

(2010) 04 MAD CK 0051

In the Madras High Court

Case No : Writ Petition (MD) No. 5019 of 2010 and M.P. (MD) No's. 1 and 2 of 2010

A. Pramman

APPELLANT

Vs

The District Collector, The District Manager TASMAL and Sp.
Varadarajan

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0051

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

Advocate : V.R. Shanmuganathan, for the Appellant; V. Rajasekaran, S.G.P. for RR1 J. Ravindran, for RR2 and C.B. Senthil Kumar, for RR3, for the Respondent

Final Decision : Dismissed

Judgement

P. Jyothimani, J.—Heard the learned Counsel appearing for the petitioner and the learned Special Government Pleader, appearing for the

1st respondent as well as the learned Counsel appearing for the 2nd respondent apart from the learned Counsel appearing for the 3rd respondent.

2. The petitioner, as the son of his father Arumugham Servai has filed the present writ petition, challenging the notification issued by the 2nd

respondent dated 07.04.2010, calling for Bar license to be issued for selling eatables and collecting empty bottles in respect of shop No. 7515,

situated at behind the new bus stand of Karaikudi. This Court, by an order dated 15.04.2010, has directed to maintain status-quo as on date. As

per the notification, the last date for receiving all applications is 27.04.2010 upto 5.00 p.m. and the opening of the tenders is on 28.04.2010 at

11.00 am.

3. The learned Counsel appearing for the respondents submitted that even as on date, the said TASMACH shop is running in the said place viz., plot

No. 285, behind the new bus stand of Karaikudi. As it is seen from the submission made by the learned Counsel appearing for the 3rd respondent,

the 3rd respondent is stated to have inherited the property from his father Subbiah Pillai, who in his turn has purchased the said property from the

father of the writ petitioner viz., Arumugam Servai under a registered sale deed executed on 28.12.1956.

4. It is seen that when the petitioner's father has executed the sale deed in favour of the father of the third respondent herein, the petitioner was

aged about one year, being a Minor and as a guardian for him and another son, who also happened to be the minor, the petitioner's father has

executed the sale deed as stated above on 28.12.1956. Based on the same, tax receipts and other revenue documents are transferred in the name

of the 3rd respondent herein and with his permission, the TASMACH shop No. 7515 has been running in the said premises.

5. The impugned notification for the purpose of Bar license came to be challenged by the petitioner without even impleading the said 3rd

respondent, who has now impleaded himself as 3rd respondent and the present writ petition came to be filed on the ground that the petitioner

herein is the owner of the property. Without even disclosing about the sale deed, which has been executed by the petitioner's father in favour of

the 3rd respondent in 1956, stating that the 3rd respondent has obtained sale from his father and that sale should be treated as sham and nominal

transaction and on the basis that he has filed a suit in O.S. No. 23 of 2010 on the file of the District Munsif Court, Karaikudi.

6. On a reference to the documents especially the sale deeds and other documents produced by the 3rd respondent herein, there is absolutely no

difficulty to come to a conclusion that the writ petitioner cannot claim any right over the property as on date unless and until the petitioner has

approached by filing a suit to declare the sale deed as sham and nominal before the competent civil Court.

7. Inasmuch as, it is the competent civil court, which has to decide about the dispute between the petitioner as well as the 3rd respondent, this

Court does not want to express any opinion on the merit of the subject matter except to say that prima-facie the petitioner as on date has no right

to maintain the writ petition, challenging the notification issued by the 2nd respondent TASMAL.

8. The learned Counsel appearing for the petitioner would submit that in an earlier writ petition filed by the petitioner in W.P(MD) No. 3269 of

2010 for direction against the District Collector to consider the representation dated 01.03.2010, this Court by an order dated 15.03.2010 has

directed the District Collector to consider the representation of the petitioner dated 01.03.2010 for the purpose of shifting the TASMAL shop

No. 7515 situated at behind the new bus stand of Karaikudi and to pass appropriate orders within a stipulated time. It is his submission that

pursuant to the same, the District Collector has already conducted an enquiry and he should be directed to pass orders.

9. In such view of the matter and having been satisfied prima-facie that the petitioner as on date has no right to oppose the notification issued by

the 2nd respondent, in my considered view, no useful purpose will be served by permitting the 1st and 2nd respondents to pass orders on the so-

called enquiry said to have been conducted by them as directed by this Court earlier and therefore, this writ petition stands dismissed with liberty

to the 2nd respondent to proceed with the notification for the purpose of lease of the Bar license for the above said shop.

10. It is made clear that the order passed in this writ petition shall not stand in the way of the civil Court in deciding the rights of the parties in the

suit in O.S. No. 23 of 2010 filed by the petitioner against the 3rd respondent as stated above. No costs. Consequently, connected miscellaneous

petitions are closed.