

(2012) 02 MAD CK 0117

In the Madras High Court

Case No : Writ Petition No. 23699 of 2010 and M.P. No. 1 of 2010

Golden Enclave Owners Association

APPELLANT

Vs

Vetrivel and Others

RESPONDENT

Date of Decision : 07-02-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 47

Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2012) 02 MAD CK 0117

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : MA. Gouthaman, for the Appellant; S. Gunalan for R-1, Mr. S. Muthuraj for TASMACH for R-2, Mr. V. Subbiah, Spl. G.P. For RR 3, 5 to 7, Mr. V. Bharathidasan for R-4, Mr. G. Jayachandran for R-8, for the Respondent

Judgement

K. Chandru, J.—The petitioner is a Welfare Association of occupants having their office complexes at No. 184, Poonamallee High Road,

Kilpauk, Chennai -10. In this writ petition, they have sought for a direction to close the liquor shop with bar attached functioning in the basement of

Golden Enclave situated at No.184, Poonamallee High Road, Kilpauk, Chennai-600 010 and to pass orders.

2. It was claimed by the petitioner that in the basement of the Golden Enclave, Tamil Nadu State Marketing Corporation Ltd., (for short

TASMACH) is running a liquor shop with an attached bar. The owner of the premises is the first respondent, who is residing at Anna Nagar West.

While operating the liquor shop in the basement, they had also covered the common areas with metal sheets and are illegally running a restaurant.

The said premises is not at all suited either for running a liquor shop with or without a bar. It is being run contrary to the Rules and Regulations

framed under the Tamil Nadu Prohibition Act, 1937. The said complex is a commercial complex, wherein various offices are located and many women were also working. Due to the establishment of the liquor shop cum bar, the women were finding it very difficult to move freely inside the complex. One of the office was having a godown in the basement and the main job attached to the said office was only the godown for dealing the stock. Women staff of that office finds it difficult to go to the godown. The premises becomes pitiable after 6 p.m since people enter the complex to go to the bar at that time. Very often they stand outside the bar for consuming liquor.

3. It was further stated that the liquor shop cum bar is near the junction of the Poonamallee High Road and Tailors Road. Just opposite to the complex is the Bus Shelter put up by Metro Transport Corporation (M.T.C.). Very close to the complex, there are several schools, hospitals and temples. The school going children who are in the nearby schools have to come to the bus stand to go to various places. The school children as well as the women who went to catch the bus finds it difficult to use the bus stand because of the nuisance created by the persons who are consuming liquor in the bar and the shop. Many times, left over of eatables and empty bottles were thrown into the garbage of the complex.

Invariably many persons who are consuming alcohol were also used to smoke in the same complex, thereby creating nuisance to the occupants of the enclave. Because of the shop and the bar, number of Auto rickshaws and Cycle rickshaws were also parked to bring in and take out the consumers. It was also stated that Maharishi Vidhya Mandir, Seetha Kingston House School for Girls, Our Ladies School for girls and Union Christian School for Girls are situated very close to the complex and the school children who come to the bus stand had to necessarily pass through the road near the shop. More often their safety is at stake. It was also stated in the Golden Enclave complex, there are as many as 40 offices and more than 200 women employees are working. In the second floor of the same complex, there is a dance school teaching traditional dance forms. The young girls and boys who are accompanied by their parents or guardians are unable to put up with this nuisance created by the shop and the consumers.

4. It was further stated by the storage of alcohol, there is also risk of fire in the building. The safety aspect was not taken note of by the

Commissioner of Chennai Corporation and Tamil Nadu Fire and Rescue Department. Since eatables are prepared in the basement using LPG Gas

cylinder and some other fuel, there is always a risk of fire in the building which can cause heavy damage to other occupants and the officers

working in the building. It is in that premises, the writ petition came to be filed.

5. The writ petition was not admitted. On notice from this Court, on behalf of the second respondent, a counter affidavit dated 06.12.2010 was

filed.

