



W.P.No.20670 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.10.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.20670 of 2022

R.Kulandaivel

... Petitioner

Vs

- 1.The District Collector,
Erode District,
Erode.
- 2.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.L.C.Arumugam

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in Letter No.Na.Ka.16796/2022J1 dated 13.07.2022 on the file of 1st respondent



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and to quash the same and consequently direct the 1st and 3rd respondents to remove/relocate the TASMACH Shop 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.

For Petitioner : Mr.V.Chandrasekaran

For Respondents : Mrs.Geetha Thamaraiselvan (for R1 & R2)
Special Government Pleader

Mr.M.Sekar (for R3)
Standing Counsel

Ms.P.Raja Rajeswari (for R4)
Government Advocate

No Appearance (for R5)

ORDER

This writ petition has been filed by a resident of Modakurichi Taluk, Erode District. He is aggrieved by the location of the TASMACH shop bearing No.3855 in R.S.No.104/4, Patta No.852, Panchai Lakkapuram Village, Modakurichi Taluk, Erode District (land in question).

2.Learned counsel for the petitioner submits that the petitioner is the owner of agricultural land which is situate in the vicinity of the land in question, bearing R.S.No.103/1 vide patta No.24.



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3.Learned counsel for the TASMAL would raise an objection stating that the land of the petitioner is at some distance from the land in question. However, the objection is rejected on the ground that it does not contain sufficient merit and that it is perfectly in order for a resident of the locality, particularly, an owner of agricultural land, which is in the vicinity of the land in question to raise a question challenging the location of the shop.

4.The primary grievance expressed is that the shop in question is situated on agricultural land, which belongs to the 5th respondent. He has been served and his name printed in the cause list, but has chosen not to appear. There is no dispute upon the position that the land in question, in fact, constitutes agricultural land.

5.The First Bench of this Court in the case of *Mallasamy Nachimuthu v. The District Collector, Erode District, Erode and 3 others* (WP.No.4136 of 2019, dated 06.12.2019) had considered a Public Interest Litigation for removal of TASMAL Liquor shop in Bhavani Taluk, Erode District.

6.The questions that the Court had formulated were three-fold and set out at paragraph 11 extracted below:

'11.On submissions raised, we find that the issues which require consideration are broadly three-fold:- Firstly, as to whether the inclusion of agricultural lands for the purpose of



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utilizing them for establishing liquor vending shops is either expressly or impliedly prohibited under the 1937 Act and the 2003 Rules framed thereunder. Secondly, as to whether under the relevant laws for the time being in force, such premises have been permitted to be used in accordance with the relevant permissions and approvals relating to their location and the nature of the building where a liquor vending shop can be housed and thirdly, as to whether the respondents, particularly the fourth respondent, while renting out such premises have undertaken the exercise of locating the shops in accordance with the Rules and the restrictions that are in vogue for the time being in force.'

7. At paragraph 8 of their order, the Bench states as follows:

'8. But, at the same time, we find that the provisions of the Tamil Nadu Town and Country Planning Act, 1971 coupled with the relevant government orders and the Rules do require a permission from the local authority for changing the nature of the user of land by getting a permission of reclassification. Thus, there are permissible limits prescribed in law for user of land otherwise including agricultural land.'

8. The First Bench answered the issue stating categorically at paragraph 13 that *'We are, therefore, of the clear opinion that a liquor vending shop can be housed in a premises that may be situate over an agricultural piece of land, subject to the conditions and restrictions which are required for the utilisation of such land in accordance with the Rules and Regulations, referred to herein above, and as detailed in the affidavits filed by the fourth respondent.'*

9. Thus, it becomes incumbent upon the authority to comply with all statutory and regulatory requirements prior to setting up a shop upon



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agricultural land. This includes in the provisions of Section 47A of the Tamil Nadu Town and Country Plan Act, 1971, which requires development on any land in an area other than a planning area to be carried out only after an application is filed in writing to the local authority seeking such permission.

10.Learned counsel for the TASMACH would submit that such permission has to be obtained by the land owner being R5 and not by TASMACH. This may be so. However, the fact remains that till such time such permission is obtained by the land owner, the location of a TASMACH shop in that area is impermissible.

11.Section 47A, to the extent to which it is relevant to this matter, is extracted below:-

'47-A. Development of land in an area other than planning area.- (1) Any person intending to carry out any development on any land in an area other than planning area shall make an application in writing to the local authority for permission in such form and containing such particulars and accompany such documents as may be prescribed.

(2) The local authority shall before according permission under sub-section(1), shall obtain the price concurrence of the Director and shall also collect such fees at such rate as may be prescribed:

Provided that in the case of wet lands, the prior concurrence of the Collector of the District concerned is necessary.'



12. In light of the decision of the First Bench, permission from the local authority, who ought to have obtained prior concurrence of the Director, is a pre-condition for setting up of the TASMACH shop in question. The respondents have specifically been asked to furnish a clarification in this regard and by way of a report filed today, confirm as follows:

'It is submitted that the TASMACH shop no.3855 is functioning in survey No. R.S.F.No.104/4A (Patta No.852) from 16.07.2018. The land owner / 5th respondent produced the approved building plan obtained from the Lakkapuram village panchayat for construction of shop to the extent of 231 sq. ft. That apart, no conversion/ reclassification of land obtained since the remaining land used by the land owner himself. The reclassification of the existing Patta land cannot be done at this context. The reclassification of 231 Sq.Ft. of land situated in survey field No.104/4 of Punjai Lakkapuram village in which the 3rd respondent had established the retail vending Shop No.3855 could be possible if the land owner/ 5th respondent had sold the land to the 3rd respondent by a registered sale deed. In this case the land owner / 5th respondent has not sold the property to 3rd respondent. Therefore, the concept of change of Classification of the land does not arise. The land is certified as Punjai and the revenue records also stand in the name of 5th respondent till now.'

13. Their argument, which confirming that conversion/re-classification of the patta land has not been done, is that it cannot be done. While this Court is not concerned with the reasons why such re-classification/conversion may or may not be effected, it would suffice for the purpose of this writ petition to note that as on date, the land upon which the shop in question has been developed is



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classified as agricultural land for the development of which no consent of the local authority and Director have been obtained as required under Section 47A of the Act.

14.The prayer of the petitioner is thus accepted. The specific grievance of the petitioner in his representation dated 28.02.2022 to the effect that the shop in question has been developed upon agricultural land has not been dealt with in the impugned order dated 13.07.2022. To this extent, the impugned order is bad in law and set aside.

15.As a consequence order of the First Bench in WP.No.4136 of 2019 dated 06.12.2019, the discussion in this order and the admitted fact that there has been no conversion/re-classification of the land, the shop in question is liable to be removed forthwith.

16.This writ petition is allowed. No costs.

12.10.2022

vs

Index : Yes/No

Speaking Order/Non-speaking order



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DR.ANITA SUMANTH, J.

VS

To

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Erode District,
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