

(2010) 08 MAD CK 0313

In the Madras High Court

Case No : Writ Petition No. 7314 of 2010 and M.P. No. 1 of 2010

S. Manivannan

APPELLANT

Vs

The District Collector, The Regional Manager and The District
Manager, TASMAL

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Constitution of India, 1950 — Article 21

Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 — Rule 8, 8(1)

Citation : (2011) 3 MLJ 956

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : G. Ethirajulu, for the Appellant; R. Murali, Government Advocate for
1st Respondent and J. Ravindran, for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

N. Paul Vasanthakumar, J.—The prayer in the writ petition is to issue a writ of mandamus forbearing the respondents from carrying on liquor business through wine shop bearing Licence No. 11425 situated at Singavaram Road Sundaravinayagar Koil Street junction, Gingee, Villupuram District.

2. The petitioner, who is a permanent resident of house bearing Door No. 60-C, Singavaram Road, Gingee, has filed this writ petition contending that the wine shop No. 11425 is located at Singavaram Road and Sundaravinayagar Koil Street junction, Gingee, which is opposite to District Munsif Court and Additional District Court, Gingee, and within a distance of 50 meters of temples viz., Sundara Vinayagar Temple, Saibaba Mandir, Krishnan Temple and Parasakthy Vazhipattu Mandram. The petitioner further states that the said wine shop is open from 8.00 a.m. upto mid night on all days and by virtue of the location of the said liquor shop at the said junction, general public, worshippers, school going students and litigants as well as Advocates using the road are put to untold hardships, particularly ladies and girls passing through the said place, as the persons

consuming liquor and using the bar attached to it are causing hindrance throughout the day until mid night. It is also averred in the affidavit that often gang fights are going on in the junction and therefore public at large are kept under constant peril and panic. The Police authorities are looking like spectators as the liquor shop is run by the Government Agency. The petitioner could not live in his house peacefully and he could not even open his door and windows.

3. According to the petitioner, several complaints were given to various authorities, however none of them were looked into. Petitioner submitted representations on 19.5.2009 and 22.6.2009 by registered post and in spite of receipt of the same no action was taken by the respondents, who are duty bound to take action under the statute. The location of the said wine shop in the said place affects the petitioner's personal and property rights and he is unable to live in a peaceful manner, which is guaranteed under Article 21 of the Constitution of India. Hence the petitioner has filed this writ petition with the above said prayer.

4. The third respondent has filed counter affidavit opposing the writ petition stating that the said shop is not situated within the prohibited distance as contemplated under Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, and the Temples are located beyond 82 meters and the District Munsif Court is located beyond 93 meters. Therefore there is no statutory prohibition to locate the liquor shop. The area is a commercial area and therefore the petitioner has no right to object the location of the liquor shop in the commercial area. It is further stated in the counter affidavit that the shop is located at a distance of 37 meters in the lane from the main road and therefore shifting of the shop is not necessary and the shop is functioning from 1.9.2005 without any disturbance to the public and the sale proceeds increase the Government revenue. It is also stated in the counter affidavit that no school or temple is located nearby the liquor shop. The Divisional Excise Officer, Tindivanam, recommended retention of the shop in the said place. It is also stated in the counter affidavit that the people residing nearer to the shop have already given a statement that there is no disturbance to the public. Petitioner's representation was considered and enquiry report was submitted to the District Collector on 28.2.2008. No personal or property right of the petitioner is affected and the writ petition is to be dismissed.

5. A reply affidavit was filed by the petitioner stating that 100 houses are located in the area and the wine shop is surrounded by residential buildings and not by commercial buildings. The distance between the District Munsif Court and wine shop is only 30 meters.

6. The learned Counsel appearing for the petitioner submitted that the location of the wine shop in the present place is causing great hardships to the petitioner, worshippers of the above said four temples, school going children and merely because the Government is getting revenue, the respondents have no right to continue the liquor shop in the said place, even assuming that the distance rule

is not violated. The learned Counsel also relied on the decision of this Court in W.P. No. 38494 of 2009 dated 8.6.2010, which was confirmed by the Division Bench of this Court in W.A. No. 1353 of 2010 dated 19.7.2010 in support of his contentions.

7. The Learned Counsels for the respondents on the other hand submitted that the liquor shop having been located in a commercial area, which is certified by the Executive Officer, Gingee Town Panchayat, and the Divisional Excise Officer, Tindivanam having found that there is no hindrance to the public by his report dated 25.8.2009, petitioner is not justified in praying for shifting of the shop to some other place. The learned Counsel also submitted that the State is entitled to get revenue through the said shop for several public purposes.

8. I have considered the rival submissions of the learned Counsel for the petitioner as well as respondents.

9. On the basis of the above pleadings the following issues arise for consideration:

(1) Whether the petitioner is entitled to seek shifting of the Liquor Shop No. 11425, Singavaram Road and Sundaravinayagar Koil Street junction, Ginjee, Villupuram District, even if the shop is not situated within the prohibited distance:

(2) Whether the respondents can object the shifting of the liquor shop on the ground of loss of revenue to State?

10. As per para 4 of the counter affidavit filed by the third respondent, the temples and courts are situated within 100 meters from the liquor shop No. 11425. The actual distance mentioned are as follows:

Distance between Sundara Vinayagar Temple and Shop .. 89 meters
Distance between Krishnan Temple and Shop .. 102 meters
Distance between Parasakthi Vazhipattu Mandram and Shop .. 99 meters
Distance between the District Munsif Court .. 93 meters and Shop
Distance between Sai Baba Mandir and Shop .. 82 meters

Rule 8(1) of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003 states that

No shop shall be established in Municipal Corporations and Municipalities within a distance of 50 (fifty) meters and in other areas 100 (hundred) meters from any place of worship or educational institutions:

Provided that the distance restriction shall not apply in areas designated as "Commercial" or "Industrial" by the Development or Town Planning Authorities

The fact that Gingee junction is a busy junction, is also not denied in the counter affidavit. The only objection raised by the respondents in the counter affidavit is that the shop is located not within the prohibited distance under Rule 8 of the Tamil Nadu Liquor Retail Vending (in Shops and Bars) Rules, 2003, and therefore

the petitioner cannot object the location of the shop, which is in existence from 1.9.2005.

