

(2010) 12 MAD CK 0208

In the Madras High Court

Case No : Writ Appeal (MD) No. 882 of 2010 and M.P. (MD) No. 1 of 2010

P.K. Chandrasekar

APPELLANT

Vs

P. Krishnamoorthy, The District Collector, Madurai District,
The Senior Regional Manager, TASMAL, Madurai Region and
The District Manager, TASMAL, Madurai District

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 — Rule 8

Citation : (2010) 12 MAD CK 0208

Hon'ble Judges : R. Subbiah, J; R. Banumathi, J

Bench : Division Bench

Advocate : Veera. Kathiravan, for the Appellant; K. Mahendran, for Respondent No. 1, R. Janakiramulu, Spl Govt Pleader for Respondent No. 2 V. Karthikeyan for J. Ravindran for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

R. Subbiah, J.—The present appeal is preferred against the order dated 18.11.2010 passed by a learned single Judge of this Court in W.P.(MD) No. 12651 of 2009, whereby a direction was given to Respondents 2 to 4 herein to shift the TASMAL Retail Vending Shop No. 5274 situated near the Kanchivanam Swamy Temple at Melur to any other place.

2. The 1st Respondent in this appeal has filed the writ petition with the following averments.

Sri Kanchivanam Swamy Temple located at Melur is a very old temple and it is having 12 Ambalakarars of various branches and the 1st Respondent is one of the Ambalakarars. In and around the temple, the Ambalakarars have constructed several shops and they have been leased out for monthly rent to various persons and from that income, the temple authorities have been maintaining the temple and also conducting temple festivals. There is a Girls Higher Secondary School,

Central Bus Stand and some nursing homes are situated in and around the temple. While so, the Appellant/4th Respondent, being one of the Ambalakarars of the said temple, requested the other existing Ambalakarars to lease out one of the shops for his personal use and occupation and considering the request made by him, the other Ambalakarars had permitted the Appellant to occupy one of the shops with a condition that he should not sub-lease the shop to anybody else and not to carry on with business against law. But, contrary to the said arrangement, the Appellant, without getting any consent or no objection certificate from the temple, has entered into a lease agreement for running a wine shop in the temple complex. From the first day onwards, the Ambalakarars as well as the general public have been objecting for running a wine shop in the temple complex and they gave a representation to the 2nd and 4th Respondents herein to shift the shop. The 1st Respondent also gave a representation on 24.08.2009 to the 4th Respondent herein and sent a copy of the same to the 2nd Respondent, the District Collector on 05.09.2009. Since there was no response, the 1st Respondent has come forward with the writ petition for a direction to Respondents 2 to 4 to consider the representation dated 24.08.2009 and also to shift the TASMAR retail vending shop No. 5274 situated in the temple premises to some other place.

3. When the writ petition came up for hearing on 13.04.2010, the learned single Judge has appointed an Advocate commissioner with a direction to inspect the location of the shop in question and submit his report as to (i) whether the distance between the TASMAR shop and the temple is within 50 meters and also (ii) whether any educational institutions are situated within the said prohibited distance. Pursuant to the same, the Advocate Commissioner has inspected the spot on 17.04.2010 and filed his report.

4. Thereafter, the 4th Respondent herein/Appellant filed a counter affidavit, inter alia, stating that the measurements noted in the report of the Advocate Commissioner would show that the shop in question is situated beyond the prohibited distance, as envisaged under Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 (for short "the Rules").

5. The learned single Judge, by considering the entire materials, directed Respondents 1 to 3 therein (Respondents 2 to 4 herein) to shift the TASMAR retail vending shop situated in the Kanchivanam Swamy Temple to any other place, within a period of four weeks from the date of receipt of the order. Challenging the same, the present appeal is preferred.

6. Learned Counsel appearing on behalf of the Appellant/4th Respondent submitted that in the report, the Commissioner has narrated the distance between the wine shop and the temple, as follows :

From shutter of TASMAR shop No. 5274 to front main entrance of Kanchivanasamy temple is 76.0 meters;

From shutter of TASMAR shop No. 5274 to western wall of Kanchivanasamy

Temple is 60.6 meters;

From shutter of TASMAL shop No. 5274 to western side compound wall of Kanchivanasamy temple is 57.0 meters;

From backside wall of bar to western side compound wall of Kanchivanasamy temple is 52.0 meters.

With regard to the distance between Government Girls Higher Secondary School and the temple, in the report, it has been stated that

From shutter of TASMAL shop No. 5274 to front main entrance gate of Government Girls Higher Secondary School is 95.0 meters;

From shutter of TASMAL shop No. 5274 to starting point of front compound wall of Government Girls Higher Secondary School is 78.0 meters.

7. By pointing out the said measurements given in the report, the learned Counsel for the Appellant submitted that the same would show that the shop is not situated within the prohibited place, as envisaged under Rule 8 of the Rules, 2003. Moreover, the 1st Respondent has filed the writ petition only to consider the representation dated 24.08.2009; but the learned single Judge, by totally rejecting the Commissioner's report as well as by traversing beyond the scope of the prayer sought for in the writ petition, has ordered the shifting of the shop.

