



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P. (MD)No.5309 of 2020

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B.Jebastin Arputharaj : Petitioner

Vs.

1.The Managing Director,
TASMAC
Egmore, Chennai.

2.The Senior Regional Manager,
TASMAC
Plot No.100 Anna Nagar,
Madurai.

3.The District Collector,
Thoothukudi District,
Thoothukudi.

4.The District Manager,
TASMAC, Sipcot Campus
Thoothukudi

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus to direct the respondents to remove the TASMAC shop No.10144 from the petitioner's village, viz., Kamarajar Nagar in Servaikaranmadam Village, Thoothukudi Taluk, Thoothukudi District by considering the petitioner's representation dated 27.02.2020 within the time limit that may be stipulated by this Court.

For Petitioner : Mr.N.Ramesh Arumugam
For Respondents : Mr.B.Jameelarasu for R1, R2 & R4
standing counsel for TASMAC
Mr.P.Kannidevan
Additional Government Pleader for R3

ORDER

(Order of the Court was made by B.PUGALENDHI, J.)

The Writ petition has been filed in the nature of Public Interest Litigation to direct the respondents to remove the TASMAC Shop No.10144 from the petitioner's village, namely, Kamarajar Nagar



in Servaikaranmadam Village, Thoothukudi District, by considering the petitioner's representation dated 27.02.2020.

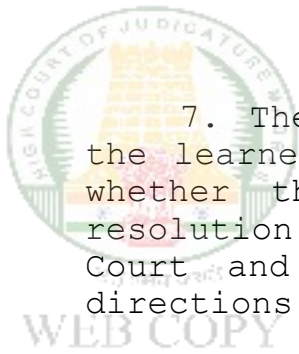
2. Heard the learned counsel for the petitioner, the learned Standing counsel for the TASMAC and the learned Additional Government Pleader for the third respondent.

3. It is the case of the petitioner that opposing the opening of a TASMAC shop No.10144 in Kamarajar Nagar in Servaikaranmadam Village, the petitioner along with other villagers made a representation on 22.07.2019 not to open the proposed TASMAC shop in their village. Despite the same, the District Collector, Thoothukudi, by his proceedings dated 22.07.2019 in Na.Ka.No.X3/14637/219 permitted the TASMAC to open their outlet at Servaikaranmadam Village, Thoothukudi District. Whereas, while considering the representation of the petitioner dated 22.07.2019, it was decided not to open any new TASMAC shop in the petitioner's Village namely, Servaikaranmadam in Thoothukudi District. The Village Panchayat has also made a resolution in their Grama Sabha meeting held on 26.01.2020 as resolution No.23. A further representation was also made by the villagers and the ward members on 10.02.2020. It is the specific case of the petitioner that the TASMAC Shop No.10144 at Servaikaranmadam Panchayat is within 10 meters from a Mariamman Temple and Kamarajar Nagar Child Welfare Centre. A Church is also lying in 70 mtr. distance and an Art College and an Engineering College are also situated nearby.

4. The learned counsel for the TASMAC, who takes notice for the respondents 1, 2 and 4, would submit that the TASMAC outlet at Servaikaranmadam was permitted by the District administration after ascertaining all the parameters and there is no prohibitory places within the distance as contemplated under Rule 8 of the Tamil Nadu Liquor Vending Rules and therefore, there is no reason to interfere with the same. Further, he would submit that the so called resolution of the village Grama Sabha was not in accordance with law, that the Grama Sabha was not convened with due notice and not conducted in the presence of the officials.

5. This Court gave its anxious consideration to the rival submissions and also perused the available records.

6. The TASMAC shop at Servaikaranmadam was permitted on 22.07.2019 by the District administration. But in the reply to the representation of the Villagers dated 22.07.2019, the petition status in the official website discloses that there is no new proposal for any TASMAC shop at Servaikaranmadam Village. Apart from the representation of the Village Panchayat, the President and the Ward Members of the Villagers have also passed a resolution as resolution No.23 in the Grama Sabha meeting held on 26.01.2020 and have also duly intimated the same to the District administration.



7. The validity of the Grama Sabha resolution is disputed by the learned counsel for the TASMAC. Be that as it may, the issue whether the TASMAC shop can be removed based on a Panchayat resolution is no longer *res-integra* before the Full Bench of this Court and therefore, this Court is not inclined to issue any directions based on the Grama Sabha resolution.

8. It is a specific case of the petitioner that apart from the Grama Sabha resolution, the shop is functioning in violation of Rule 8 of the Tamil Nadu Liquor Vending Rules and there are Temple, Church and Educational Institutions within the prohibitory distance. It is relevant to extract the finding of this Court in "**Gangabhai v. District Collector, Kanyakumari District**" reported in 2013 (5) CTC 141:

"8. The Hon'ble Supreme Court in **P.N.Kaushal Vs. Union of India**, reported in 1978 (3) SCC 558, considered the right of State to regulate the sale of liquor and the power of the State to locate the liquor shop and also considered as to how the liquor trade is affecting the health of the public. In Paragraph No.49, the Hon'ble Supreme Court held thus:-

"..... The trade is instinct with injury to individual and community and has serious side-effects recognized everywhere in every age. Not to control alcohol business is to abdicate the right to rule for the good of the people. Not to canalise the age and sex of consumers and servers, the hours of sale and cash-and-carry basis the punctuation and pause in days to produce partially the 'dry' habit is to fail functionally as a Welfare State. The whole scheme of the statute proclaims its purpose of control in time and space and otherwise. Section 58 vests in Government the power for more serious restrictions and laying down of principles. Details and lesser constraints have been left to the rule-making power of the Financial Commissioner. The complex of provisions is purpose-oriented, considerably re-inforced by Article 47."

9. The sentiments and the well being of a common man is an important factor in a democratic Country. As discussed above, Article 47 of the Constitution of India mandates the State to improve the Public Health and Article 21 guarantees right to life with human dignity and for healthy environment. Therefore, this Court deems it fit to issue a direction to the respondents to consider the representation of the Villagers dated 22.07.2019 and to take appropriate action in accordance with law.



10. With the above direction, the writ petition is disposed of.
No costs.

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Sd/-

Assistant Registrar (CS-II)

/ /2020

Sub Assistant Registrar(CS)

RR

To.

The District Collector,
Thoothukudi District, Thoothukudi.

+1 CC to M/s.N.RAMESHARUMUGAM, Advocate (SR-11631[F]

+1 CC to M/s.B.JAMEEL ARASU, Advocate (SR-11756[F]

Order made in

W.P. (MD)No.5309 of 2020

13.03.2020

SMA/02/06/2020/4P/4C