



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) No.12773 of 2018

and W.M.P. (MD) No.11657 of 2018

WEB COPY

V.Pooveshkuptha

... Petitioner

-vs-

1.The District Collector,
Theni District,
Theni.

2.The District Manager,
TASMAC, Theni District,
Theni.

3.The Assistant Commissioner (Prohibition and Excise),
District Collector's Office,
Theni, Theni District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the respondents herein from any way allowing to establish the TASMAC shop at Ward - 18, Kamatchiamman Temple Street, Koodalur, Theni District on the basis of the representation dated 26.05.2018 given by the petitioner.

For Petitioner

: Mr.C.Jeganathan

For Respondents 1 & 3

: Mr.S.Angappan
Government Advocate

For 2nd Respondent

: Mr.K.Chellapandian
Additional Advocate General
Assisted by
Mr.B.Jameel Arasu
Standing Counsel for TASMAC

O R D E R

[Order of the Court was made by T.S.SIVAGNANAM, J.]

Heard Mr.C.Jeganathan, learned counsel appearing for the petitioner, Mr.S.Angappan, learned Government Advocate appearing for the respondents 1 and 3 and Mr.K.Chellapandian, learned Additional Advocate General appearing for the second respondent.

2.This Writ Petition has been filed by way of Public Interest Litigation, seeking for issuance of a Writ of Mandamus, forbearing the respondents herein from any way allowing to establish the TASMAC



shop at Ward - 18, Kamatchiamman Temple Street, Koodalur, Theni District.

3. When the Writ Petition was entertained on 20.08.2019, this Court passed a comprehensive interim order appointing an Advocate Commissioner to inspect the area and to submit a report and framed four questions for consideration.

4. The learned Advocate Commissioner in her report dated 16.09.2019 has averred about the distance between the shop and the temple and has also mentioned about the distance from the other facilities, which are located in the near vicinity of the shop, viz., Bank with ATM, Hospital, Marriage Hall etc. The learned Advocate Commissioner also referred to the opinion expressed by the ladies in the locality apprehending threat to life, if they disclose their names. The ladies appears to have stated that since the TASMACH shop does not have any Bar, the buyers are consuming liquor on the side of the road and dropping the bottles there itself and at times the broken bottles are causing injuries to the people who are walking with bare foot. *Prima facie* it appears that there is some materials to show that the shop is creating nuisance in the locality.

5. The learned Additional Advocate General appearing for the second respondent would submit that the shop is in commercial area and therefore, the Distance Rule cannot be applied in this case. In this regard he cited G.O.(Ms.) No.32 Home, Prohibition & Excise (VI) Department dated 21.05.2019.

6. The facts remains that the shop is established 54 meters away from the Temple and therefore, the shop is located in consonance with the Tamil Nadu Liquor Retain Vending (Shops and Bars) Rules, 2003. It is to be noted that the road where the shop is located is named after the presiding deity namely Kamatchiamman. The stand of the second respondent is that they will abide by mathematic calculation and stick to sustain the location. An allegation is made stating the Writ Petitioner is a Manager of FL-2 Bar, which is located nearby. However, there is nothing on record to show that the petitioner has motive for filing this Writ Petition.

7. Considering the peculiar facts and circumstances of the case, we are of the opinion that the view of the persons present in the area cannot be ignored and apart from that we are fully convinced about the location of the shop in the area, to which, distance rule may not apply. Therefore, considering only the nuisance caused to the public the shop should be relocated. We also find that the building, where the shop is located, has a first floor, construction of which is yet to be completed and there is door leading to which has been locked for the present. It is not known who will monitor the same, so that it is not used as a bar. These are larger issues, which cannot escape our attention. Therefore, we are of the firm opinion that the shop should be relocated.



8. In view of the above, the Writ Petition is disposed of by directing the second respondent to close down the shop within one week from today and apply to the District Collector, seeking permission or no-objection for the proposed shop to which the present shop is to be relocated. We note that the learned Advocate Commissioner has incurred substantial expenses and seeks additional remuneration. Accordingly, we direct the petitioner to pay additional remuneration of Rs.10,000/- (Rupees Ten Thousand only) to the learned Advocate Commissioner on or before 25.09.2019. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

sj
To

1. The District Collector,
Theni District,
Theni.

2. The District Manager,
TASMAC, Theni District,
Theni.

3. The Assistant Commissioner (Prohibition and Excise),
District Collector's Office,
Theni, Theni District.

Copy to:

Ms.D.Deepamathi,
Advocate Commissioner,
No.91, Law Chamber,
Madurai Bench of Madras High Court,
Madurai. (Mobile No.9865682117)

+1 CC to M/s.Special Government Pleader (SR-89017[F] dated 24/09/2019)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-88473[F] dated 23/09/2019)

+1 CC to M/s.B.JAMEEL ARASU, Advocate (SR-88603[F] dated 23/09/2019)

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KK/SAR/27.09.2019/3P-8C/