6. In the counter affidavit filed by the TASMACH, it was claimed that under the advise from the Corporation and Fire Service Authorities, a

Chimney and Fire Extinguisher have been installed and also they have applied for a No Objection Certificate from the Fire Department. The

schools which were described in the affidavit are situated beyond the prohibited distance found in the Tamil Nadu Liquor Retail Vending (in Shops

and Bars) Rules, 2003. Seetha Kingston school is situated 170 Mtrs away from the shop, Union Christian School is 330 Mtrs, Maharishi Vidya

Mandir is 450 Mtrs and Our Lady Matriculation School is 500 Mtrs. The temples are also situated beyond the prohibited distance. The bar

attached to the shop has no connection with the fast food shop in the basement. The MTC bus stand is 70 meters away from the shop. The space

available for the bar in the basement is nearly 3,500 sq.ft which consists of closed and covered rooms with a common open space. The basement

has got ample open space for the movement of the consumers. It was further stated that originally TASMACH Retail Vending Shop was functioning

at Orms Road. As per the orders of this Court, it was directed to be shifted to some other place. In pursuance and compliance of the said order,

the shop was shifted to the basement in the Petitioner's Golden Enclave. Hence, the writ petition filed by the petitioner Association is vexatious.

7. In the counter affidavit filed by the first respondent, who is the owner of the premises had objected to the allegations made by the petitioner

Association. It was claimed that the Association need not worry about what is happening outside the Golden Enclave premises. The person who

had described himself as the Secretary of the petitioner Association is not the

owner of any premises in the complex. Police make regular visits to the area and to the premium bar attached to the shop. Such a writ petition can be filed only as a public interest litigation. The by-laws of the Association do not authorise anyone to file such a writ petition. The TASMAC shop is having an air condition facility and no one is allowed to smoke inside. His own grievances against the Secretary of the Association was set out in the counter affidavit and it is unnecessary to go into the same. It was claimed that at the most, the writ petition can be filed in an individual capacity and not in the name of the Association.

8. In view of the stand taken by the parties were at variance, M.Sathyanarayanan,J. ordered the appointment of Advocate Commissioner vide order dated 21.01.2011. He was directed to issue notice to the petitioner and respondents and to inspect the liquor shop cum bar in the premises and also to note down the physical features and the environment as well as the location from the schools, temples etc and to submit a detailed report. Pursuant to the same, a report was submitted by the first Advocate Commissioner dated 08.02.2011 describing the physical features of the location.

9. When the matter came up on 09.02.2011, Vinod Kumar Sharma,J. after noting that the Advocate Commissioner did not go into all aspects of the matter referred to passed the following order:-

2. The reading of the report submitted by the Advocate Commissioner shows that though he beautifully described the location of the Beer bar, but has failed to report as to how Beer bar causes nuisance to the general public, warranting its closure.

3. Consequently, Mr.M.Johnson Durairaj, Advocate, 20/K1, 9th Street, J.T.Durairaj Nagar, Aminjikarai, Chennai 29, is appointed as second

Advocate Commissioner, 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. He is also directed to record the statement of the persons of nearby locality, in this regard and submit a report quo nuisance if any on or

before 18.02.2011.

10. It was pursuant the same, the second Advocate Commissioner submitted a report dated 26.02.2011. Along with his report, he had enclosed

the objections raised by the occupants of the Golden Enclave complex with

reference to the location of the shop as well as the letters received from three principals of neighbouring schools.

11. The letter received from the Principal of Union Christian Matriculation Higher Secondary School addressed to the Managing Director of

TASMAC dated 23.02.2011, reads as follows:-

I am writing on behalf of the children of Union Christian Matriculation Higher Secondary School. As our school is situated on Nowroji Road, our

pupils frequently use Poonamallee High Road for various purposes. There is a building called Golden Enclave, No.184, P.H.Road, which the

children visit frequently to utilize the facility of the Xerox Shop, photo studio and dance classes. Adjoining the building is a bus-stop which is also

frequently used by the children.

Recently the owner of the basement of the aforesaid building has leased it out to a TAMAC shop. I am deeply worried about the safety of our

pupils especially the girls who use this bus-stop to board their buses.

I would be extremely grateful to you if the shop could be shifted from there as early as possible.