11. The nuisance caused to the petitioner and the residents and the worshippers, advocates and litigants due to the location of the said shop is the main issue. The worshippers of the temple, the litigants as well as Advocates practising in the District Munsif Court and Additional District Court, are all affected due to the said location of the liquor shop, even though the same is denied in the counter affidavit. The contention that the liquor shop is not situated within the prohibited distance is one issue. If it is located within the prohibited distance, no other proof or consideration will arise for ordering shifting as locating the shop itself is prohibited.

12. In the report of the third respondent addressed to the first respondent dated 23.9.2009 it is stated that if the liquor shop is shifted, there would be loss of revenue to the TASMAL. The said reason cannot be treated as a valid reason. If the shop is shifted to the nearby unobjectionable site, there may not be revenue loss. It is common knowledge that a person determined to consume liquor will always purchase the same even if the shop is located in a little distant place. The entire liquor trade (retail) is carried on by the TASMAL, a Government Agency in Tamil Nadu. As such, the question of loss of revenue will not arise even if one shop is closed on any reason, as the consumers will get their requirements by purchasing the same in a nearby liquor shop and ultimately the Government will not lose its revenue. Therefore, the reason stated in the report of the third respondent that it is very difficult to get ideal place to locate the shop in Gingee Town is patently unsustainable.

13. Gingee is a town located in a municipal area, having vast area. The respondents can very well find a suitable place if they are willing to shift. Like medical shops, the liquor shops need not be located at the junction itself, that too opposite to Civil Courts, which are treated as Temples of Justice by the people at large. Apart from that, the people are visiting Temples and other places of worship to get peace of mind and to get their mind purified. The existence of the liquor shop within the vicinity of the Temples or places of worship will definitely spoil the peaceful atmosphere near the Temples and other places of worship. Running of a liquor shop cannot be treated as locating/establishing an industry for the development of the nation, which can be permitted on the ground of sustainable development. No one can claim trading in liquor as a fundamental right. Earning more revenue may be the ultimate aim in the matter of liquor trade, which however will not give any right to the Government or its agency that it will run a liquor shop only in a particular site in a busy locality.

14. The petitioner is residing in his house at No. 60-C Singavaram Road, Gingee. He has got the right to live in a calm and peaceful atmosphere. Similarly the worshippers of the Temples, particularly women and children have got every right to visit the Temples for worship without any interference or disturbance of any kind of public order or law and order and they have also got a right to see

that the area is maintained in a calm and peaceful manner. The students going to nearby schools have got the right to go to their schools peacefully. The calmness and peace should be available not only inside the schools, but also on their way to schools.

15. Similar issue was considered by this Court in W.P. No. 38494 of 2005 in respect of a liquor shop located at Door No. 12/4 Arms Road, Chennai. This Court considering the facts and circumstances of the location of the said shop and the objections raised by the nearby residents, ordered to shift the shop even though the said shop was also not located within the prohibited distance. The said order was confirmed in appeal in W.A. No. 1353 of 2010 by the Division Bench of this Court by order dated 19.7.2010 and ordered to shift the said shop within six weeks time. In the said judgment the right guaranteed to the citizens under Article 21 of the Constitution of India, which includes peaceful life, was given much importance and the plea that the Government will lose revenue was repelled. In the order dated 31.8.2005 passed by the third respondent the only reason stated to shift the shop to the present location is that it will fetch more revenue as this place will attract more number of liquor consumers. The said reason cannot be accepted as a valid reason to justify the stand of the respondents.

16. Applying the said judgment to the facts of this case and having regard to the existence of four Temples and District Munsif Court and Additional District Court in the nearby area, the respondents are not justified in contending that the liquor shop cannot be shifted to other place. In fact a liquor shop located opposite to this Court as well as Dr. Ambedkar Law College, Chennai-104, was ordered to be closed by the First Bench of this Court, taking note of the objectionable way in which the liquor shop was located and functioned, even though the said liquor shop was not located within the prohibited distance, in a busy commercial area, and earned more revenue than the present liquor shop located at Gingee.

17. The First Bench of this Court also took serious note of location of a liquor shop, which caused hardships to the worshippers of Thiruvannamalai Temple and the authorities were forced to close the said shop or shift the said shop. Thus, this Court is entertaining such prayers in the writ petition like this after recording its satisfaction and several liquor shops were ordered to be shifted or the same were shifted by the authorities themselves.

18. The respondents are bound to take a pragmatic view in these kind of matters depending on the ground realities though there may not be any statutory bar prohibiting the location of liquor shop in a given area. The files produced by the learned Counsel for TASMACH contain not only the objection from the petitioner, but also from a political party dated 9.1.2010. Taking into consideration all the above aspects, I hold that the petitioner has made out a case for shifting the liquor shop.

19. The writ petition is allowed. The respondents are directed to shift the liquor

shop No. 11425 situated at Singavaram Road Sundaravinayagar Koil Street junction, Gingee, Villupuram District, to any other unobjectionable place within four weeks from the date of receipt of copy of this order. In any event, the said liquor shop shall be closed from the present premises within four weeks, even if any alternate place is not found. No costs. Connected M.P. No. 1 of 2010 is closed.