

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.6899 of 2019

Ramesh

... Petitioner

vs.

1.The District Collector,
Theni District.

2.The District Manager,
TASMAC,
Theni.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents not to open the proposed TASMAC outlet at Poothipuram Main Road, Palanichettipatti, Theni District, which is situated in front of the petitioner's house in the name and style of "MURUGAN KUDIL" based on the petitioner's representation dated 16.03.2019.

For Petitioner	: Mr.A.Uthayakumar
For Respondents	: Mr.G.V.Vairam Santhosh, Addl.Government Pleader for R1 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 not to open the proposed TASMACH outlet at Poothipuram Main Road, Palanichettipatti, Theni District, which is situated in front of the petitioner's house in the name and style of "MURUGAN KUDIL" based on the petitioner's representation dated 16.03.2019.

2. The learned counsel for the petitioner submitted that subsequent to the filing of the writ petition, license was granted and the TASMACH shop in question was opened, which is running and according to the learned counsel appearing for the TASMACH, there are no distance violation.

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

To

- 1.The District Collector,
Theni District.
- 2.The District Manager,
TASMAC,
Theni.

W.P(MD)No.6899 of 2019

R.MAHADEVAN,J.
and
J.SATHYA NARAYANA PRASAD,J.

vsm

ORDER MADE IN
W.P(MD)No.6899 of 2019

DATED : 12.09.2022