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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.07.2021

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P. No.13861 of 2020

R.Muthuselvan

... Petitioner

Vs

- 1 The District Collector,  
Kancheepuram District,  
Kancheepuram.
- 2 The Managing Director  
Tamil Nadu State Marketing Corporation Ltd.,  
IV Floor, CMDA Tower - II,  
Gandhi Irwin Bridge Road,  
Egmore, Chennai - 600 008.
- 3 The District Manager  
Tamil Nadu State Marketing Corporation Ltd.,  
Orikkai, Kanchipuram (South)  
Kancheepuram - 631 501.
- 4 The Superintendent of Police,  
Kancheepuram District,  
Kancheepuram.
5. Mr.U.Narayanan  
(R5 impleaded suo moto vide order dated 29.06.2021)

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling for the records of the third respondent pertaining to an impugned order bearing Na.Ka.N.No.269/2020/A7 dated 28.02.2020 and quash the same and consequently direct respondents 1 and 2 not to open the bar attached with TASMAC Wine shop No.4043 at Kancheepuram Town.

For Petitioner : Mr.S.Udayakumar

For Respondents : Mr.N.R.R.Arun Natarajan  
Government Advocate - R1 and R4  
Mr.A.Arumugarajan  
Standing Counsel - R2 and R3  
Mr.C.Anbu - R5



## O R D E R

This Writ Petition has been filed by one R.Muthuselvan, residing at No.75, Villakadi Koil Street, Kancheepuram. He seeks an order of Certiorari and Mandamus calling for and quashing order dated 28.02.2020 of the District Manager, TASMAR/R3 and consequently directing R1 and R2, i.e., the District Collector and the Managing Director, TASMAR, not to open the bar attached to TASMAR wine shop No.4043 at Kancheepuram Town. The petitioner has not arrayed the owner of the property in which the TASMAR is running the present shop and by order dated 29.06.2021 the owner has also been impleaded as R5.

2. Heard Mr.S.Udayakumar, learned counsel for the petitioner, Mr.Arun Natarajan, learned Government Advocate for R1 and R4/Superintendent of Police, Mr.A.Arumugaran, learned Standing Counsel for R2 and R3 and Mr.C.Anbu, learned counsel for R5.

3. The trajectory in which this Writ Petition has come to be heard by me is that though the shop in question was opened in 2003, the petitioner has challenged the same in the year 2012 by way of Writ Petition in W.P.No.23011 of 2012 seeking a mandamus directing the respondents to consider his representation for shifting of the shop. The said Writ Petition was disposed on 17.12.2019 directing the respondent to consider the representation, pursuant to which the impugned order has come to be passed, challenged in the present Writ Petition.

4. The first objection taken by R5 is that the petitioner does not even reside close to the shop in question and only carries on his dental practice therefrom. This proximity is, in my view, sufficient and this argument of the petitioner is rejected. Secondly, he would state that the shop is compliant with all applicable Rules and Regulations and thus there is no justification in the petitioner's prayer seeking shifting of the same.

5. The counter filed by TASMAR supports the position that the shop is in compliance with the Tamil Nadu Liquor Retail Vending (Shops and Bars) Rules, 2003, specifically Rule 10 thereof which states that the bar shall be housed within or adjoining the shop, shall have a minimum plinth area of 10 sq.mts., shall be housed in a pucca building, sufficiently screened from the public. Rule 8(1) stipulates the minimum distances that are to be maintained between the shop and places of worship and educational institutions.

6. While this is so and the counter defends the impugned order, the respondents appear to have had a change in heart and under proceedings dated 09.03.2021 issued by the District



Manager, TASMAC, Kancheepuram, have conveyed the decision of TASMAC to shift the location of the shop in question.

7. When asked to explain the change of heart, the respondents have produced a report of the District Manager dated 04.04.2021 to the effect that when attempts were made to open the shop on 25.01.2021 after the lifting of lock down imposed by the Government on account of COVID-19 pandemic, there was a hue and cry created by the public in that area. Apprehending law and order problem a decision was taken that it is best to shift the location.

8. In order to ascertain that the hue and cry was not created by elements who had been brought in for the stated purpose, I had directed the Superintendent of Police, Kancheepuram to file a report and vide affidavit dated 04.07.2021 R5 confirms that objections were raised by the residents of that area.

9. This Writ Petition throws up a peculiar question and one that I have not encountered in other Writ Petitions filed involving similar issues. Normally, the TASMAC would be insistent upon running the shops in locations despite objections raised by the petitioner to the effect that public nuisance is caused. In this case, despite the shop functioning from the same location between 2003 and now and being in compliance with applicable Rules and Regulations, public opinion and sentiment has been taken into account in arriving at the decision to shift the shop. The shop has been functioning in the said premises for nearly two decades. However the dynamics of the neighbourhood would have changed over the years, as would have the composition of the residents.

10. The present move would indicate their concession to the position that TASMAC has to receive and taken into account public opinion in fixing the location of its shop. This is a good step taken by TASMAC and sets the trend for the future as well.

11. I have in the case of S.Madasamy V. The Tamil Nadu State Marketing Corporation Ltd. (W.P.Nos.3828 and 4444 of 2019 dated 30.04.2021) indicated that public objections should be called for prior to fixing the location of a TASMAC shop. I reiterate that decision in this order as well and I would also urge that there is a review of the position periodically, to take into account changes in composition of the neighbourhood and compliance with applicable Rules.



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12. In the light of the discussion as aforesaid, impugned order dated 28.02.2020 is set aside and this Writ Petition allowed. No costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

- 1 The District Collector,  
Kancheepuram District,  
Kancheepuram.
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Kancheepuram - 631 501.
- 4 The Superintendent of Police,  
Kancheepuram District,  
Kancheepuram.

+1CC to Mr.S.Udayakumar, Advocate, Sr.No.31825

W.P. No.13861 of 2020

PCH (CO)

K.RK. (20.07.2021)