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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2021

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. NO.959 OF 2021

AND

WMP.NOS.1041 & 1042 OF 2021

Sudha

...Petitioner

Vs.

1.The District Collector,
Tiruppur,
Tiruppur District.

2.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Tiruppur,
Tiruppur District.

3.The Commissioner of Police,
Tiruppur City,
Tiruppur District.

4.The Tahsildar,
Tiruppur North Taluk,
Tiruppur District.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus calling for the records on the file of the 1st respondent in N.A.12711/2020/CUS-2 dated 29.12.2020 and quash the same and further forbear the Respondents 1 and 2 from relocating TASMACH Shop No.19871 from the Petitioners Building bearing SF No.167/2C, Murugampalayam, Verappandi Village, Tiruppur City Municipal city corporation, Tiruppur south Taluk, Tiruppur District.



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For Petitioner : Ms.Reshmi Christy

For Respondent : Mr.NRR.Arun Natarajan (for R1, R3 & R4)
Government Advocate

Mr.K.Sathish Kumar (for R2)
Standing Counsel

O R D E R

The petitioner seeks a certiorarified mandamus calling for and quashing order dated 29.12.2020 and further forbearing respondents 1 and 2 being the District Collector and District Manager, Tamil Nadu State Marketing Corporation Limited (TASMAC) from relocating TASMAC Shop No.19871 located at SF No.167/2C, Murugampalayam, Verappandi Village, Tiruppur.

2. The TASMAC is seen to have taken fluctuating stands in this matter and I thus, encapsulate briefly the sequence in which the events have transpired.

(i) The matter first came up on 20.01.2021, when the appearance of the respondents was recorded and pleadings were directed to be completed.

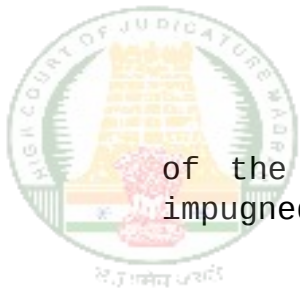
(ii) On 20.01.2021, I had noted that the impugned order directing the shifting of the shop refers to an objection received from the public and sought a copy of the same. This direction was reiterated on 14.06.2021.

(iii) Objections dated 03.10.2020 to the setting up of the TASMAC shop, stated to be endorsed by 260 residents in that area, were circulated.

(iv) All the residents had expressed the view that the shop was liable to be shifted since it caused severe hardship to the public and was also contrary to the Rules.

3. Counter dated Nil, June, 2021 filed by R2 had stated that initially R2 had forwarded a recommendation to R1 that the shop was compliant with the Tamil Nadu Liquor Retail Vending (Shops and Bars) Rules 2003 (in short 'Rules') and accordingly R1 had granted approval for opening thereof.

4. While this is so, and the shop was functioning for a few months, the residents appear to have objected to the opening



of the shop, resulting in the District Collector passing the impugned order directing the closure of the same.

5. I have earlier taken the stand that the opinion/sentiments of the persons residing in the vicinity of a proposed TASMAL Shop, particularly if the area were residential, should be determined even prior to the setting up of the shop so that the authorities could taking into account objections/views of the residents in their decision making process. This has evidently not been done in the present case.

6. R2, in its counter, states thus:

'3.This Respondent respectfully submits that the Writ Petitioner is the owner of the building and land situated at Survey No.167/2, Veerapandi Village, Tiruppur South circle, Tiruppur District and she gave a letter dated 17.07.2021 for willing to open the TASMAL shop in her property. Based on her Letter this Respondent inspected the petitioner's property on 23.07.2020 and found the said building in located as per the norms and there is no educational institutions and place of worship within 100 meters and decided to open the TASMAL Shop No.1987 in the petitioner's premises.

4.This Respondent submits that pursuant to the inspection he sent a proposal to the District Collector by letter No.143/2020/A6, dated 12.08.2020 along with inspection report stating that the proposed location is situated at Commercial area and therefore it is covered under para 17(d) of the G.O. Ms.No.32, Prohibition Excise Department, dated 21.05.2018 and there is no violation of Rule 8 (1) of the Tamil Nadu Liquor Retail Vending (Shops and Bars) Rules, 2003, the building planning approval also produced and proposed to open the TASMAL Shop No.1987 in the said locality. In turn the District Collector/ 1st Respondent obtained a report from the Assistant Commissioner Excise and thereafter passed a detailed order in Na.Ka.12711/2020/Excise-2, dated 03.09.2020 for opening the Tasmal Shop No.1987 in the petitioner's place. Based upon the District



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Collector order, the said shop was opened with effect from 23.09.2020 and continuously functioning in the said place.

5.This Respondent submits that the District Collector/1st Respondent herein passed order in Na.Ka.No.12711/2020/Excise-2, dated 29.12.2020 for closure of the Tasmac Shop no.1987 due to public objections and to avoid any law and order problem and directed to relocate the shop within 15 days. Based upon the Collector order this Respondent taken steps for relocation the shop in some other place, in the meantime the petitioner approached this Hon'ble Court and this Hon'ble Court pleased to grant a Status Quo, therefore the said Shop is continuously functioning in the very same place.

6.It is submitted that the 1st Respondent/District Collector is a competent authority for granting approval for location of the Shop. As per Rule 8(3) of Tamil Nadu Liquor Retail Vending (in shops and bars) Rules, 2003 stipulates that the shop shall be in the location approved by the Collector before commencing the business in the shops. Thus the District Collector already issued an order dated 29.12.2020 for closure of the Tasmac Shop No.1987 by considering the public objections.'

7. I fail to understand how the District Collector could have approved the opening of the shop in question on 03.09.2020 in the light of the sentiments of the residents. Clearly, public opinion matters, as ruffled public emotions could lead to serious and avoidable law and order issues. It is public objection and opinion that has led to R1 changing his mind so quickly on the heels of his original approval and this factor should have weighed in the decision making process followed. Further, Rule 8(3) must be read to contemplate an enquiry to be conducted prior to grant of approval and this enquiry MUST encompass the garnering of the views of the residents in that area and application of mind to their views as well.



8. Had the above procedure been followed, there would have been no necessity for the District Collector to change his mind within three months, on 29.12.2020, and order closure of the shop in question, ostensibly in light of public objections. The necessity for the present writ petition, the investment made by the petitioner in the venture and all the efforts that go with it, could have been obviated if only the proper procedure had been followed to ensure that there is, the least dislocation caused to the business of the shop as well as to the residents.

9. In light of the public objections that are now placed on record, the request of the petitioner has to be denied. However, in light of the observations made by me aforesaid, I believe that this is a case that the petitioner is entitled to costs from TASMAC to compensate her for the improper procedure followed as well as vacillation in the stand of TASMAC. Costs computed at Rs.25,000/- (Rupees twenty five thousand only), payable to the petitioner within four weeks from date of uploading of this order.

10. This Writ Petition is disposed in the aforesaid terms. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CCC)

// True Copy //

Sub Assistant Registrar

vs

To

1.The District Collector,
Tiruppur,
Tiruppur District.

2.The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Tiruppur,
Tiruppur District.



3.The Commissioner of Police,
Tiruppur City, Tiruppur District.

4.The Tahsildar,
Tiruppur North Taluk,
Tiruppur District.

+1cc to Mr.K.V.Sanjeev Kumar, Advocate SR.No.29968

+1cc to the Government Pleader SR.No.29844

W.P. No.959 of 2021
and WMP.Nos.1041 & 1042 of 2021

NRL(CO)
RVM(05/10/2021)