(Emphasis added)

12. The letter sent by Our Lady's Matriculation Higher Secondary School dated 23.02.2011, reads as follows:-

We find that broken bottles are thrown on the road side and our school children are finding it difficult to board the bus. One of our school girl also

got hurt in the leg. Since it is a disturbance to the school children and the public kindly intervene and to the needful.

(Emphasis added)

13. The letter sent by the Seetha Kingston Matriculation School dated 24.02.2011, addressed to the Managing Director of TASMAC, reads as

follows:-

This building is located on Taylor's road signal and having facility like Xerox, Photo Studio, hotels and dance classes. There is bus stop which is

used by our children. Unfortunately the owner of the basement has let out his premises to TASMAC shop and opened bars also. Due to this

school children are finding it difficult to board the bus and find it inconvenience to visit, premises for any of the above services. Young innocent

children are put to embarrassment and suffer mental agony and psychological torture.

Hence we appeal to your good office to kindly look into this and take suitable steps.

(Emphasis added)

14. It was on the strength of these objections from different groups including the school management, the Commissioner in paragraph 8 made a recommendation, which is as follows:-

8. Specifically the women are mentally and physically touchier by the Drunken People. Therefore, I respectfully submitted this report the above BEER BAR (TASMAC) is make (Sic. making) nuisance to the public.

15. This report was furnished to both parties. In the mean while, one Anbarasan, who was granted bar license attached to shop No.717 got

himself impleaded as 8th respondent vide order dated 21.01.2011. He had also filed a counter affidavit dated 08.03.2010 supporting the stand of

the owner of the premises as well as the TASMAC. On the Commissioner's report, the first respondent has filed an objection by stating that while

the Commissioner visited the premises on 22.02.2011 the letters sent by the School Management were all subsequent dates. No letter was

obtained from the Maharishi Vidya Madhir School. The letters do not disclose anybody's discomfort and if at all in case of public nuisance, the

jurisdictional Magistrate alone can exercise jurisdiction u/s 133 Cr.P.C. The fee was paid one John of Xerox Point, and not by the Association.

Therefore, he wanted the Commissioner's report to be discredited.

16. It is significant to note that the second respondent TASMAC has not filed any objection to the report of the Commissioner. Right from the

beginning, the petitioner in his affidavit has mentioned about the safety and the danger faced by the school children who sometimes frequent the

commercial complex for buying stationery and taking photocopies. The allegation that the school children will have to go to the bus stop for going

to various places and there is real risk of the children facing hardship at the consumers are at time become drunkards, the nuisance cannot be ruled

out. Especially, when Principals of three leading schools in that area have sent letters to the Managing Director of TAMAC, they ought to have

filed a reply before this Court or should have sent replies to the School

Management. Making revenue is not the only object of the State. The State should be equally concerned about the minor children who are sent to the schools by their parents. This Court has already held that it is not merely the Rules framed under the Prohibition Act for running shops or bars alone are not the be-all and end-all in any matter. Public interest and the need to prevent public nuisance can also be grounds to order closure of such shops.

17. When the same retail outlet was earlier running at 12/4, Orms Road, Kilpauk, Chennai -10, this Court by an order dated 08.06.2010 in

W.P.No.38494 of 2005 directed the closure of the shop. The matter was taken on appeal by the TASMACH in W.A.No.1353 of 2010. The said

writ appeal was dismissed by a Division Bench of this Court reported in The Tamil Nadu State Marketing Corporation Ltd. Vs. R.M. Shah and

Others, . The Division Bench in paragraph 19 and 20 observed as follows:-

19. There is no static measure of nuisance which can be applied to all situations alike. It is for the court to decide on the basis of materials as to

whether the extent of nuisance was sufficient to direct the closure of liquor shop located in a particular area.

20. Therefore we are of the considered view that any person who is deprived of peaceful life on account of the nuisance created by a liquor shop

could challenge the action in locating the shop in a residential or semi-residential locality as offending the right to life guaranteed under Article 21 of

the Constitution of India notwithstanding the fact that the liquor shop satisfies the distance criteria.

