



W.P(MD).No.20813 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.09.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.20813 of 2022

and

W.M.P.(MD).No.15099 of 2022

M.Babu

... Petitioner

Vs.

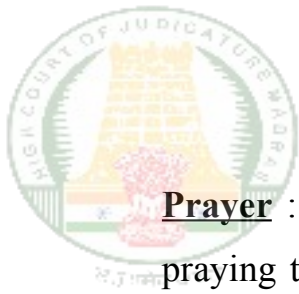
1.The Managing Director,
Tamil Nadu State Marketing Corporation,
(TASMAC), CMDA Tower,
Chennai.

2.The District Collector,
Trichy District,
Trichy.

3.The District Manager,
Tamil Nadu State Marketing Corporation,
(TASMAC),
Trichy.

4.The Regional Manager,
Tamil Nadu State Marketing Corporation,
(TASMAC),
Old Collectorate Office,
Trichy.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents from opening/establishing the TASMAL liquor shop at Survey No.19/1A, TVS Tollgate, Trichy District by considering the petitioner's representation dated 12.08.2022.

For Petitioner : Mr.H.Mohammed Imran
for M/S.Ajmal Associates

For Respondents : Mr.B.Jameel Arasu
1 and 3 Standing Counsel
For 2nd Respondent: Mr.S.Kameswaran
Government Advocate

ORDER

This Writ Petition has been filed, seeking for a Mandamus to direct the respondents from opening / establishing the TASMAL liquor shop at Survey No.19/1A, TVS Tollgate, Trichy District by considering the petitioner's representation dated 12.08.2022.

2.Mr.S.Kameswaran, learned Government Advocate takes notice for the second respondent and Mr.B.Jameel Arasu, learned Standing Counsel takes notice for the respondents 1, 3 and 4. By consent, this Writ Petition is taken up for final disposal at the admission stage itself.



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3.The learned counsel appearing for the petitioner submitted that the TASMAC authorities are making arrangements to open the TASMAC shop near TVS Tollgate in Trichy District. This Tollgate is situated in Survey No.19/1A, TVS Tollgate, Trichy District. In the same place in the year 2018, when a proposal was made, at that time, public gathered and made agitation, which was also covered by the media news, papers, more particularly in Thinamalar Publication and Malai Murasu Publication. Considering the objections, at that time, the TASMAC shop No.10213 was cancelled.

4.He further submitted that a TASMAC shop is situated within 25 mts from Sankili Muthu Mariamman Thirukovil and Mariamman Thirukovil and Pathinettam Pati Karuppasamy kovil Iyappa Seva Sangam. Further, the road is situated in such a way that it would take some distance for the customers of TASMAC shop to take u-turn to approach the wine shop, which is not normally followed and two wheelers came on the wrong direction to the shop and thereafter, proceed in the four way lane road, which normally ends up in accidents and loss of life or limb. Since the proposed shop is located in the prime locality, it would cause traffic, disturbance and movements of ambulance and other emergency vehicles, hence, the petitioner sent representation, which is yet to be considered. Hence, the present petition has



been filed.

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5.The learned Standing Counsel appearing for the respondents 1, 3 and 4 submitted that there was no earlier proposal in the year 2018 as contended by the petitioner. He further submitted that now, following G.O.Ms.No.32, dated 21.05.2018, the District Manager, TASMAL Limited made a proposal, dated 31.05.2022, the Assistant Commissioner of Excise sent a report, dated 14.06.2022, the District Collector found the report proper, no objection or restriction to shift the TASMAL shop No.10562, which is functioning adjacent to Shop No.10316 to cater to the needs of customers. The said shop No.10562 is proposed to be shifted to Survey No.19/1A near Trichy Tollgate. According to the inspection report, the temple is 300 metres away, Kajamiyan Higher Secondary School is 700 metres away from the proposed site. Further, it is also 10 metres away from the national highways NH 45 and the place now comes under the Trichy Corporation, which is classified as mixed commercial and residential use Zone. Based on the report of the Assistant Commissioner, the Collector granted permission to open the shop by his proceedings in Na.Ka.P&E3/20788/2022, dated 03.08.2022. After approval given by the District Collector, the Managing Director, Tamilnadu State Marking Corporation Limited, by his proceedings in



