



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.21349 OF 2021

AND

W.M.P.NO.22595 OF 2021

V.Jothi

... Petitioner

Vs

District Manager,
TASMAC Ltd.,
Thiruvallur East District,
No.1, Bangalore Highway,
Chembarapakkam,
Chennai - 600 123.

... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling the records relevant to letter No. NA.KA.AA3/1265 dated 26.07.2021 issued by the respondent and quash the same as illegal, improper, arbitrary against the natural justice.

For Petitioner : Mr.U.Jugal Kumar

For Respondent : Mr.K.Sathish Kumar
Standing Counsel for TASMAC

ORDER

Captioned writ petition and writ miscellaneous petition thereat will stand governed by this order.

2.A communication dated 26.07.2021 bearing reference Na.Ka.No.A3/1265/2021 issued by the lone respondent (hereinafter referred as 'impugned order' for the sake of convenience and clarity) has been called in question in the captioned writ petition.

3.Mr.U.Jugal Kumar, learned counsel for writ petitioner submits that the writ petitioner and her son (E.V.Sundaresan) are absolute owners of a immovable property comprised in Town Survey No.149/2, Old Survey No.571/1A, 571/2, 572/2 at



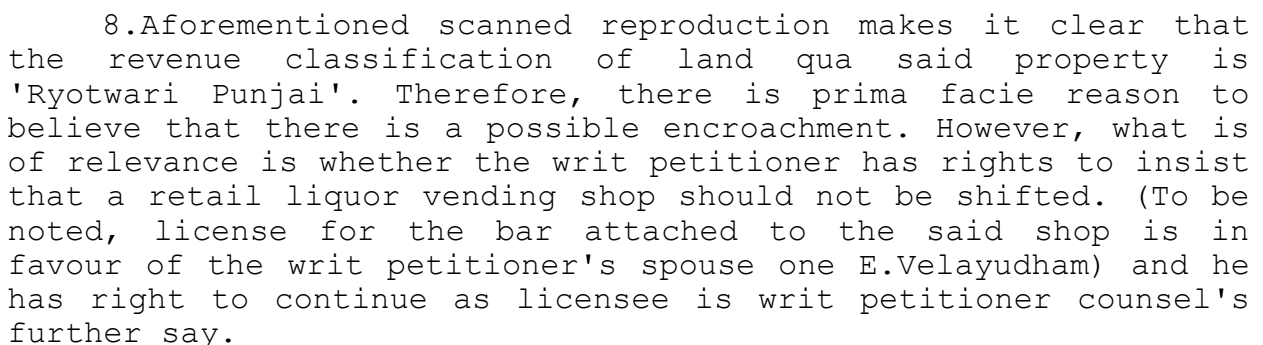
Subramaniam Nagar, Thiruvotriyur, Chennai - 600 019 with Patta No.1670/2017 (hereinafter referred as 'said property' for the sake convenience and clarity).

4.Learned counsel for writ petitioner submits that the respondent 'Tamil Nadu State Marketing Corporation Limited' (hereinafter referred as 'TASMAC' for the sake of brevity), is in the business of wholesale and retail vending of liquor in the State of Tamil Nadu and in the course of such business, the respondent approached the writ petitioner and requested to give said property on lease and promised to pay Rs.12,000/- per month.

5.There is no lease deed and learned counsel has drawn attention of this Court to paragraph 4 of the writ affidavit wherein it is mentioned that it is the usual practice of the respondent to get blank signed stamp papers and green papers for execution of lease deed and the same was done in 2019, but the fact of the matter is no lease deed is placed before me and learned counsel submits that there is no formal lease deed with the respondent qua said property as of today. However, a retail vending outlet of TASMAC namely Shop No.9173 (hereinafter 'said shop' for the sake of convenience and clarity) was functioning in the said property and there is no disputation about this.

6.Learned counsel for writ petitioner submits that owing to the understanding that was arrived at with the respondent, a superstructure was put up (qua said property) to suit the needs of the respondent and they have now been suddenly visited with the impugned order which says that the aforementioned shop is to be shifted as it is situate in land that is encroached.

7.Learned counsel draws the attention of this Court to a sale deed dated 21.12.2015 wherein the writ petitioner and her son are vendees and says patta also stands in her name. A scanned reproduction of the extract from the Town Survey Land Register is as follows:



9. In the aforesaid fact setting/trajectory of hearing in the Admission Board, Mr. K. Sathish Kumar, learned Standing counsel for TASMACH accepted notice.

10.Learned Standing Counsel for the respondent submitted that lock and seal notice has been issued by the jurisdictional Chennai Corporation authority on 10.06.2021 and it is cited as No.1 in Subject in the impugned order. A perusal of paragraph 5 of the writ affidavit makes it clear that this 10.06.2021 notice has been served on the writ petitioner's spouse, in any event, the writ petitioner is aware of 10.06.2021 notice, as is evident from the averments in paragraph 5 of the writ affidavit.



11.Learned Standing Counsel for TASMAL points out that the reason for shifting said shop is lock and seal notice which has been issued by the local authority which in turn is predicated on the allegation that said shop is situate in land which according to the local authority an encroachment. This Court is informed that an earlier writ petition being W.P.No.19158 of 2021 with the same prayer was withdrawn as three documents were not placed before this Court.

12.In the light of the aforementioned submissions, with the consent of learned counsel on both sides, the main writ petition is taken up and the same is disposed of.

13.I am not inclined to accede to the prayer in the writ petition and interfere with the impugned order, the reasons are as follows:

(a)Liquor vending is not a right much less a legal right. It is only a concession. This is res extra commercium principle explained in Asst. Excise Commissioner Vs. Issac Peter ((1994) 4 SCC 104) and Khoday Distilleries Ltd., Vs. Sri Mahadeswara Sahakara Sakkaare Karkhane Ltd., ((2019) 4 SCC 376) cases.

(b)The writ petitioner therefore does not have a legal right. Absent legal right, the writ petitioner cannot insist that the respondent should not shift the said shop.

(c)Patta i.e, revenue record placed before this Court prima facie shows that land qua said property has been classified as Ryotwari Punjai and therefore the possibility of encroachment cannot be ruled out. However, this Court does not express any opinion on the same in this order.

(d)In the light of the lock and seal notice from the local authority dated 10.06.2021, it is open to the writ petitioner to work out her remedy against the local authority i.e., Chennai Corporation.

(e)In the course of arguments, (though there is no whisper in the writ affidavit), learned counsel mentioned that a suit has been filed on the file of the jurisdictional civil Court. If that be the case, it is open to the writ petitioner to pursue the suit and this order will neither impede nor serve as impetus in the suit which is said to have been filed.



14.Owing to the reasons adumbrated supra, I am not inclined to interfere qua impugned order and the captioned writ petition stands dismissed albeit preserving the right of the writ petitioner to pursue the suit which shall be dealt with on its own merits and in accordance with law by the jurisdictional civil Court. No costs. Consequently, connected WMP stands closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mmi

To

The District Manager,
TASMAC Ltc.,
Thiruvallur East District,
No.1, Bangalore Highway,
Chembarapakkam,
Chennai - 600 123.

W.P.No.21349 of 2021

NR(CO)
PM/28/10/2021