



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.8789 of 2019

and

W.M.P(MD)Nos.6832 and 6833 of 2019

WEB COPY

P.Narasimman

... Petitioner

Vs.

1.The Tamil Nadu State Marketing Corporation Ltd.,
Rep. by its Managing Director,
CMDA Tower,
Gandhi Irwin Road,
Egmore, Chennai.

2.The District Collector,
Virudhunagar District,
Virudhunagar.

3.The Assistant Commissioner(Excise),
Virudhunagar,
Virudhunagar District.

4.Tamil Nadu State Marketing Corporation Ltd.,
Rep. by its District Manager,
Virudhunagar District,
Virudhunagar.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order of the second respondent dated 08.02.2018 in Na.Ka.Ka2/3876/2018 and consequential order of the fourth respondent dated 14.02.2018 in Na.Ka.No.A1/023/18 and quash the same as illegal and further direct the second and fourth respondents to reopen the TASMACH shop and bar in the petitioner's building at Door No.3/122-D, Sankaralingapuram Village, Virudhunagar District based on the report of the fourth respondent dated 23.04.2018.

For Petitioner : Mr.M.Jegadeesh Pandian,

For R-1 & R-4 : Mr.H.Arumugam,
Standing Counsel

For R-2 & R-3 : Mrs.J.Padmavathi Devi,
Special Government Pleader



ORDER

This writ petition is filed by the petitioner challenging the order of the second respondent dated 08.02.2018 in Na.Ka.Ka2/3876/2018 and the consequential order of the fourth respondent dated 14.02.2018 in Na.Ka.No.A1/023/18 and quash the same as illegal and to further direct the second and fourth respondents to reopen the TASMAC shop and bar in the petitioner's building at Door No.3/122-D, Sankaralingapuram Village, Virudhunagar District, based on the report of the fourth respondent dated 23.04.2018.

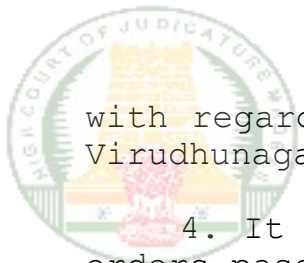
2. The case of the petitioner is as follows:

(i) The petitioner is the owner of the building bearing Old.No.1/119A and New Door No.3/122D at South Street, Sankaralingapuram, Virudhunagar District and in that building, prior to 2003, a private wine shop was being run and after that, TASMAC Shop No.12060 is being run in the said building without any objection. While the matter stood thus, in the year 2015, W.P(MD) No.15060 of 2015 was filed against the running of the shop by a third party raising false allegations and based on the interim orders passed in the said writ petition, the District Collector ordered to close the shop temporarily by an order dated 29.08.2015. Subsequently, final order was passed in the said writ petition on 08.09.2015, wherein a direction was given to the consider the objection raised by the people in that locality and if any violation is found out, to relocate the shop to an appropriate place.

(ii) Thereafter, a field inspection was conducted by the Revenue Divisional Officer, who in turn gave a report stating that there is no nuisance or hindrance caused due to the location or running of the Tasmac shop in the subject place and therefore, the shop was reopened on 01.03.2016 and the petitioner is running the shop without any hindrance.

(iii) While so, the second respondent passed an order dated 08.02.2018 to shift the Tasmac Shop No.12060 to Amathur Village, which is situated 18 kms away from the petitioner's building and therefore, the petitioner made a representation before the second respondent on 14.02.2018. Subsequently, the first respondent called for fresh tender for running the Tasmac shop, in which, the petitioner has also participated and selected as a successful bidder and fresh licence was also issued to run the Tasmac shop No.12060. However, based on the order of the second respondent dated 08.02.2018, the fourth respondent passed an order dated 14.02.2018 with regard to shifting of the Tasmac shop No.12060. Hence, this writ petition.

3. Counter affidavits have been filed by the respondents 2 and 4 stating that based on the complaints received from the public and based on the reports received from the third and fourth respondents, the second respondent has passed the impugned order dated 08.02.2018



with regard to shifting of Tasmac Shop No.12060 to Amathur Village, Virudhunagar District.

4. It is the specific case of the respondents that based on the orders passed by the authorities concerned, Tasmac Shop No.12060 was shifted to another place and Tasmac Shop No.12060 is not functioning in the petitioner's premises.

5. However, the learned counsel appearing for the petitioner would contend that the petitioner was given fresh licence and the shop is being run by him in his premises.

6. Heard the learned counsel for the petitioner as well as the respondents.

7. Admittedly, in the earlier round of litigation in W.P(MD)No.15060 of 2015, the TASMAC Shop No.12060 was directed to be closed temporarily and thereafter by order dated 08.09.2015, a direction was given to the respondents to consider the objections raised by the people in the locality and if necessary, to re-locate the shop at an appropriate place. Admittedly, there is no appeal filed against that order. It is the contention of the learned counsel for the petitioner that field inspection was conducted by the Revenue Divisional Officer, who gave a report stating that there is no nuisance or hindrance caused due to the location or running of the TASMAC shop in the subject place and therefore, the shop was re-opened on 01.03.2016 and running without any hindrance to any one. The learned counsel for the petitioner would further state that the 2nd respondent passed an order dated 08.02.2018 to shift the TASMAC shop No.12060 to Amathur Village which is situated 18 kms away from the petitioner's premises.

8. Admittedly, based on the orders passed by this Court, enquiry has been conducted and the shop has been shifted to Amathur Village, but the learned counsel for the petitioner would state that as per the report of the Revenue Divisional Officer, the shop was running in the petitioner's premises and it was allowed to open on 01.03.2016. The learned counsel for the petitioner would also state that the petitioner is continuing the running of the shop in the said premises without any hindrance. Such a contention of the learned counsel for the petitioner cannot be countenanced as the order has been passed for shifting of the shop as early as on 08.02.2018. When the learned counsel for the petitioner stated that the shop is still running in the petitioner's premises and there was no order to shift the shop, this Court suggested for appointment of advocate commissioner to verify whether the shop was functioning in the present place or not. When the Court suggested for appointment of the advocate commissioner, the learned counsel for the petitioner would state that the shop is not running in the said premises and admittedly it has been shifted as early as on 08.02.2018 and



shifted to some other place, the petitioner has come out with the present writ petition stating that the shop is not shifted and still functioning in the same place and therefore, the prayer is wholly misconceived.

9. Though I am inclined to dismiss the writ petition with heavy cost, considering the present pandemic situation, I dismiss the writ petition without ordering cost.

10. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note:(i) 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 Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
CMDA Tower, Gandhi Irwin Road,
Egmore, Chennai.

2. The District Collector,
Virudhunagar District,
Virudhunagar.

3. The Assistant Commissioner(Excise),
Virudhunagar,
Virudhunagar District.

4. The District Manager,
Tamil Nadu State Marketing Corporation Ltd.,
Virudhunagar District, Virudhunagar.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-16583[F] dated 20/04/2021)

**W.P(MD)No.8789 of 2019
19.04.2021**