

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.15392 of 2018

G.Thangapandian

... Petitioner

VS.

1.The District Collector,
Tuticorin District,
Tuticorin.

2.The District Manager,
Tamil Nadu State Marketing Corporation Limited (TASMAC),
Tuticorin District,
Tuticorin.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, for a direction directing the respondent Nos.1 and 2 to remove the TASMAC Shop No.9918 from the building located at 20B, Kadambur Road, Kayathar, Tuticorin District.

For Petitioner	: Mr.R.Rajesh Kumar
For R1	: Mr.G.V.Vairam Santhosh
	Additional Government Pleader
For R2	: Mr.H.Arumugam

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 respondent Nos.1 and 2 to remove the TASMAC Shop No.9918 from the building located at 20B, Kadambur Road, Kayathar, Tuticorin District.

2.The learned counsel for the petitioner submitted that the petitioner is a resident of Kayathar and the shop in question is located very close to the Temple. Therefore, the petitioner made a representation dated 01.06.2018 to the respondent authorities requesting to remove the 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 the petitioner to approach the appellate authority by preferring an appeal, in accordance with law, for which, there is no objection on the side of the respondent 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
ps

To

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

ps

ORDER MADE IN
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