
(2012) 10 MAD CK 0095

In the Madras High Court

Case No : W.A. No. 277 of 2012 in M.P. No. 1 of 2012

G. Vetrivel

APPELLANT

Vs

Golden Enclave Owners' Association and Others

RESPONDENT

Date of Decision : 05-10-2012

Acts Referred:

Citation : (2012) WritLR 1057

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : AR.L. Sundaresan for M/s. AL. Gandhimathi in W.A. 277/12 and Mr. S. Muthuraj in W.A. 389/12, for the Appellant; S. Muthuraj for R2 in W.A. 277/125, Mr. V. Prakash for Mr. M.A. Gowthaman for R1 in both the Appeals, Mrs. A. Srijayanthi, Spl. G.P. for R3 and R5 to R7 in both the Appeals and Mr. V. Bharathidasan for R.4 in both the Appeals, for the Respondent

Final Decision : Dismissed

Judgement

Elipe Dharma Rao, J.—The first respondent in both the writ appeals is a Welfare Association of occupants of the Flats, situated on Poonamallee High Road, Chennai-10. They have initiated the present writ proceedings, before the learned single Judge, praying to close the liquor shop with bar attached functioning in the basement of their flats. Their contention is that their complex is a office cum commercial complex where various offices are situated and many ladies are working. It is also their case that the complex in which the liquor shop cum bar is situated at the Taylors Road junction of Poonamallee High Road and exactly outside the complex, there is a bus stop and in and around the complex, there are several schools, hospitals and temples. According to them, because of the liquor shop, the situation becomes more worst after 8 pm, when almost all the offices are closed and taking advantage of the closed offices, many people purchase liquor and other items from liquor shop and go to various places in the complex, consume liquor and are throwing the bottles and other garbage in the complex, as a result of which, many of the occupants are finding it difficult in the morning to open their offices and due to the existence of liquor shop cum bar

and the restaurant in the basement, throughout the day, in the entire complex, there is unpleasant smell due to the smoke from the restaurant and also because of smoking of the liquor consumers.

2. The claim of the writ petitioner was stiffly opposed by the owner of the flat and TAS-MAC by filing separate and vivid counters, denying all the allegations of the writ petitioner and further stating that the liquor shop was opened by obtaining necessary licences and at no point of time, there is any nuisance or disturbance in the locality, which is evident from the fact that no police complaint of that sort has ever been lodged. They have also maintained that the building is a commercial one, with different entry points for bar and the other occupants and therefore, the contentions raised on the part of the Association are baseless.

3. Since the contentions of the rival claimants are at variance and to find out the truth, the learned single Judge, in the writ petition, by order dated 21.1.2011, has appointed an Advocate-Commissioner. Accordingly, an Advocate-Commissioner visited the complex on 31.1.2011 and filed his report on 8.2.2011, describing the physical features of the complex.

4. Again, since, in the opinion of the learned single Judge, the said Advocate-Commissioner has failed to report as to how beer bar causes nuisance to the general public, warranting its closure, by the order dated 9.2.2011, another Advocate-Commissioner was appointed with a direction to go and inspect the beer bar and to report as to whether location of beer bar at the place is nuisance to the public at large. The second Advocate-Commissioner was also directed to record the statement of the persons of nearby locality, in this regard and submit his report. Accordingly, the second Advocate-Commissioner filed his report before the learned single Judge. Along with the report, the Advocate-Commissioner had enclosed the objections raised by the occupants of the Complex, with reference to the location of the shop as well as the letters received from three Principals of neighbouring Schools.

5. Considering all the facts and circumstances and following the judgment of a Division Bench of this Court in The Tamil Nadu State Marketing Corporation Ltd. Vs. R.M. Shah and Others, authored by one of us (Eliphe Dharma Rao, J.), the learned single Judge has allowed the writ petition, further directing to file the compliance report before the Court by 20.2.2012.

6. Against this order of the learned single Judge, while the owner of the flat leased out to TASMAL has come forward to prefer W.A. No. 277 of 2012, the Managing Director of the Tamil Nadu State Marketing Corporation Limited (TASMAL), has come forward to prefer W.A. No. 389 of 2012.

7. Mr. AR.L. Sundaresan, the learned senior counsel appearing for the appellant in W.A. No. 277 of 2012 (owner of the flat which was let out to TASMAL) would argue that the area wherein the building is located is designated as a "commercial area" by the planning authorities and in the building, only commercial activities are in place and therefore, according to him, the learned

single Judge has committed a legal error in placing reliance upon the judgment of the Division Bench of this Court, which pertains to a liquor shop in a residential area. He would further argue that the TASMAC shop and the bar attached thereto are located in the basement of the building, for which there is a separate entrance. The learned senior counsel would further argue that if it is a case of public nuisance and public interest, the first respondent could not have maintained the writ petition, that too before the learned single Judge as it should have been treated as a Public Interest Litigation, which could have been disposed of only by the Division Bench. He would further argue that as a lawful owner of the property, he is entitled to put his property to profitable use by letting it and accordingly, he let it out to TASMAC and there is no complaint of any sort and the present writ proceedings are initiated by the other occupants with an ulterior motive. On such arguments and further drawing our attention to various averments made by his client in the counter affidavit before the learned single Judge and also in the grounds of writ appeal, the learned senior counsel would pray to set aside the order of the learned single Judge.

