



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

W.P. (MD)Nos.17489 & 20741 of 2019 and
W.M.P. (MD)Nos.17360 & 17362 of 2019 & 1759 of 2020

W.P. (MD)No.17489 of 2019

1. N.Balakrishnan
2. N.Chandrasekaran
3. M.R.Muthukrishnan

(Petitioners 2 and 3 are impleaded
vide order dated 19.11.2019

W.M.P. (MD)Nos.20774 & 20777 of 2019)

... Petitioners

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Park Town,
Chennai - 600 003.

2. The District Collector,
Tiruchirappalli District,
Cantonment,
Tiruchirappalli - 620 001.

3. The District Manager,
IMFS Depot, TASMAL Limited,
72, C.P.No.3, SIDCO Estate,
BHEL Nagar, Thuvakudi,
Tiruchirappalli - 620 015.

4. The Managing Director,
TASMAL, CMDA Tower-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the second respondent to shut down the TASMAL retail outlet(Shop No.10226) and relocate the same to a different location.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel,
for M/s.AL.Gandhimathi.



For R-1 & R-2

: Mrs.S.Srimathy,
Special Government Pleader.

For R-3 & R-4

: Mr.B.Jameel Arasu

WEB COPY

W.P. (MD)No.20741 of 2019

1. N.Balakrishnan
2. N.Chandrasekaran
3. M.R.Muthukrishnan

(Petitioners 2 and 3 are impleaded
vide order dated 19.11.2019
W.M.P. (MD)Nos.20775 & 20773 of 2019)

... Petitioners

Vs.

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Park Town,
Chennai - 600 003.
2. The District Collector,
Tiruchirappalli District,
Cantonment,
Tiruchirappalli - 620 001.
3. The District Manager,
IMFS Depot, TASMAL Limited,
72, C.P.No.3, SIDCO Estate,
BHEL Nagar, Thuvakudi,
Tiruchirappalli - 620 015.
4. The Managing Director,
TASMAC, CMDA Tower-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai - 600 008.
5. The Commissioner,
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.
6. The City Engineer,
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.



7. The Executive Engineer(West),
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.

8. The Assistant Executive Engineer,
Planning Department,
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.

9. The Junior Engineer,
Planning Department,
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.

10. M.Saleem

11. S.Jesmitha

12. G.Dinesh Kumar

(R-12 is impleaded vide order dated 05.03.2021
in W.M.P.(MD)No.22486 of 2019)

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned tender notification in Na.Ka.No.855/2019/R.V-3 dated 13.09.2019 of the third respondent herein in so far as it relates to the TASMAL retail(Shop No.10226) located at Door No.5, Karur Bye-Pass Road, Annamalai Nagar, Trichy - 620 018 and quash the same.

For Petitioner : Mr.AR.L.Sundaresan,
Senior Counsel,
for M/s.AL.Gandhimathi.

For R-1 & R-2 : Mrs.S.Srimathy,
Special Government Pleader.

For R-3 & R-4 : Mr.B.Jameel Arasu

For R-5toR-9 : Mr.Shaji Bino

For R-10&R-11 : Mr.S.M.Mohan Gandhi

For R-12 : Mr.D.Srinivasaragavan

* * *



C O M M O N O R D E R

Heard the learned Senior counsel appearing for the petitioners and the learned Standing counsel appearing for the respondents.

2. These writ petitions have been filed seeking closure of the petition mentioned TASMAC retail outlet and for forbearing the respondents from opening the bar. The District Manager of the TASMAC retail outlet had issued tender notification dated 13.09.2019 for auctioning the license to run the bar. When this Court admitted the writ petitions, interim order had been granted against finalising the tender process.

3. The primary contention of the learned Senior counsel is that the TASMAC retail outlet is being run in a building that is purely residential. He also would point out that permitting the bar to be opened would seriously infringe the writ petitioners' rights.

4. Though there is considerable force in the contention of the learned Senior counsel appearing for the petitioners, I am primarily of the view that the dispute is rather private in nature and therefore, it is only the jurisdictional civil Court that may be competent to go into the issue. That apart as pointed out by the learned counsel appearing for the respondents, the Hon'ble Division Bench of Madras High Court vide Order dated 20.06.2019 in W.P. No.16389 of 2019 (Ramalingam V. The District Collector and two others) had held that in a case of this nature, if according to the litigant, location of TASMAC retail outlet is causing nuisance, the remedy is to move the Executive Magistrate under Section 133 of Cr.P.C.

5. I am of the view that the petitioners have the remedy not only to move the jurisdictional civil Court but also to move the jurisdictional Executive Magistrate under Section 133 of Cr.P.C. In my view invoking writ jurisdiction in a case of this nature cannot be warranted. Therefore, the writ petitions are disposed of by giving liberty to the petitioners to move the jurisdictional civil Court and also to move the jurisdictional Executive Magistrate under Section 133 of Cr.P.C.

6. The learned Standing counsel appearing for the TASMAC has given a categorical undertaking before this Court that though the tender has been received, final orders have not been passed. The tender process will not be finalised for a period of eight weeks from the date of receipt of a copy of this order. If in the meanwhile the petitioners file any civil suit, the same will be numbered without any delay and injunction application filed by the petitioners will be disposed of on merits and in accordance with law



within a period of four weeks. The contesting respondents are duly represented by counsel and if the process of service is getting delayed, it is always open to the petitioners to serve papers on the counsel who represent for the respondents in these proceedings.

7. I make it clear that the jurisdictional civil Court will go into the issue entirely uninfluenced by the fact that the petitioners could not get relief before this Court. This Court had relegated the petitioners to move the jurisdictional civil Court and therefore invoking the jurisdiction of the civil Court should not be viewed otherwise.

8. Accordingly, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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 Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Park Town, Chennai - 600 003.
2. The District Collector,
Tiruchirappalli District,
Cantonment, Tiruchirappalli - 620 001.
3. The District Manager,
IMFS Depot, TASMAL Limited,
72, C.P.No.3, SIDCO Estate,
BHEL Nagar, Thuvakudi, Tiruchirappalli - 620 015.
4. The Managing Director,
TASMAL, CMDA Tower-II, IV Floor,
Gandhi Irwin Bridge Road, Egmore, Chennai - 600 008.



5. The Commissioner,
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.

6. The City Engineer,
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.

7. The Executive Engineer(West),
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.

8. The Assistant Executive Engineer,
Planning Department,
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.

9. The Junior Engineer,
Planning Department,
Tiruchirappalli City Municipal Corporation,
No.58, Bharathidasan Salai,
Cantonment, Tiruchirappalli - 620 001.

+2 CC to M/s.AL.GANTHIMATHI, Advocate (SR-13172 & 13173[F] dated 24/03/2021)

+1 CC to M/s.S.M.MOHAN GANDHI, Advocate (SR-13177[F] dated 24/03/2021)

+1 CC to M/s.S.SAJI BINO (SR-13398[F] dated 24/03/2021)

+1 CC to M/s.SPL GP (SR-13354[F] dated 24/03/2021)

W.P. (MD)Nos.17489 & 20741 of 2019

23.03.2021

SVM(CO)

TR(25.03.2021) 6P 15C