



W.P.No.30826 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.30826/2022 and WMP.No.30246/2022

Govindarasu

.. Petitioner

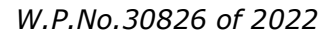
vs.

1. The District Collector,
Collectorate Office,
Ariyalur District.

2. The District Manager,
TASMAC Limited,
Perambalur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the respondents from re-locating the TASMAC shop No.6402 situated in Elakurichi Revenue Village to Kovilur Revenue Village in S.No.305/3B by following the judgment reported in W.P.No.20076/2019 dated 19.07.2019 and the



For Petitioner	::	Mr.B.Gopalakrishnan for Mr.R.Gokulakrishnan
For Respondents	::	Mr.R.Muthukumar, State Government Pleader for R1 Mr.C.Ramesh for R2

(Order of the Court was made by the Hon'ble Acting Chief Justice)

Seeking to issue a Writ of Mandamus, forbearing the respondents from re-locating the TASMACH shop No.6402 situated in Elakurichi Revenue Village to Kovilur Revenue Village in S.No.305/3B by following the judgment reported in W.P.No.20076/2019 dated 19.07.2019 passed by the First Bench of this Court and the resolution passed in Resolution No.30/2022/2023 by Kovilur Village Panchayat dated 07.05.2022, this Writ Petition has been filed.



W.P.No.30826 of 2022

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2. Learned Counsel appearing for the petitioner would submit that being a member of Kovilur Village Panchayat and an agriculturalist, earning a sum of Rs.50,000/- per annum, the petitioner has been advised to file this writ petition as a Public Interest Litigation opposing the opening of or establishing a TASMAL shop in his village. It is also stated in the affidavit filed in support of the writ petition that the entire village is depending only on the agricultural operations and at present, the entire land is full of sugarcane fields. When the agricultural operations are going on in the petitioner's village, the 2nd respondent, namely, the District Manager, TASMAL Limited, Perambalur District, has come forward to open a liquor shop which would affect the agricultural operations and also the peaceful and the conducive atmosphere in the village and within half-a-kilometre, a Gas Storage Warehouse is also located. If the 2nd respondent is permitted to open a liquor shop, then, there is a high chance for happening of untoward incidents. Therefore, a detailed representation dated 30.09.2022 was sent to the respondents not to shift the TASMAL shop to the petitioner's village and more particularly, the Village Panchayat has also passed a Resolution



W.P.No.30826 of 2022

WEB COPY

dated 07.05.2022 in Resolution No.30/2022-2023 resolving that the respondents should not grant permission for operating a new liquor Tasmac shop in the aforesaid village.

3. Learned Counsel for the petitioner would further submit that the petitioner is also a IX ward member in Kovilur Panchayat. When there are 3000 people living in the said village, so far, there was no Tasmac shop in the said village and after coming to know about the news that the 2nd respondent is going to open a Tasmac Shop in Kovilur Panchayat, an agitation was conducted and continuous representations were also given by the public opposing the opening of the Tasmac shop in Kovilur Village Panchayat. On 7.5.2022, Kovilur Panchayat has also passed a resolution No.30/2022-23 resolving that the respondents should not grant permission for opening any liquor shop as that would cause immense and untold miseries to the people living there. It is also submitted that Article 47 of the Constitution of India mandates the State to improve the public health, as it is a primary duty and the State shall endeavor to bring about prohibition of



W.P.No.30826 of 2022

WEB COPY

the consumption except for medical purposes of intoxicating drinks and of drugs, as it is injurious to health. Further, the apprehension of the villagers is that if the liquor shop is shifted to the village-in-question, the rights of the school going students, women and children would be jeopardized and they may not be in a position to move freely during night hours which is guaranteed under Article 19(1)(d) of the Constitution of India. Ignoring the same, the 2nd respondent cannot come forward to open a Tasmac shop which is not liked by anyone of the villagers because the resolution dated 7.5.2022, passed by Kovilur Panchayat clearly shows the will of the people living in that locality. Therefore, as against the will of the villagers, the 2nd respondent without respecting the sentiments and the will of the people, cannot come forward to open the TASMACH shop in Kovilur Village Panchayat. Hence, the writ petition may be ordered as prayed for, it is pleaded.

4. Mr.P.Muthukumar, learned Special Government Pleader takes notice for 1st respondent and Mr.C.Ramesh, learned Counsel takes notice for 2nd respondent TASMACH.



W.P.No.30826 of 2022

WEB COPY

5. Learned State Government Pleader appearing for the 1st respondent producing an order dated 06.12.2019 passed in W.P.No.4136/2019 by the First Bench of this Court would submit that this Court in a similar writ petition filed opposing the setting up of a Tasmac shop or a wine shop in a particular village, overlooking the objection raised by the petitioner therein and the villagers of Mylambadi Village, Bhavani Taluk, Erode District held that there is no any prohibition or restriction of the utilization of premises established/constructed over agricultural land for the purpose of setting up of a liquor shop. Therefore, following the same, this Writ Petition also has to be dismissed.