8. The learned counsel appearing for the appellant in W.A. No. 389 of 2012 (TASMAC) would also advance arguments in the similar lines. He would further argue that by scrupulously following the distance criteria, the bar was established by TASMAC, for which necessary licence was also issued by the authorities concerned. He would further argue that the concerned authorities are also conducting frequent checks. On such arguments and further submitting that the learned single Judge has committed a legal error in applying a judgment of the Division Bench, which was rendered completely in a different scenario, since in that case the liquor shop was established in a residential area, he would pray to set aside the order of the learned single Judge.

9. On the contrary, Mr. V. Prakash, the learned senior counsel appearing for the first respondent (writ petitioner/occupants association) would argue that there is complete violation of rule of law by the authorities concerned in issuing licence to the bar in a locality surrounded by schools. He would further argue that all the pros and cons have been rightly assessed by the learned single Judge, by appointing Advocate-Commissioner, not once but twice, and would pray to dismiss both the appeals.

10. No doubt, the bar is situated in a commercial building. But, as has already been stated supra, much exercise has been undertaken by the learned single Judge, by appointing Advocate Commissioners, not once but twice, to find out as to whether there is any nuisance to the public visiting the said commercial building and the pupil studying in the nearby educational institutions. In fact, the specific purpose of appointing the second Advocate-Commissioner is to find out this aspect of nuisance. The report of the second Advocate-Commissioner, though objected vehemently by the owner and the TASMAC, would show that most of the occupants of the complex are having objections to the running of the bar in the ground floor. The complaints made by them are to the effect that the

persons who visit the beer bar of TASMAC, used to misbehave with the women visiting the shops and establishments in the building under the influence of alcohol. The letters issued by the three Principals of the neighbouring Schools viz. Union Christian Matriculation Higher Secondary School; Our Lady's Matriculation Higher Secondary School and the Seetha Kingston Matriculation School, which are extracted by the learned single Judge in his elaborate order, are self-explanatory with regard to the hurdles being faced by the students because of the bar in the said building, which is having all the necessary facilities like xerox, photo studio, hotels and dance classes besides the bus stop right in front of the said bar. The second Advocate-Commissioner has categorically stated that there is nuisance to the general public because of the bar.

11. We are not able to appreciate the arguments advanced on the part of the appellants that the bar possess necessary licence to run and that if at all there is any nuisance, a public interest litigation should have been filed. The writ proceedings are initiated by none else than the direct sufferers/the other occupants of the building and they cannot be required to wait for some one to arrive from heaven to champion their cause.

12. Even with regard to the contention of the owner and the TASMAC that the building is having different entries, and that there is no nuisance of any sort by the bar, we have no hesitation to say that it is within every prudent man's knowledge that drunken man will be flying somewhere and he will be out of his own control. Therefore, even though there are different entries to the building, the nuisance factor claimed by the occupants of the building cannot be ruled out as a drunken man is susceptible to claim anything and everything, even the globe for himself and no barricades will prevent him from indulging in any sort of nuisance.

13. With regard to the contention of the owner that as a lawful owner, he is entitled to let out his property to profitable use, we deem it fit to remind him the basic principle of Law of Tort that "one's liberty ends, where other man's nose starts". He may be owner of the flat, that does not mean that only with a view to generate income, he can do whatever he likes, particularly at the cost of safety and security of others. Therefore, this contention raised on the part of the flat owner is also rejected.

14. The other aspects with regard to licence and distance criteria have very well been discussed by the Division Bench of this Court, speaking through one of us (Justice Elipe Dharma Rao) in the above quoted judgment, which has been relied on by the learned single Judge to arrive at his unerring conclusion of rejecting the contentions of the owner and the TASMAC. The broad principles laid down by us in The Tamil Nadu State Marketing Corporation Ltd. Vs. R.M. Shah and Others, cannot be permitted to be diluted as if that case pertains to a residential locality whereas the present building is a commercial one. Whether it is a residential building or a commercial building, it should meet out the public safety and security. Therefore, the arguments advanced on the part of the appellants that

the learned single Judge has committed a legal error in applying the said judgment to the facts of the present case, cannot be appreciated. On re-assessment of the entire facts and circumstances of the case, we have no hesitation to hold that the learned single Judge is perfectly right in ousting the claims of the owner and the TASMAL and upholding the case of the writ petitioner/occupants Association. Therefore, we see no reason to entertain these writ appeals.

In the result,

i) both these writ appeals are dismissed.

ii) TASMAL/the appellant in W.A. No. 389 of 2012 shall close its liquor shop functioning in the basement of Golden Enclave, No. 184, Poonamallee High Road, Kilpauk, Chennai, within thirty days from the date of receipt of a copy of this judgment, for which the owner/the appellant in W.A. No. 277 of 2012 shall render all his cooperation and assistance towards terminating the lease etc. The respondents 3 to 7 are directed to take all necessary steps towards implementing the above directions.

Consequently, connected Miscellaneous Petitions are also dismissed. No costs.