

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

W.P(MD)No.6366 of 2019

M.Suresh Kumar

... Petitioner

vs.

1.The District Collector,
Dindigul District.

2.The District Manager,
TASMAC,
Dindigul District.

3.The Block Development Officer,
Office of the Panchayat Union,
Gujiliamparai,
Vedasandur Taluk,
Dindigul District.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to shift the TASMAC Shop No.3118, situated in Chinnu Illupai Village, Vedasandur Taluk and Dindigul District.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondents : Mr.P.Thilakkumar,
Government Pleader for R1 & R3
Mr.H.Arumugam for R2

ORDER

(Order of the Court was made by R.MAHADEVAN, J.)

The relief sought in this Writ Petition is to issue a Writ of Mandamus, directing the respondents to shift the TASMACH Shop No.3118, situated in Chinnu Illupai Village, Veda sandur Taluk and Dindigul District.

2.The learned counsel for the petitioner submitted that the petitioner is a resident of Chinnu Illupai Village, Dindigul District and the shop in question is situated adjacent to the National Highways and just opposite to the sub-station of TANGEDCO and a Muthalamman Temple is also situated within 100 meters of the TASMACH shop. Therefore, the petitioner made a representation dated 24.12.2018 to the first respondent requesting to not to open the TASMACH shop. Finding no response on the same, he has come up with this writ petition for the aforesaid relief.

3.Heard the learned appearing for all the respondents and perused the documents enclosed in the typed set of papers.

4.This court is of the opinion that the location of the liquor shop is governed by the statutory Rules, viz., Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, particularly Rule 8; and the District Collector is the competent authority to grant permission for the same. Therefore, the prayer made by the petitioner, cannot be entertained under Article 226 of the Constitution of India, when the statute explicitly provides for the remedy of appeal to the parties.

5.In this context, it is apropos to refer to the order ***dated 04.07.2022*** passed in ***WP.No.16848 of 2022*** by a Co-ordinate Bench of this Court, in the case of ***P.Rajendiran v. Government of Tamil Nadu and others***, in which, while dismissing the said case, it was observed as follows:

"2.The remedy of appeal is available to the petitioner, if according to the petitioner, the licence to the Tasmac shop has been issued in violation of rules. But without availing the remedy aforesaid, where factual issue about the location of the shop can also be determined, i.e., as to whether it is licensed in violation of the rules or not, the present writ petition has been preferred. The extraordinary remedy under Article 226 of the Constitution of India would not be open for determining the factual issues, which includes the location of

Tasmac shop and as to whether it is in violation of rules or not. All these factual issues can easily be determined in the appeal. Therefore, we do not the writ petition of any exceptional nature where it can be maintained without taking the remedy of appeal. It is more so while there is no pleading in the writ petition to show that the remedy of appeal would not be efficacious."

6.At this juncture, the learned counsel for the petitioner sought liberty to approach the appellate authority by preferring an appeal, in accordance with law, for which, there is no objection on the side of the respondents authorities.

7.In view of the above submissions made on either side, this Court permits the petitioner to file an appeal before the appellate authority within a period of two weeks from the date of receipt of a copy of this order. On such filing, the appellate authority shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of hearing to all the parties, within a period of 60 days thereafter.

8.The Writ Petition is disposed of with the above directions. No costs.

[R.M.D.,J.] & [J.S.N.P.,J.]
12.09.2022

Index : Yes / No
Internet : Yes

vsm

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ORDER MADE IN
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