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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**
AND
THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.P.(MD)No.4064 of 2020
and
W.M.P.(MD)No.3439 of 2020

Devaraj Seetha Padmanabhan : Petitioner

Vs.

1.The District Collector of Kanyakumari,
at Nagercoil,
Kanyakumari District.

2.The Assistant Commissioner of Prohibition and Excise,
Nagercoil,
Kanyakumari District.

3.The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC),
Nagercoil,
Kanyakumari District. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus forbearing the respondents from locating or relocating any TASMAC Liquor Retail Vending Shop on the premises, bearing Door No.6-33D of Ezhudesom Town Panchayat in S.No.143/13 of Ezhudeson-B Village, Killiyoor Taluk, Kanyakumari District, or in the locality of the same at Nithiravilai, Killiyoor Taluk, Kanyakumari District.

For Petitioner : Mr.K.N.Thampi

For Respondents : Mr.K.P.Krishnadoss,
Special Government Pleader
for RR.1 & 2

Mr.B.Jameel Arasu,
Standing Counsel for R.3

Mr.D.Shanmugaraja Sethupathi,
Advocate Commissioner

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ORDER

(Order of the Court was made by **M.M.SUNDRESH, J.)**

The petitioner has filed this public interest litigation on the ground that he belongs to the Nithiravilai unit of Marxist Communist Party of India; he is also an active social worker of Sree Bhadreswari Temple, Kanjampuram, Kanyakumari District; and he was also a former Secretary of Drivers' Union. Therefore, on that effect, this public interest litigation has been filed, *inter alia*, alleging that the proposed location of the TASMAC shop, which has been removed recently from the earlier location in view of the objections, is within the prohibited distance.

2. On perusal of the affidavit filed, it is seen that the objections of the petitioner is that there are Government Schools, Hindu Temple and a Christian Shrine within the prohibited distance of the proposed shop.

3. The third respondent has filed a counter affidavit stating that the proposed place is not within the prohibited distance. The averments made in paragraph nos.4 & 5 of the counter affidavit are extracted as under:

> *"4.I further submit that insofar as averment in the affidavit, the writ petitioner miserably failed to mention even the distance between the proposed shop and the existence of any religious institution or educational institution whatsoever within the prohibitory distance as per rules. Thus except making bald and wild allegations, the writ petitioners has not given any particulars whatsoever more fully proving that there is existing any of the school or religious institution within the prohibitory distances which enumerated under the rules.*
>
> *5.I further submit that there is a recreation club is existing near 450 meters of the proposed tasmac shop namely "Century Recreation Club" but he did not whisper anything about the closure of the above FL-II bar. This clearly proves that there is an intention in filing the above writ petition for purposes of personal gains and there is no public interest involved. But he miserably failed to mention anything about the FL-II bar which is located at Nithirvilai Junction where the FL-II bar is situated. However the proposed tasmac shop which is going to be located is more than 500 meters far away the Nithirivilai junction. As far as existence of a church in the affidavit, the same is situated more than 400 meters. Thus it is seen that the church is not within the prohibitory limits."*

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4. In paragraph no.7 of the counter affidavit, it has been stated that there is no educational institution or religious institution within the prohibitory distance. We would also like to record the said paragraph, as is averred, as under:

> *"7.It is further submitted that, to prove the contentions of this respondent, a detailed sketch is filed which proves morefully ensure that within the prohibitory distance there is no educational institution or religious institutions whatsoever. Further necessary photos are also enclosed."*

5. This Court, by an earlier order, appointed an Advocate Commissioner to verify as to whether the proposed place violates Rule 8 of the Liquor Vending Rules, inasmuch as it is within 60 meters from Padmanatha Kurusadi Church. It is submitted by the learned Advocate Commissioner that the direction of this Court is to measure the proposed place from the Church building and it is about 293 meters.

6. The learned Counsel appearing for the petitioner submitted that the contention is with respect to the proposed establishment nearer to the Highways. Therefore, appropriate orders will have to be passed in this regard.

7. The learned Standing Counsel appearing for the third respondent, placing reliance on the counter affidavit filed, submitted that the shop proposed is not within the prohibited distance.

8. Even as per the submission made by the learned Advocate Commissioner, there is no violation in the proposed place. The petitioner, though made an averment with respect to the proposed place being within the prohibited distance of a Highway, there is no material to substantiate the same. This Court cannot conduct a roving enquiry in this matter, by exercising the extra-ordinary jurisdiction under Article 226 of the Constitution of India. There is nothing to discredit the averments made in paragraph nos.4, 5 & 7 of the counter affidavit, as extracted supra. The petitioner is stated to be a Hindu, having faith and therefore, he could not have any grievance over the proposed shops being nearer to the Church, which is also not factually correct. Thus, looking from any perspective, we do not find any merit in this writ petition, especially when there is no material to hold that the process undertaken by the third respondent is borne out of extraneous consideration or contained with arbitrariness.

9. In view of the foregoing reasonings and discussions, this writ petition is liable to be dismissed and the same is accordingly,

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dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

gk

To

1.The District Collector of Kanyakumari,
at Nagercoil,
Kanyakumari District.

2.The Assistant Commissioner of Prohibition and Excise,
Nagercoil,
Kanyakumari District.

+1 CC to Mr.K.N.THAMPI, Advocate (SR-9386[F] dated 08/03/2021)

+1 CC to M/s.SPL GP (SR-9704[F] dated 09/03/2021)

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08.03.2021

VB (15.03.2021) 4P 5C

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