18. In paragraphs 22 and 23, the Division Bench gave the following direction:-

22. The Supreme Court in Municipal Council, Ratlam Vs. Vardichan and Others, observed thus: ""The pressure of the judicial process, expensive

and dilatory, is neither necessary nor desirable if responsible bodies are responsive to duties.

23. When we have expressed our view that the respondents 1 to 4 clearly made out a case for shifting the liquor shop from the subject location on

account of nuisance, the learned Standing Counsel for the appellant took time to file an affidavit agreeing to shift the shop. Subsequently, the Chief

General Manager of TASMACH as per his affidavit dated 19th July 2010 agreed to shift the Liquor Shop No.717 functioning at Door No.12/4,

Orms Road, Kilpauk, Chennai - 10 to another place and made a request for

granting reasonable time for such shifting. In view of the said submission we grant six weeks time to the appellant to comply with the order passed by the learned single Judge.

19. Therefore, apart from complying with the Rules, there are also other obligations vest on the part of the State. The TASMACH which is an instrumentality of the State has to safeguard the interest of the general public, especially the minor children who are facing unnecessary hardship at the hands of the consumers of the said shop. The statement that the shop was shifted pursuant to the direction issued by the Division Bench only shows that the TASMACH and the State Government have accepted the law laid down by this Court. Apart from compliance of the prohibition rules, the public nuisance that is likely to be created can be a relevant factor for closing a shop.

20. Ironically, the second respondent Corporation states that in order to obey the order of this Court they have shifted the location to the present premises. The nuisance created in the previous place, wherein another girls school was situated near the vicinity i.e, Bain School at Kilpauk.

21. Very close to the present premises, there are as many as five schools situated. The problem has become more complex than before. This Court is not willing to rule out the genuine apprehension raised by the principals of the schools who have an abiding interest in safeguarding the children of

their school who are likely to visit the complex or to pass that way to get into the bus from the bus stop which is diametrically opposite to the

TASMACH shop. When the Commissioner's report categorically stated that the shop was committing nuisance and it is liable to be shifted, merely

objecting that nuisance issue will have to be tackled only by a jurisdictional Magistrate or that private scores cannot be settled using Section 133

Cr.P.C. does not help to solve the problem on hand. The interest of the first respondent is that of an owner of the godown who is collecting hefty

amounts as rents from the shop and the bar. The interest of the 8th respondent is only that of a licensee to run the bar. Therefore, they are purely

private interest and it cannot over weigh public good involved in this writ petition.

22. The learned counsel for the first respondent also brought to the notice of this Court a subsequent judgment of this Court reported in A.

Thirumaran Vs. The Inspector of Police Law and Order and Others, , wherein the

Division Bench rejected a public interest litigation in seeking for a direction to relocate the shop only because it was situated opposite to his office. It was observed by the Division Bench that the shop was in a commercial area and does not violate the rules relating to location of shops. Therefore, it was held that there was no public interest involved in entertaining the writ petition and the shop has been functioning from the year 1985 namely over the last 25 years and there were no complaints from the general public. It is not clear as to how the said judgment will have any application to the case on hand.

23. In the present case, the interest of the minor children studying in five schools in the near the vicinity of the shop and the day to day hazards of going to the bus shelter for proceeding to their destinations and also the school children frequenting the shopping complex inside the Golden Enclave for getting stationery or for photocopying and for going to the Dance school coupled with the report submitted by the Commissioner obliges this Court to direct the second respondent TASMAL to forthwith close the shop in the Golden Enclave situated at No.184, Poonamallee High Road, Kilpauk, Chennai - 600 010 forthwith and send a compliance report to this Court.

24. The future and safety of the children are more important than the second respondent earning revenue out of selling liquor. By quixotic interpretation to the Prohibition Act and even in the teeth of Article 47 wherein the State had undertaken its endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health, the State is running liquor shops. By the closure of one shop, no one will shed tears and it will not bring about any loss to the State especially, the turn over from the liquor sales in this State had already crossed Rs.16,500 crores per annum.

25. In view of the above, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed. Compliance report for implementing the order shall be filed before this Court by 20.02.2012. Post the writ petition on 20.02.2012.