6. At the outset, we are of the view that the issue raised in W.P.No.4136/2019 is squarely different from the issue raised in the case on hand. Here the grievance of the petitioner is not to shift the TASMAC shop No.6402 situated in Elakurichi Revenue Village to Kovilur Revenue Village in S.No.305/3B and in this regard, the people of the Kovilur Panchayat also jointly passed a resolution in No.30/2022/2023 dated 07.05.2022 resolving



W.P.No.30826 of 2022

WEB COPY

that the respondents should not grant permission for opening of any liquor shop. Therefore, even the resolution passed by Kovilur Village Panchayat on 07.05.2022, in our considered opinion, falls within the meaning of law under Article 13(3)(a)(b) of the Constitution of India which are extracted here under:

"13. Laws inconsistent with or in derogation of the fundamental rights: (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires,— (a)“law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;



W.P.No.30826 of 2022

(b)“laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368."

7. In this context, it is necessary to advert to paragraph Nos.22 and 23 of a judgment of the Hon'ble Supreme Court of India in ***Village Panchayat, Calangute Vs. Additional Director of Panchayat and Ors.***¹, which is reproduced as hereunder:-

" An analysis of Article 40 and Articles 243 to 243-O shows that the Framers of the Constitution had envisaged the village panchayat to be the foundation of the country's political democracy—a decentralised form of government where each village was to be responsible for its own affairs. By enacting the Constitution (Seventy-third Amendment)

¹ (2012) 7 SCC 550



WEB COPY



W.P.No.30826 of 2022

Act, Parliament has attempted to remedy the defects and remove the deficiencies of the Panchayati Raj system evolved after Independence, which failed to live up to the expectation of the people in rural India. The provisions contained in Part IX provide firm basis for self-governance by the people at the grass root through the institution of panchayats at different levels. **Para 22**

For achieving the objectives enshrined in Part IX of the Constitution, the State Legislatures have enacted laws and made provision for devolution of powers upon and assigned various functions listed in the Eleventh Schedule to the panchayats. The primary focus of the subjects enumerated in the Eleventh Schedule is on social and economic development of the rural parts of the country by conferring upon the panchayat the status of a constitutional body. Parliament has ensured that the panchayats would no longer perform the role of simply executing the programs and policies evolved by the political executive of the State. By virtue of the provisions contained in Part IX, the panchayats have been empowered to formulate and



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W.P.No.30826 of 2022

implement their own programs of economic development and social justice in tune with their status as the third tier of the Government which is mandated to represent the interests of the people living within its jurisdiction. The system of panchayats envisaged in this part aims at establishing strong and accountable systems of governance that will in turn ensure more equitable distribution of resources in a manner beneficial to all. **Para 23"**

8. Article 243(a) of the Constitution of India reads as follows:-

" **243-A. Gram Sabha.**--- A Gram Sabha may exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide."

9. In this context, the State of Tamil Nadu, by enacting Tamil Nadu Panchayats Act, 1994, had vested certain powers with the Village Panchayat under Section 111 of the Act, which reads as hereunder:-

" **111. Power of Village Panchayat to provide for certain other matters.**---- Subject to the provisions of this Act and the Rules made thereunder a Village Panchayat



WEB COPY



W.P.No.30826 of 2022

may also make such provisions as it thinks fit for carrying out the requirements of the village in respect of the following matters, namely:----

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(j) the construction of works of public utility and the provisions of other facilities for the safety, health, comfort, convenience, culture or recreation of the inhabitants of the village."

The location of the TASMACH shop certainly falls within the safety, health, culture or recreation of the inhabitants of the village.

10. The Tamil Nadu Panchayats (Quorum and Procedure for The Convening and Conduct of Meetings of Village Panchayat) Rules, 1999 vide Rule 14 enables the passing of resolution by the panchayat. Therefore, the Kovilur panchayat was well within its rights and jurisdiction to pass the resolution saying no to TASMACH shop. In this regard, a Division Bench of



W.P.No.30826 of 2022

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this Court in *G.Kanaga Bai Vs. The District Collector, Kanyakumari District and Ors.*², has categorically held that as per Rule 10(5) of the Tamil Nadu Liquor Retail Vending [in Shops and Bars] Rules, 2003, it is mandatory that all the TASMAL shops to have a signboard with slogan "மது நாட்டுக்கு, வீட்டுக்கு, உயிருக்கு கேடு" (Liquor — ruins country, family and life) and that if any panchayat seeks to follow slogan in its letter and spirit by passing a resolution, the same has to be honoured.

11. A cursory reading of the above makes it clear that when a resolution is passed by a competent authority that also is a law and breaking the said law, thereby taking decision to shift the TASMAL shop No.6402 situated in Elakurichi Revenue Village to Kovilur Revenue Village is unacceptable, unsustainable and also amounts to breach of law and further, if the resolution is not accepted, it would unnecessarily create some law and order problem that may lead to disturb the conducive atmosphere in that locality. Hence the respondents are injuncted from shifting any Tasmac shop into Kovilur Village as against the resolution passed in Resolution

² (2013) 5 CTC 141



W.P.No.30826 of 2022

No.30/2022-2023 dated 07.05.2022 by Kovilur Village Panchayat.

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12. With the above observation and direction, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

(T.R.,A.C.J.) (D.B.C, J.)

05.12.2022

To

1. The District Collector,
Collectorate Office,
Ariyalur District.
2. The District Manager,
TASMAC Limited,
Perambalur District.



WEB COPY



W.P.No.30826 of 2022

THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.,

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W.P.No.30826 of 2022

05.12.2022