelveli and another (Order dated

16.11.2016 in W.P. (MD) No.20063 of 2015] in the aforesaid order, Hon'ble Division Bench had also held that V.Ravichandran's case is not an authority for the proposition that no liquor shop shall be set up if there is an objection from the residents. Relevant portions of the order of Hon'ble Division Bench are Paragraphs 2 and 6 and the same read as follows:

'2. On the face of the averments in the writ petition, the petitioner has not been able to show infringements of any provision of law in running the liquor shop in the village of the petitioner. In the absence of any allegation of contravention of any statutory rule or regulation, interference of writ court is not warranted.'

'6. Learned counsel appearing on behalf of the petitioner has cited a Division Bench judgment of this Court in V.Ravichandran v. The District Collector, Tirunelveli and another (Order dated 16.11.2016 in W.P. (MD) No.20063 of 2015). This judgment was rendered having regard to the particular facts of the case. The judgment is not an authority for the proposition that a liquor shop can in no circumstances be set up if there is an objection from the residents or a resolution of Panchayat Grama Sabha to that effect.'

(Underlining made by Court to supply emphasis and highlight)

11. Be that as it may, as far as the instant case is concerned, the only issue that survives is that said shop was located in a building for which there was no approval. In other words, superstructure in the said location does not have building approval. To be noted, it is in these circumstances that predecessor Hon'ble Judge of this Court passed an interim order on 21.01.2018, which reads as follows:

'The petitioner seeks for a Mandamus directing the respondents to close the TASMAL shop No.3557 in Survey No.93/1 by considering therepresentation of the petitioner Trust dated 22.09.2018 and 21.11.2018. Apart from raising other contentions expressing the difficulties being experienced by the School going children and other local public as against the location of the subject matter liquor shop, it is specifically contended by the petitioner that the building in which the subject matter shop is functioning, is without building plan approval.

2. When the matter was taken up for hearing on 02.01.2019 Mr.K.Sathish Kumar, learned Standing

Counsel appearing for the TASMAC took notice for the 3rd respondent and submitted that the subject matter Shop was already opened. However, he sought time to verify whether the planning approval is obtained for the said Shop or not. Accordingly, the matter is listed today for further hearing.

3. On instructions, the learned Standing Counsel Mr.K.Sathish Kumar, appearing for the TASMAC, today submitted that though the planning approval as on today is not obtained by the owner of the premises, he is taking steps to rectify the mistake by making application before the appropriate authority. Therefore, he seeks time for getting and placing such approval.

4. On the other hand, the learned counsel appearing for the petitioner, by relying on the decision of the Division Bench made in W.P.(MD) No.15607/2017 dated 18.09.2017, submitted that in the absence of building plan approval, the subject matter shop, shall not be allowed to run any more.

5. From the above stated facts and circumstances, one thing is very clear that the disputed liquor shop is being run in the premises which has no building plan approval. In an identical circumstances, the Division Bench of this Court in W.P.(MD) No.15607/2017 dated 18.09.2017 has passed an order as follows:

'The writ petitioner seeks shifting of the TASMAC Wine Shop No.6907 situated at Manickka Nagar, Nairppaiyoor Panchayat, Kadaladi Taluk, Ramanathapuram District.

2. When the matter was taken up for hearing, it is fairly submitted that there is no building plan approval for the premises which is housing the said shop. If there is no building approval for the premises in question, then TASMAC Liquor shop cannot be allowed to run in such premises. Therefore, the respondents are directed to close down the shop in question forthwith.

3. This writ petition stands allowed accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.'

6. Considering the above stated facts and circumstances and the order passed by the Division Bench as extracted supra, this Court is of the view that the subject matter Shop cannot be permitted to run any further since it is admitted that building plan approval is not obtained to the said building as

on today. Hence, this Court is left with no other option except to direct to close the subject matter Shop forthwith.

Accordingly, a direction is issued. Post the matter on 11.02.2019 for filing counter and to inform further development, if any, on the building plan approval request/rectification said to have been made by the owner of the property.'

12. Thereafter, third respondent has filed a counter affidavit dated 06.04.2019 wherein it has been averred that building planning approval for superstructure in said location has since been obtained from the local body on 07.02.2019. Relevant averment in Paragraph 4 of the counter affidavit reads as follows:

'4.....The said Shop obtained Building planning approval from Kilambadi Panchayat in Na.Ka.No.38/2018-19 dated 07.02.2019.'

