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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

Review Application Nos.22 and 98 of 2020
in
WP:26334/2017

Review Application No.22 of 2020:

Jothy Bar
Rep. by its Proprietor, R.Murugesan
Vizhidiyur Main Road, Niravi Commune
Karaikal District
Union Territory of Puducherry.

...Petitioner

Vs

- 1 M.Veeramani
- 2 The Union of Territory of Puducherry
Rep by the Chief Secretary to Government
Government of Puducherry
Secretariat, Beach Road
Puducherry-605 001.
- 3 The Secretary to Governor
Government of Puducherry
Raj Nivas, Puducherry.
- 4 The District Collector (Karaikal)
Office of the District Collector (Karaikal)
Karaikal.
- 5 The Commissioner (Excise)
Government of Puducherry
Office of the Excise Commissioner
Secretariat
Pondicherry - 605 001.



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6 The Deputy Commissioner (Excise)
Government of Puducherry
Excise Department
Thattanchavadi (Near Govt. Press)
Pondicherry.

7 The Commissioner
Hindu Religious Charitable and Endowment
Board Government of Puducherry
Puducherry-605 009.

8 T.Anandhanarayanan
The Special Officer,
Arulmigu Vizhidhinathaswami Temple Devasthanam
Vizhidiyur, Niravi Commune,
Karaikal District
Union Territory of Puducherry.

...Respondents

Review Application No.98 of 2020:

1 Union of Territory of Puducherry
Rep.by the Chief Secretary to Govt
Government of Puducherry, Secretariat
Beach Road
Puducherry - 605 001.

2 The Secretary to Governor
Government of Puducherry
Raj Nivas
Puducherry.

3 The District Collector(Karaikal)
Office of the District Collector (Karaikal)
Karaikal.

4 The Commissioner(Excise)
Government of Puducherry
Office of the Excise Commissioner
Secretariat
Puducherry - 605 001.

5 The Deputy Commissioner(Excise)
Karaikal.

6 The Commissioner
Hindu Religious Charitable and Endowment Board
Government of Puducherry
Puducherry -605 009.

...Petitioners



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For eighth respondent : Ms.A.Anusuya
in
Rev.Aplw.No.22 of 2020
and 2nd respondent in
Rev.Aplw.No.98 of 2020

COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

These review applications are directed against an order dated August 9, 2019 passed on W.P.No.26334 of 2017.

2. The matter pertained to the location of a watering-hole by the name of Jothy Bar at Vizhidiyur. The writ petition was disposed of by directing the Commissioner (Excise) of the Government of Puducherry to take steps to cancel the FL-2 license granted to the eighth respondent to the writ petition, who was the owner of the bar.

3. The basis for passing the order is found at the final paragraph of the order, which is set out:

"29. A reading of all these judgments and keeping in mind the object of Rule 113 of the Puducherry Excise Rules, 1970, the word 'place of worship' has to be given an expansive meaning. It must not only include the temple, but also include, such lands belonging to the temple, which is being used for conducting functions related to the temple and its activities. If this is accepted then, no liquor shop can operate in R.S.No.3/4 also. Since the distance from R.S.No.3/3 to R.S.No.3/4, is 40 metres only. So, either which way one looks at i.e. where R.S.No.3/4 and R.S.No.3/3 taken as a composite shop or R.S.No.3/4 is taken alone, where liquor shop is situated, the liquor bar located in R.S.No.3/4, is hit by the restrictions prescribed in Rule 113(2) of the Puducherry Excise Rules, 1970. In view of the above, instant writ petition is allowed. The Commissioner (Excise), Government of Puducherry, Puducherry, 4th respondent is directed to take steps to cancel the FL-2 license, granted to the 8th respondent, within four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected writ miscellaneous petitions are closed."



4. Upon receipt of the review applications, several orders were passed, including one for a fresh inspection to be conducted by the Tahsildar, who doubles up as the Excise Officer in Karaikal. A report dated March 15, 2021 has been submitted by such Excise Officer along with a sketch-map indicating the locations of the temple, an adjacent land that lies fallow and the bar. From such sketch-map, which is appended to the Excise Officer's report, it is evident that the bar is housed at premises bearing Survey No.3/4, though, to the immediate north of such land, there is another plot of land bearing Survey No.3/3 which may be regarded as an extension of the bar, as the lands covered by Survey Nos.3/3 and 3/4 may be used in connection with the bar, notwithstanding the actual location of the room or the space where actual drinking takes place being within the land bearing Survey No.3/4. The outer extremity of the precincts of the bar has been taken to be the northern edge of the property on Poonthottam Main Road. From the northern extremity and boundary wall of the property one has to traverse a considerable distance westwards, alongside and to the north of land bearing Survey No.3/2, to reach a road that leads southwards to the entrance of the temple. The distance from the outer extremity of the precincts of the bar to the entrance of the Throwbathiammam Temple is shown to be 114.5 metre, which is well in excess of the prohibited distance.

5. In the light of such finding, there does not appear to be any basis for the licence granted to the relevant bar to be cancelled, since the bar is not located within the prohibited distance, nor does it fall foul of any other condition.

6. The official respondents are represented and it appears that there is no objection as far as the official respondents are concerned and such official respondents are satisfied that the existing Jothy Bar meets the parameters for the business to be continued at the relevant premises.

7. The order impugned recorded the distance between the temple gate and the outer extremity of the precincts of the bar to be 79.8 metre, notwithstanding the assertion by the official respondents that the distance was approximately 120 metre. What may have weighed with the Court while passing the order under review was that the land bearing Survey No.3/2 was also owned by the temple and, as such, since such land was contiguous to the land bearing Survey No.3/4, where the bar is situated, the distance between the bar and the temple land was too close for the bar to continue its operations. However, it is confirmed by the official respondents that notwithstanding the land at Survey



No.3/2 being owned by the temple, or patta in respect of that land being obtained by the temple, such land lies fallow and there are no religious activities conducted there, whether on a regular basis or otherwise.

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8. In the light of the above and, in particular the inspection conducted by the Tahsildar-cum-Excise Officer that culminated in his report of March 15, 2021, the order under review is modified and W.P.No.26334 of 2017 is disposed of without disturbing the present location of the bar run by the eighth respondent. However, in the event the land bearing Survey No.3/2 is put to any regular use by the temple for religious activities, the relevant authorities may have to reconsider the location of the bar.

9. Review Application Nos.22 and 98 of 2020 are allowed and the order dated August 9, 2019 is recalled and substituted as indicated by disposing of the writ petition without any order. There will be no order as to costs. Consequently, W.M.P.Nos.16886 of 2020 and 32687 of 2019 are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To:

- 1 The Chief Secretary to Government
Union of Territory of Puducherry
Government of Puducherry
Secretariat, Beach Road
Puducherry-605 001.
- 2 The Secretary to Governor
Government of Puducherry
Raj Nivas, Puducherry.
- 3 The District Collector (Karaikal)
Office of the District Collector (Karaikal)
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4 The Commissioner (Excise)
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5 The Deputy Commissioner (Excise)
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Excise Department, Karaikal,
Thattanchavadi (Near Govt. Press)
Pondicherry.

6 The Commissioner
Hindu Religious Charitable and Endowment
Board Government of Puducherry
Puducherry-605 009.

+lcc to Mr.B.Balavijayan,Advocate,Sr.34270[06/08/2021]

Copy to:

The Section Officer,
Writ Section,
High Court, Madras.

Review Application Nos.22 and 98 of 2020

RLD[co]
NSK 29/07/2021