Na.Ka.No.R-3/7523/2022, dated 30.08.2022 accepted the proposal and permitted to shift the TASMAC shop No.10562 to the survey No.19/1A, near TVS Tollgate. At this stage, the petitioner belatedly made the representation and objection. Further, under Section 9A of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, appeal provision, wherein any person aggrieved by an order passed by the Collector under Sub Rule 3 of Rule 8 or under Rule 9 of the Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, can file an appeal to the Commissioner of Prohibition and Excise within a period of 30 days from the date of receipt of the order and the Commissioner of Prohibition and Excise shall dispose of the appeal within a period of sixty days from the date of filing of the appeal. This being so, when the appeal provision is there, the petitioner approached this Court by way of filing this Writ petition, which is not proper. Hence, he seeks to dismiss the petition.

6.The learned Government Advocate appearing for the second respondent submitted that based on the report of the Assistant Commissioner of Excise, who conducted spot inspection, it was found that Survey No.19/1A , TVS Tollgate comes under Trichy Corporation limit and the place declared as a mixed commercial and residential use Zone. Further, the



location is found to be in the service road not on the national high way NH

45. Hence, the permission was granted by the Collector, since there was no other valid objections.

7.The learned counsel appearing for the petitioner submitted that the petitioner came to know about the shifting of the TASMAC in Survey No. 19/1A recently when preparatory work for the shop made. Thereafter, immediately he has sent a representation to the District Collector as well as the Commissioner of Prohibition and Excise to cancel the permission granted to shift the TASMAC shop by considering the welfare and safety of the public at large.

8.Considering the submission and perusal of the materials available on records, it is seen that the District Manager, TASMAC has sent a proposal on 31.05.2022 to shift the TASMAC shop No.10562, which is near the TASMAC Shop No.10316 in Alathur Village. The Assistant Commissioner of Excise conducted spot inspection, submitted his report on 14.06.2022 to the District Collector. Form the report, it is seen that the proposed shop is to be situated in the service road off national high way NH45. Now the Trichy Corporation is classified the place as mixed commercial and residential use Zone. The



Collector following G.O.Ms.No.32, dated 21.05.2018, and order No.17(d) of the said G.O., which is in compliance to Rule 8(1) of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, had given consent and permission. From the typed set of papers, it is seen that already in the year 2018, there was a protest from the villagers, residents and others for opening the shop No.10213 near the TVS Tollgate area by considering the objections of the public, then the shop was not opened. Further, the proposed site is in the service road adjacent to the national High way NH 45, which is not denied. There is an appeal provision, specifically to consider the objections of the aggrieved persons. In this case, the petitioner is aggrieved person. The petitioner had come to know about shifting of the TASMAL Shop No.10562 near TVS Tollgate area only recently.

9.In view of the same, the petitioner is directed to file an appeal under Section 9A of Tamil Nadu Liquor Retail Vending (In Shops and Bars) Rules, 2003, before the District Collector, who has to consider the objections of the petitioner's. It would be appropriate that the District Collector himself make site inspection to satisfy the objections made by the petitioner. The petitioner to file an appeal within a period of 30 days from the date of receipt of a copy of this order. Till such time, the permission granted by the first respondent is



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kept in abeyance, third respondent is directed not to take any steps to shift the shop No.10562 to survey No.19/1A, near Trichy Tollgate. The District Collector may consider the appeal, within a period of 30 days from the date of filing of the appeal. In the event of rejecting the objections of the petitioner, within 30 days the petitioner has to make an appeal before the Commissioner of prohibition and Excise.

10. With the above direction, this Writ petition stands disposed of. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

02.09.2022

Index : Yes / No
Internet : Yes/ No

vsg

To

The District Collector,
Office of the District Collector,
Trichy District.



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