

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.No.9734 of 2022

R.Kulandaivel

...Petitioner

Vs

1. The District Collector,
Erode District, Erode.
2. The Revenue Divisional Officer,
Erode, Erode District.
3. The District Manager,
Tasmac Limited,
Bhavani Main Road,
Sooriyampalayam (P.O.),
Erode.
4. The Inspector of Police,
Modakurichi Police Station,
Erode District.

5. A.C.Arumugam

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the 1st and 3rd respondents to remove the TASMAL bearing Shop No.3855 in R.S.No.104/4, Patta No.852, Panchai Lakkapuram Village, Modakurichi Taluk, Erode District within the time limit that may be fixed by this Court since it violates Article 21 of the Indian Constitution by spoiling agricultural activities and affecting livelihood.

For Petitioner : Mr.A.Kumaraguru

For RR 1, 2 & 4 : Mr.G.Nanmaran
Special Government Pleader

For RR 3 : Mr.K.Sathish Kumar
Standing Counsel

ORDER

The prayer sought for herein is for a writ of mandamus directing the 1st and 3rd respondents to remove the TASMAC bearing Shop No.3855 in R.S.No.104/4, Patta No.852, Punchai Lakkapuram Village, Modakurichi Taluk, Erode District.

2. There is a TASMAC Retail Vending Shop i.e., Shop No.3855 located in R.S.No.104/4, Patta No.852, Punchai Lakkapuram Village, Modakurichi Taluk, Erode District which is adjacent to the agricultural land of the petitioner.

3. Due to the location of the said TASMAC Retail Vending Shop in the adjacent land to the petitioner's agricultural lands, the people who come to consume liquor in the TASMAC shop are throwing the empty bottles in the agricultural lands and moreover, the petitioners and the nearby land owners are squatting over the land to remove the said TASMAC shop. Therefore, in order to relocate the TASMAC shop, the petitioner had already given representation to the respondents, including the District Collector and the said representation dated 28.02.2022 since was not considered, the petitioner already approached this Court by filing writ petition in W.P.No.7020 of 2022, where, a learned Judge of this Court passed an order on 25.03.2022 giving direction to the respondents to consider the representation dated 28.02.2022 of the petitioner and dispose the same on merits within a period of 12 weeks.

4. Though the said order was passed on 25.03.2022, the TASMAC Manager, who was one of the respondent in the said writ petition, has passed an order as if passed on 18.03.2022 and dispatched it only on 25.03.2022 stating that, instructions have been given to supervise that, no empty bottles will be thrown on agricultural lands belongs to the petitioners and other land owners.

5. The said communication dated 18.03.2022, according to the petitioner, is afterthought, which has been pre-dated and issued only to overcome the direction issued by this Court dated 25.03.2022.

6. Therefore, the present writ petition, according to him, was necessitated and accordingly, he has filed the present writ petition with the aforesaid prayer.

7. Heard Mr.A.Kumaraguru, learned counsel appearing for the petitioner, who having reiterated the aforesaid, would seek indulgence of this Court to issue a direction to the District Collector who is the authority under the relevant Rules to decide the location of a particular TASMAC shop based on the objection being received from the public.

8. Heard Mr.G.Nanmaran, learned Special Government Pleader appearing for the respondents 1, 2 and 4 and Mr.K.Sathish Kumar, learned Standing Counsel appearing for the 3rd respondent TASMAC.

9. In view of the order going to be passed in this writ petition, there would be no prejudice for the 5th respondent, hence notice to him is dispensed with.

10. Mr.G.Nanmaran, learned Special Government Pleader as well as the learned Standing Counsel appearing for TASMAC would submit that, the order passed by the learned Judge is dated 25.03.2022, where, a direction was given to consider the representation of the petitioner within 12 weeks period, however, without waiting for the period given by this Court to decide the representation of the petitioner, he has rushed to this Court by filing the present writ petition, therefore, it should be dismissed, they contended.

11. I have considered the said submissions made by both sides and have perused the materials placed before this Court.

12. Whether in a particular location the TASMAC shop can be located or not has to be decided only by the District Collector that too based on any objection received from the public as per the amended Rule 8(3) of the Tamil Nadu Liquor Retail Vending Shop and Bars Rules, 2003.

13. Therefore, under the said Rule, the petitioner's representation already been directed to be considered, should be considered by the 1st respondent District Collector by giving an opportunity of being heard to both the petitioner as well as the 5th respondent who is the land owner of the agricultural lands, from whom the TASMAC taken the lease to locate the TASMAC shop, and to pass orders thereon within a time frame.

14. In view of the said stand taken by the respondents and by taking into account the earlier order passed by this Court dated 25.03.2022 in W.P.No.7020 of 2022, this Court is inclined to dispose of this writ petition with the following orders:

(i) That the order passed by this Court dated 25.03.2022 in W.P.No.7020 of 2022 shall be complied with strictly by giving an opportunity of being heard to the petitioner as well as the 5th respondent and accordingly, the plea raised by the petitioner can be considered and decided by the 1st respondent District Collector who is the authority under Rule 8(3) of the said Rules as early as possible preferably at the earliest i.e. before the outer limit prescribed by the orders of this Court dated 25.03.2022.

(ii) It is made clear that, while considering the request of the petitioner, the District Collector shall

also take into account the difficulties faced by the petitioner being the agriculturists and other land owners, where, if the empty bottles are thrown by the consumers who come to consume liquor from the TASMAC shop which is in question, that will have bearing on the very agricultural activities of the petitioner and others.

15. With these observations, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The District Collector,
Erode District, Erode.
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Erode.
4. The Inspector of Police,
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Erode District.

+1cc to Government Pleader SR. No. 27158

W.P.No..9734 of 2022

NK (CO)

PR (15/07/2022)