



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2021

CORAM

THE HON'BLE MR. JUSTICE M.SUNDAR

W.P(MD) No.20998 of 2021

S.M.Balasubramaniyan

... Petitioner

Vs.

1.The District Collector,
Virudhunagar,
Virudhunagar District.

2.The District Manager,
TASMAC,
Virudhunagar.

3.The Thasildar,
Arrupukottai,
Virudhunagar District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, directing the 2nd respondent to proceed further based on the inspection report and recommendations of the third respondent's proceedings in Na.Ka.Aa2/190/2020 dated 04.03.2021 for establishing a retail outlet in petitioner's premises.

For Petitioner	:	Mr.A.Srinivasan
For Respondents	:	Mr.T.Amjadkhan, Govt. Advocate for R1 & R3 Mr.K.K.Udhayakumar for Mr.H.Arumugam, Standing Counsel for TASMAC

O R D E R

In the captioned writ petition, the prayer is to mandamus the second respondent to proceed further based on the inspection report of the third respondent being inspection report bearing reference Na.Ka.Aa2/190/2020, dated 03.03.2021 [wrongly shown as 04.03.2021].

2. Short facts are that the writ petitioner is the owner of property at 'door No.1/1-1 in Survey No.101/9 in Kallurani Village, Aruppukottai Taluk, Virudhunagar District' (hereinafter 'said property' for the sake of convenience and clarity); that the second respondent intended to set up a TASMAC retail outlet in the said property; that the second respondent for this purpose requested the third respondent to send a report about suitability; that the third respondent pursuant to said request sent aforementioned report dated 03.03.2021 *inter alia* saying said property may not be a objectionable location for opening a TASMAC retail outlet; to be noted, 'TASMAC' stands for 'Tamil Nadu State Marketing Corporation



Limited', which is the wholesale and retail State owned vending company for liquor in the State; that the petitioner has come to this Court with the captioned writ petition to mandamus the second respondent to carry the proposal to its logical end i.e., set up a TASMAC retail outlet in the said property.

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3. Mr.K.Udhayakumar, learned counsel representing the Standing counsel for TASMAC accepted notice on behalf of the second respondent and Mr.T.Amjadkhan, learned Government Advocate accepted notice on behalf of respondents 1 and 3.

4. Owing to the short point involved with the consent of the aforementioned learned counsel main writ petition was taken up and heard out.

5. I am not inclined to accede to the prayer. In other words, the answer to the prayer in the captioned writ petition is in the negative and the reasons are as follows:

a] writ petitioner has no legal right. To be noted it is imperative that the petitioner should have a legal right to seek a mandamus and this principle was laid down in the oft quoted judgment of Hon'ble Supreme Court in **Praga Tools Corporation Vs. Shri C.A.Imanul and others** reported in (1969) 1 SCC 585.

b] As a sequitur to the previous point, in the case on hand though it may not be liquor vending per se but it pertains to opening of a shop for retail vending of liquor and therefore, the concept of *res extra commercium* would operate. This doctrine of *res extra commercium* has been elaborately considered by the Hon'ble Supreme Court in a series of case laws and some of the case laws are **Har Shankar and other Vs. Dy. Excise and Taxation Commr. and others** reported in (1975) 1 SCC 737, **Assistant Excise Commissioner and other Vs. Issac Peter and other** reported in (1994) 4 SCC 104, and **Khoday Distilleries Ltd., and others Vs. State of karnataka and others** reported in (1995) 1 SCC 574. The *res extra commercium* principle in simple terms is liquor vending is not a right and it is a concession given by the State. Therefore, there is absolutely no possibility of the writ petitioner establishing even a semblance of a legal right in the case on hand.

c] Be that as it may, on a demurer, the writ petition proceeds on the basis that the second respondent approached the writ petitioner and requested for taking said property on rent but there is no such request, only a communication from the second respondent dated 08.02.2021 and further communication of the second



respondent to the third respondent, have been placed before me and these communications only demonstrate that the second respondent had contemplated the possibility of opening a retail TASMAL in the said property and therefore this does not mean any right either legal or contractual.

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d] Prayer in effect tantamounts to the Court writing a contract, which is clearly impermissible and this Court would not write a contract much less in the writ jurisdiction.

e) There is an averment in the writ affidavit [paragraph 4] that the writ petitioner had renewed the superstructure in the said building based on assurance said to have been given by the second respondent but no piece of document has been annexed to the typed set of papers. To be noted, even if it had been annexed, it would make no difference as *res extra commercium* principle operates and there is nothing to show that there is even a contract much less a concluded enforceable contract. Therefore, it may not be necessary to delve any further into these aspects of the matter.

f] On instructions, learned Standing Counsel for TASMAL submits that for the present i.e., at the moment, the second respondent does not intend to open a retail outlet in the said land. This also puts an end to the campaign of writ petitioner.

7. The sequitur is captioned main writ petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (T&P)

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/ /2021

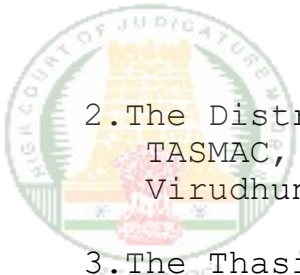
Sub Assistant Registrar(CS)

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,
Virudhunagar,
Virudhunagar District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The District Manager,
TASMAC,
Virudhunagar.

3.The Thasildar,
Arrupukottai,
Virudhunagar District.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-36417[F] dated 29/11/2021)

+1 CC to M/s.SPL GP (SR-36018[F] dated 26/11/2021)

+1 CC to M/s.A. SRINIVASAN, Advocate (SR-35831[F] dated 25/11/2021)

W.P (MD) No.20998 of 2021
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PS (CO)
KB(21.12.2021) 4P 7C