



W.P.No.28868 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.11.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

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... Petitioner

Vs

- 1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai-600 009.
- 2.The Chairman,
Tamil Nadu State Marketing Corporation Limited,
CMDA Tower-II, IV Floor,
Gandhi Irwin Bridge Road,
Egmore, Chennai-600 008.
- 3.The District Collector,
Office of the District Collector of Krishnagiri,
Krishnagiri District.
- 4.The District Manager,
Tamil Nadu State Marketing Corporation Limited,
No.1,2/123 Painapalli Village and Post,
Krishnagiri – 635 115.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus, forbearing the Respondents from opening



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the TASMACH shop in patta No.495, Kittampatti (Periyathallapadi), Uthangarai Taluk, Krishnagiri District.

For Petitioner : Mr.J.Pradeep

For Respondents : Mr.R.U.Dinesh Rajkumar (for R1 & R3)
Additional Government Pleader

Mr.M.Sekar (for R2 & R4)
Standing Counsel

ORDER

Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader accepts notice for R1 and R3 and Mr.M.Sekar, learned Standing Counsel accepts notice for R2 and R4. Both are armed with instructions to proceed with the matter finally, even at this juncture. Hence, by consent of all learned counsel, this Writ Petition is disposed finally even at the stage of admission.

2. The petitioner claims to be a resident of Chinnagovindapuram Village, Periyathallapadi Post, Uthangarai Taluk, Krishnagiri District and is aggrieved by the move on the part of R3, being District Collector of Krishnagiri District to open a Tamac outlet at Patta No.495, Kittampatti Village, Uthangarai Taluk, Krishnagiri District.

3. According to the petitioner, the proposed location is surrounded by schools, residential colonies and temples and is within 400 meters from a petrol bunk on the Singarapettai-Tirupathur Highway. The school and the temple are



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also within the prohibited distance as set out under the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 (in short 'Rules').

4. Admittedly, a representation objecting to the proposal has been made by the President of the Periyathallapadi Village, which has been received by the District Collector on 05.09.2022. The Panchayat is also stated to have passed a resolution (undated), objecting to the proposal in question, a copy of which is placed at page 17 of the typed set. The petitioner has filed a representation on 19.09.2022 before the District Collector also objecting to the proposal and a copy of the representation is placed at page 20 of the typed set of documents. Though, no acknowledgement of receipt is available for the same, Mr.Dinesh would confirm receipt of the objection by R3.

5. The Rules have been amended by virtue of G.O.Ms.No.17, Home, Prohibition and Excise (VI) Department dated 13.02.2022. Amended Rules 8 and 9 read as follows:

8. Location of shop.- (1) *No shop shall be established in Municipal Corporations and Municipalities within a distance of 50 (fifty) metres and '[in other areas within 100 (hundred) metres] from any place of worship or educational institutions :*

.....

(2) *Every shop shall be housed in a pucca building and no part of the shop shall be thatched either on the sides or on the roof.*

(3) *No business shall be commenced in the shop unless the location of the shop is approved by the Collector:*



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Provided that no such approval shall be given by the Collector unless representation received, if any, objecting to the location of the shop, is considered and orders passed thereon;

9. Shifting of shop. *There shall be no change in the location of shops except with the previous permission of the Collector.*

Provided that no such permission shall be given by the Collector unless representation received, if any, objecting to the change in location of the shop, is considered and orders passed thereon.

6. By virtue of the amended Rules, approvals, for both setting up of the outlet and change in location, are to be accorded by the Collector, conditional upon the Collector considering and disposing objections, if any, raised by any person objecting to the location/change in location of the outlet.

7. In light of Rule 8 as it stands now, it becomes incumbent upon R3 to consider the representation of both the Panchayat President as well as the petitioner and defer the grant of approval till such time he decides the representations, and subject to his decision on the same.

8. Rule 9A provides for filing of an appeal by any person aggrieved by an order passed by the Collector in terms of Rule 8 (3) or 9 and thus remedy is also provided in the scheme of the Rules, in anticipation of any adverse orders that may be passed by the Collector. Rule 9A reads as follows:

'9A. Appeal. (1) Any person aggrieved by an order passed by the Collector under sub-rule (3) of rule 8 or under rule 9, may prefer an appeal before the Commissioner of Prohibition and Excise within a period of thirty days from the date of receipt of the order.

(2) The Commissioner of Prohibition and Excise shall dispose of the appeal within a period of sixty days.'



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9. In light of the discussion as above, mandamus is issued to R3 to consider and dispose the representation of the petitioner dated 19.09.2022 and that of the Panchayat President dated 05.09.2022, after hearing both parties and pass orders thereupon within a period of six (6) weeks from date of receipt of a copy of this order.

10. Needless to say, the proposal to open the shop in the location in question shall be kept in abeyance till, and subject to the decision to be taken on the representations by R3.

11. This Writ Petition is disposed as above. No costs.

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Index : Yes / No
Speaking Order

To

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Dr.ANITA SUMANTH,J.

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