8. The learned Counsel for the Appellant further submitted that absolutely, no complaint as against the subject shop was given either by the school authorities or by any general public. Under such circumstances, the observation made by the learned single Judge that the shop situated at the present place would cause public nuisance is not legally sustainable. The Appellant had filed a civil suit with regard to the administration of the temple in O.S. No. 144 of 2010 before the District Munsif Court, Melur. Hence, by way of personal vengeance, as a counter-blast to the said suit, the writ petition has been filed by the 1st Respondent against the Appellant. Under such circumstances, the impugned order has to be set aside.

9. Assailing the said contentions, the learned Counsel for the 1st Respondent/writ Petitioner submitted that the shop is situated near a Government Girls Higher Secondary School and the students are facing difficulties while crossing the wine shop everyday. Since the Appellant is an influential person in that area, due to fear, the school authorities are not coming forward to give any complaint against him. Above all, since the shop is situated in the premises belonging to the temple, the Appellant, one of the Ambalakarars of the Temple, contrary to the arrangement made between them and without getting any "no objection certificate" from the temple authorities, has leased out the shop to the wine shop. Though the villagers gave a representation to the authorities, there was no response to the said representation. Even if the shop is not situated within the prohibited area, as envisaged in the Rules, perennial nuisance is created by the drunkards. Further, the suit pending before the District Munsif Court, Melur, is not

related to the subject matter and the suit is pertaining to the internal dispute between the Appellant and other Ambalakarars with regard to the administration of the temple and as such, the Appellant cannot bring that suit as a defence against the issue involved in the writ petition. Under such circumstances, the appeal has to be dismissed.

10. Heard the learned Counsel for the parties and perused the entire materials available on record.

11. It is the contention of the Appellant that when the Advocate Commissioner's report shows that the shop is not situated within the prohibited distance, the learned Judge ought not to have ordered to shift the shop by traversing beyond the scope of the writ petition, which was filed only for considering the representation dated 24.08.2009, whereas the learned Counsel for the 1st Respondent submitted that the wine shop situated in the present area would cause public nuisance. Moreover, the Government School is situated nearby and the students, who are crossing the wine shop, are facing disturbances everyday because of the drunkards before the wine shop.

12. Now, in view of the submissions made by the learned Counsel on either side, the question that has to be decided in this matter is, whether the learned single Judge is right in directing the authorities to shift the wine shop from that area to any other place. It is, no doubt, the Commissioner's report shows that the shop is located beyond the distance stipulated in the Rules, but it cannot be said that there would be no nuisance to the people of that area. At the same time, we find that the shop is leased out by the Appellant, who is one of the Ambalakarars of the temple and the place premises in which the TASMAL is presently carrying on the retail liquor vending business, belongs of the temple. Though the Appellant had stated that so far no complaint was sent against the shop, a perusal of the typed set of papers shows that a representation dated 09.10.2009 was sent by the villagers to the 4th Respondent with a copy to the 2nd Respondent, Tahsildar and Deputy Superintendent of Police of Melur. Therefore, in any event, though the shop is not situated within the prohibited distance, the fact remains that the shop is running in the premises belonging to the temple would certainly have a bearing on the religious sentiments of the public. Therefore, we are of the opinion that this Court is having a valid reason to direct the Respondents to shift the wine shop from the present place to any other place. In spite of the fact that it was alleged that the writ petition was filed only for considering the representation, in our view, there cannot be any legal impediment in directing the authorities to take steps to shift the shop from that place when the Appellant is running the wine shop in the premises belonging to the temple despite the objections raised by the public. Moreover, by exercising powers under Article 226 of the Constitution of India, this Court can issue directions for enforcement of fundamental rights and to ensure that complete justice is done to the parties and moreover in the interest of the public.

13. In fact, in a similar situation, an order was passed before the Principal Bench

by a learned single Judge on 13.12.2010 in W.P. No. 20957 of 2010 dated 13.12.2010 and the relevant paragraph in the said order reads as follows :

9. Therefore it is clear that right to carry on business is certainly subject to the other fundamental right of the citizens as well as the persons to have a decent right to live under Article 21 of the Constitution of India. Therefore, it is certainly the duty of the first Respondent Corporation to find out an appropriate place, so as to see that the normal living conditions of the citizens are not affected. Mere following of statutory provisions does not enable the people living a peaceful manner. The law has to be interpreted in such a manner and it is not only a scrupulous compliance of the Rules for the purpose of opening a shop, but also the authority concerned, to grant such licence, shall also take into consideration the surrounding circumstances as held by the Division Bench of this Court in the above said judgment.

Therefore, we are of the opinion that when a shop is situated in a temple premises, which would ultimately affect the religious sentiments of the public and would cause public nuisance, we do not find any infirmity in the order passed by the learned Judge, directing the authorities to shift the shop in question from the present place and under such circumstances, the writ appeal is liable to be dismissed.

14. For the foregoing reasons, the writ appeal fails and accordingly, the same is dismissed; however, four weeks time is granted to the Respondents 2 to 4 to shift the shop from the subject location. No costs. Consequently, connected M.P. No. 1 of 2010 is closed.