13. This clears the decks for said shop. However, this Court is informed that said location is an agricultural land. Learned Standing Counsel for TASMAC submits that they are only lessee and therefore, the question of approval is a matter between the lessor and the local body which has granted the approval. Besides this, it is also brought to the notice of this Court that this question of TASMAC retail shops being situate in agricultural lands is subject matter of W.P.No.4136 of 2019 and a Hon'ble Division Bench is in seizin of the same.

14. Therefore, only surviving issue in the instant writ petition is a matter which a Hon'ble Division Bench is in seizin. Therefore, opening of said shop in said location will obviously be subject to outcome / verdict in W.P.No.4136 of 2019.

15. Therefore, this writ petition is disposed of holding that opening of said shop in said location will be subject to outcome/verdict in W.P.No.4136 of 2019. To be noted, order in said writ petition is awaited. It is not in dispute that said shop in said location was closed pursuant to aforesaid interim order of this Court dated 21.01.2019 and it remains closed as of today. This position will continue and further proceedings, if any, in this regard will be subject to outcome in aforesaid W.P.No.4136 of 2019 which a Hon'ble Division bench is now in seizin. No costs.
gpa

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Collector
Collectorate Building
Erode

2. Executive Officer
Kilambadi Village
Vattakal Valasu Main Road
Malayapalayam (PO)
Erode

3.The District Manager
IMFS Depo, TASMAL Ltd.,
TASCO Building
Suriyampalayam, Erode

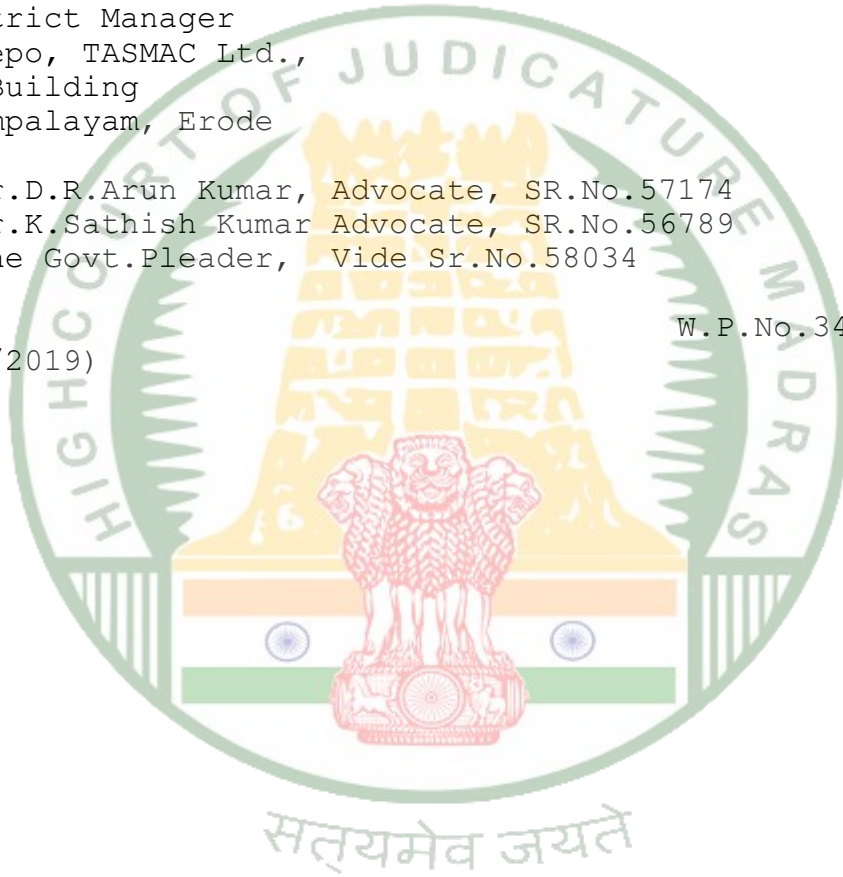
+1cc to Mr.D.R.Arun Kumar, Advocate, SR.No.57174

+1cc to Mr.K.Sathish Kumar Advocate, SR.No.56789

+1cc to the Govt.Pleader, Vide Sr.No.58034

W.P.No.34200 of 2018

Kak (29/08/2019)



WEB COPY