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W.P.(MD)NO.28965 OF 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2025

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.28965 of 2025

AND

W.M.P.(MD)Nos.22443 & 22444 of 2025

Chandran

... Petitioner

Vs.

1. The Commissioner,
Prohibition and Excise,
2nd Floor, Ezhilagam Building,
Chepauk, Chennai.
2. The Assistant Commissioner,
Prohibition and Excise, Madurai.
3. The District Collector,
Madurai District, Madurai.
4. The Managing Director,
Tamil Nadu State Marketing Corporation Ltd.,
C.M.D.A.Building, Tower-II,
Gandhi Irwin Bridge, Egmore,
Chennai – 600 008.
5. The Superintendent of Police,
Madurai District, Madurai.
6. The Divisional Officer,
Prohibition and Excise,
Thirumangalam, Madurai.



7. The Secretary,
M/s.Leo Recreation Club,
Thirumangalam,
Madurai District.

8. Raman

9. Ponnusamy

10.C.Thangaraj

11.C.Durairaj

12.C.Murugan

(R-8 to R-12 impleaded vide order
dated 28.10.2025
in W.M.P.(MD)Nos.23537,
23684 & 23781 2025)

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in R.DIS.No.P&E.2(1)/1051/2025 dated 25.09.2025 and quash the same as illegal and consequently, direct the first respondent to cancel the license No.18/2025-2026 in favour of the seventh respondent and by considering the petitioner's representation dated 27.09.2025.

For Petitioner : Mr.N.Mohideen Basha

For R-1 to R-3 : Mr.M.Lingadurai,
Special Government Pleader.

For R-4 : Mr.Arumugam

For R-5 : Mr.A.Albert James,
Government Advocate.



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For R-7 : Mr.B.Saravanan, Senior counsel,
for Mr.T.Aswin Rajasimman.

For R-8 : Mr.Nadheer Nazer

For R-9 : Mr.T.Shanmugam

For R-10 to R-12 : Mr.P.Janarthanan

* * *

ORDER

Heard both sides.

2.Vide proceedings dated 25.09.2025, the Commissioner of Prohibition and Excise, Chepauk, Chennai granted FL.2 licence in favour of the seventh respondent (Leo Recreation Club). The club is located on the land comprised in survey No.36/1B, door No.405/4, Madurai Road, Thirumangalam, Madurai 625 706. The grant of licence is put to challenge in this writ petition on the primary ground that the licence holder does not have the lease agreement in his favour executed by all the land owners. It is pointed out that the land in question belongs to six brothers, namely, Chandran, Thangaraj, Ponnusamy, Raman, Murugan and Durairaj. It is not in dispute that the lease agreement in this case was executed on 17.02.2025 only by three of the brothers namely, Thangaraj, Murugan and Durairaj.



3.The Assistant Commissioner(Prohibition and Excise),

Madurai in his inspection report dated 09.07.2025 had observed that the execution of the lease agreement by three of the brothers would suffice, since an internal agreement was executed among all the six brothers in the year 2009 for dividing the property and the land in question is with Thangaraj.

4.I cannot endorse the approach adopted by the inspecting officer. This is for more reasons than one. Rule 23 of the Tamil Nadu Liquor (Licence and Permit) Rules, 1981 states that the authority shall before granting the licence in Form FL2 license, require the applicant to execute a counterpart agreement in form FM5. Even though the statutory provisions appear to be silent that the lease agreement must be obtained by the licence holder from all the title holders, it cannot be gainsaid that the licence can be issued only to the person who is in lawful possession of the premises in question. Where the applicant is not a owner or co-owner but a lessee or licensee, in the very nature of things, he must derive his right from all the co-owners. In this case, the inspecting officer has referred to an internal agreement entered into among the parties in the year 2009. However, it is a matter of record that a partition suit was subsequently filed in O.S.No.142 of 2010 on the



file of the VI Additional District Judge, Madurai and a preliminary decree was passed on 22.11.2016 giving 1/6th share each to all the brothers in the petition-mentioned land. This decree was also confirmed by the Hon'ble Division Bench in A.S.(MD)No.73 of 2017 on 04.04.2025. The resultant position as on date is that the petitioner has 1/6th share in the land in question. He is not a party to the lease deed executed in favour of the seventh respondent (licensee).

5. When the decree passed by the competent civil Court is holding the field, the inspecting officer could not have relied on any anterior document. Such reliance on a document that has been superseded by a decree is unsustainable.

6. Be that as it may, the ground reality cannot be ignored. Technically, till the final decree is passed, all the six brothers have 1/6th undivided share over all the suit items. But on ground, some of the items are in the exclusive possession of some of them based on an earlier understanding. Thangaraj, the tenth respondent and two of his brothers, namely, Murugan and Durairaj, agreed before me that subject to the outcome of the final decree proceedings, the FL.2 licensee can pay 1/6th share separately to each of the title holders. However, this arrangement is not acceptable to the other three brothers.



7.It is not in dispute that the club has already started functioning. When a final decree proceedings in partition suit is going on, it is only just and proper that an equitable arrangement which would be beneficial to all is worked out. By cancelling the license issued to the seventh respondent, no purpose is going to be served. Taking into account the overall facts and circumstances, in the interest of justice, I sustain the impugned proceedings. All the six brothers will furnish their respective account details to the seventh respondent. The licensee shall remit 1/6th share of the monthly rental (Rs.50,000/-) in the bank account of each of the brothers. This liability will arise from this month onwards. As and when there is any enhancement and revision of the monthly rental, the division shall be made on proportionate basis. I reiterate that this arrangement will terminate on the passing of the final decree.

8.This writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

03.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU/skm



To:

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G.R.SWAMINATHAN, J.

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