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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2021

CORAM:

**THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND**

THE HONOURABLE MRS. JUSTICE S.ANANTHI

**W.P. (MD)No.4126 of 2020 and
WMP(MD) No.3485 of 2020
(Through Video Conferencing)**

Anitha : Petitioner

Vs.

1.The District Collector
Office of the District Collector
Dindigul.

2.The Assistant Commissioner
Prohibition and Excise,
Dindigul.

3.The District Manager,
Tamilnadu State Marketing Corporation (TASMAC)
Dindigul. : Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Mandamus to direct the respondents herein to locate any new proposed TASMAC shop situated at Door No.82/72 Nehruji Nagar, 80 Feet Road, Dindigul on the basis of the petitioner's representation dated 18.11.2019.

For Petitioner : Mr.T.Manikandan
For Mr.R.Varatharajan

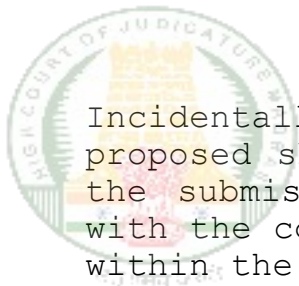
For Respondents : Mr.K.P.Krishnadoss for R1 & R2
Special Government Pleader

Mr.H.Arumugam for R3

ORDER

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

The petitioner filed this *pro bono* on the premise that the shop proposed is within the prohibited distance and not in public interest. As the school children would be crossing that place.



Incidentally, it is submitted that there are residences around the proposed shop. This Court, on an earlier occasion, taking note of the submission made, was pleased to grant an order of injunction with the condition that if it is found that the proposed shop is not within the prohibited distance, cost will follow.

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2.A counter affidavit has been filed by the respondent No.3, wherein, it has been stated as follows:

"4.I submit that the fact remains that the John Paul School is situated 200 meters away from the shop and the Vinayagar Temple is situated 200 meters away from the shop. The existence of Traffic signal, Bus stop and ATM centre situated near the TASMAC shop have no relevance as the Rule does not include the same within the prohibited distance.

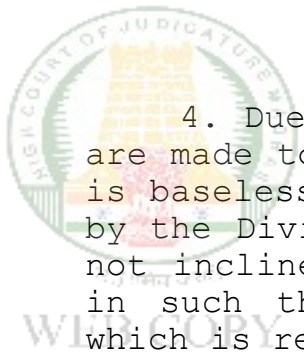
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7.I submit that based upon the allegations levelled in the Para No.6(a) of the affidavit regarding distance violation this Hon'ble Court granted interim order of injunction, with specific condition that in the event of the said distance allegation is found to be false the writ petition will be dismissed with heavy costs. The order of this Hon'ble Court reads as follows:

"3.We have made it clear to the learned counsel appearing for the petitioner that in the event of the averment stated in paragraph 6 (a) of the affidavit to the effect that the proposed TASMAC shop is situated within 45 metres is found to be incorrect or wrong and it is found that the distance between the proposed TASMAC shop and the school is more than 200 metres, a heavy costs would be levied on the petitioner."

As stated above there is no violation in selecting the proposal hence the interim order granted has to be vacated. It is settled law that the petitioner must come out with all details while filing public interest litigation. I hereby deny all other allegation except those are specifically admitted herein. As there is no merit in the writ petition and the same is liable to be dismissed with cost."

3. In the absence of any malice in law, we cannot hold that the proposed shop is within the prohibited distance. The petitioner has also not produced any material in support of the contention made. A mere possible or likelihood of the problem that might arise by the location of a liquor shop cannot be a ground for this Court to interfere, unless a violation per se is found. Secondly, no one can say that a liquor shop would create a law and order problem.



4. Due to the petitioner's adventurism, the respondents 2 and 3 are made to lose the revenue. Now, it is found that the allegation is baseless. Though it is a fit case to impose costs, as indicated by the Division Bench at the time of granting interim order, we are not inclined to do so hoping that the petitioner would not indulge in such things in future without undertaking a proper exercise, which is required while filing a Public Interest Litigation.

5. The writ petition stands dismissed accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RR

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The District Collector
Office of the District Collector
Dindigul.

2.The Assistant Commissioner
Prohibition and Excise,
Dindigul.

3.The District Manager,
Tamilnadu State Marketing Corporation (TASMAC)
Dindigul.

+1 CC to MR.H.ARUMUGAM, Advocate (SR-11383[F] dated 16/03/2021)

+1 CC to SPL GP (SR-11532[F] dated 16/03/2021)

Order made in
W.P. (MD)No.4126 of 2020
Dated: 15.03.2021

KM (23.03.2021) 3P 6C