



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Tuesday, the Twentieth day of August Two Thousand and Ninetee

PRESENT

The Hon'ble Mr.Justice M.SATHYANARAYANAN

AND

The Hon'ble Mr Justice B.PUGALENDHI

WP(MD). No.11720 of 2018

P.MUTHURAJA

... Petitioner

Vs

1 THE SECRETARY TO GOVERNMENT,
HOME PROHIBITION AND EXCISE DEPARTMENT,
FORT ST. GEORGE CHENNAI - 600 009.

2 THE MANAGING DIRECTOR, TASMAL,
CMDA TOWER - II, IV FLOOR ,
GANDHI IRWIN ROAD, EGMORE, CHENNAI - 600 008.

3 THE DISTRICT COLLECTOR,
SIVAKANGAI DISTRICT, SIVAKANGAI.

4 THE DISTRICT MANAGER, IMFS DEPOT,
TASMAL LIMITED, THONDI ROAD,
PALAMALAI NAGAR, NARIKURAVAR COLONY,
SURAKULAM VILLAGE, SIVAGANGAI.

... Respondents

Petition filed under Article 226 of the Constitution of India, Praying this Court to issue a Writ of Mandamus to directing the respondents to remove the TASMAL Shop.No.7670 situated at NH 49 Main Road to Kothankulam road to any other place in light of the petitioners representation dated 08/09/2017 within a reasonable time frame as fixed by this Honourable Court.

ORDER:

Writ Petition is coming on for hearing on this day, upon perusing the affidavit and material papers filed, and upon hearing the arguments of Mr. B.Vinoth Balan, Advocate for the petitioner, Mr.A.K.Baskara Pandian, Special Government Pleader on behalf of the Respondents No. 1 and 3, Mr.H.Arumugam, Standing Counsel for TASMAL for the Respondents No.2 to 4, this Court made the following order:



(Order of this Court was made by **M.SATHYANARAYANAN, J.**)

The petitioner has filed this writ petition, styled as public interest litigation, seeking a Writ of Mandamus to remove the TASMAC Shop No.7670 situated at NH 49 Main Road - Kothankulam Road and shift the same to some other place.

2. According to the petitioner, the shop in question was initially located in Pappankulam Panchayat Vilakku, Thoodai, Thirupuvanam Taluk, Sivagangai District and pursuant to the judgment of the Hon'ble Apex Court in **State of Tamil Nadu and others v. K.Balu and another**, reported in (2017) 2 SCC 281, whereby and whereunder, TASMAC shops within a distance of 500 meters of the outer edge of National and State Highways came to be prohibited, the shop in question was transferred and relocated to a site between NH 49 Main Road and Kothankulam, which is near Marnad bridge at Thoodai, Kothankulam Post, Thirupuvanam Taluk, Sivagangai District. It is the case of the petitioner that the present location of the shop is less than 200 meters from NH 49 (4 way lane) from Madurai to Paramagudi, which is also in violation of the order passed by the Hon'ble Apex Court.

3. Though very many grounds are raised in this petition, when the matter was taken up for hearing in the last occasion, the learned Counsel for the petitioner pointed out that without conducting any auction, illegal bar is running near the shop in question and that too, without any civic amenities. Therefore, the persons are consuming liquor in public places, which is causing great inconvenience to the general public.

4. In response, the learned Standing Counsel appearing for TASMAC sought for a short accommodation to get instructions in that regard. Today, the learned Standing Counsel appearing for TASMAC, on instructions, submitted that no bar was attached to the shop in question and selling of liquors alone is taking place in the said location, as such, there is no possibility of any nuisance.

5. However, the learned Counsel for the petitioner refuted the same and referred to the orders passed by this Court in W.P.(MD) No.16180 of 2019, dated 22.07.2019; W.P.(MD)No.16365 of 2019, dated 23.07.2019, pertaining to Madurai and Theni Districts, respectively, wherein, this Court has put series of queries, including the number of illegal bars and the nuisance / law and order problem caused by the drunkards and the response in this regard is still awaited. Reliance was also placed on the order dated 20.12.2018, passed in W.P(MD)No.20111 of 2018, wherein, it is affirmed that 98 TASMAC bars are running without any license, in Pudukottai District.



6. In fact, in a similar issue in W.P.(MD)No.19441 of 2017, pertaining to Pudukottai District, the learned Standing Counsel for TASMAC has made a positive submission as to the running of TASMAC shop in a clean and hygienic manner and further submitted that there is no illegal bar. However, the said fact was disputed by the petitioner therein and therefore, this Court was constrained to direct the Secretary, District Legal Service Authority, Pudukottai District to cause surprise inspection. Pursuant to the same, the Secretary, District Legal Service Authority, Pudukottai caused a surprise inspection and made his report, totally contravening the submissions made by the learned Standing Counsel as to the running of unlicensed Bar, cleanliness and hygienic conditions as well as the nuisance caused to the passers by. Hence, this Court, vide order dated 13.08.2019 has directed closure of the said TASMAC until further orders.

7. Therefore, in the present case, this Court, in order to ascertain the actual and factual matrix, is inclined to appoint an Advocate Commissioner, who shall cause a surprise inspection, find out the details and file a report.

8. Accordingly, Advocate Ms.J.Akillandeewari [Enrol.No.821/2018], is appointed as Commissioner and her remuneration is fixed as Rs.5,000/- (Rupees Five Thousand only). Since the Tamil Nadu State Marketing Corporation Ltd., (TASMAC) is engaged in commercial activities, the remuneration and incidental expenses to the Advocate Commissioner shall be met by the fourth respondent / TASMAC. The Advocate Commissioner is directed to cause a surprise inspection and ascertain as to

i) whether the shop is located in consonance with the Tamil Nadu Liquor Retail Vending (Shops and Bars) Rules, 2003 and the directions issued by the Hon'ble Supreme Court in **State of Tamil Nadu and others v.K.Balu and another**, reported in (2017) 2 SCC 281 ?

ii) whether any bar is attached to the shop in question and if not, how and where the customers consume liquor? and

iii) whether the shop is running in a hygienic condition without causing any inconvenience to the general public?

9. The report of the Commissioner with photographs shall reach this Court positively by 16.09.2019. The Supervisor and Salesman of the shop in question as well as the jurisdictional Police are expected to render their maximum assistance to the Advocate Commissioner.

Call on 16.09.2019.

Sd/-

Assistant Registrar(CS-III)

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To

1 THE SECRETARY TO GOVERNMENT,
HOME PROHIBITION AND EXCISE DEPARTMENT,
FORT ST. GEORGE CHENNAI - 600 009.

2 THE MANAGING DIRECTOR, TASMAL, CMDA TOWER - II,
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TASMAL LIMITED, THONDI ROAD, PALAMALAI NAGAR,
NARIKURAVAR COLONY, SURAKULAM VILLAGE, SIVAGANGAI.

5 THE SPECIAL GOVERNMENT PLEADER,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

6 THE SECTION OFFICER, WRIT SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
(To List the Case on 16/09/2019 along with report)

Copy to

M/s.MS.J.AKILLANDEESWARI, (Entrollment No.821/2018),
Plot No.5/123, Aavin Nagar, Near Siva Rice Mill,
Maruthupandiyar Street, Madurai - 625 020.

ORDER DATED : 20/08/2019

HEARING DATE : 16/09/2019
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ORDER
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WP(MD) . No.11720 of 2018

Giving direction and etc.
as stated within.

NS (CO)
TR (30.08.2019) 4P 8C