

(2012) 02 MAD CK 0082
In the Madras High Court
Case No : Writ Petition No. 24656 of 2011

S. Simon

APPELLANT

Vs

The District Collector, Collectorate, Coimbatore-641018, The Managing Director, TASMAL Limited, 4th Floor CMDA Tower-II, Egmore, Chennai-600008, The District Manager-I/Deputy Collector, TASMAL, Coimbatore-641018 and The Inspector of Police, Vadavalli Police Station, Coimbatore District

RESPONDENT

Date of Decision : 09-02-2012

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 133

Citation : (2012) 02 MAD CK 0082

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : P. Saravanan, for the Appellant; N. Sakthivel Government Advocate R1 and R4, Mr. S. Muthuraj R2 and R3, for the Respondent

Judgement

M. Jaichandren

1. Heard the learned counsel appearing for the petitioner and the learned counsels appearing for the respondents. The petitioner has stated that nearly 500 families are residing, peacefully, in Mullai Nagar area, in Coimbatore, for over 30 years. Even though Mullai Nagar area is a purely residential area a Tamilnadu State Marketing Corporation Shop No. 1715 had been opened in the said area, contrary to the relevant provisions of law. Many antisocial elements, after consuming liquor in the said Tamilnadu State Marketing Corporation shop, have been causing serious disturbances to the local residents and for those who are visiting the area. A number of drunkards have been causing problems to the women and

children of the area and to those who are going to the Sivan temple, situated at about 100 feet from the Tamilnadu State Marketing Corporation

shop. In spite of several representations having been submitted to the first respondent, on 3.9.2007, 25.2.2008, and 3.7.2010, to shift the

Tamilnadu State Marketing Corporation shop from the said residential area to some other place, there has been no response from the first

respondent, till date. In such circumstances, the petitioner has preferred the present writ petition before this Court, under Article 226 of the

Constitution of India.

2. The learned counsel appearing for the petitioner had relied on the decision of a Division Bench of this Court, reported in *The Tamil Nadu*

State Marketing Corporation Ltd. Vs. R.M. Shah and Others, wherein, it had been held that the nuisance caused to the public, on account of the

functioning of the liquor shops, would give a cause of action to the affected parties to approach the Magistrate concerned, u/s 133 of The Code

of Criminal Procedure, 1973. Any person who is deprived of his right to live a peaceful life, on account of the nuisance created by a liquor shop,

could challenge the action of locating the shop in a residential or semi-residential locality, as it offends Article 21 of the Constitution of India,

notwithstanding the fact that the liquor shop satisfies the distance criteria.

3. The learned counsel appearing for the petitioner had also relied on the decision, reported in *S. Manivannan Vs. The District Collector, The*

Regional Manager and The District Manager, TASMACH, wherein, it has been held that trading of liquor in prime and busy localities, causing

disturbance and hardship to the general public including women and school children, amounts to violation of their fundamental right to lead a

peaceful life, guaranteed under Article 21 of the Constitution of India. It had also been held that liquor business being conducted in prime areas

causing nuisance to the general public is liable to be shifted to another locality though there are no statutory restrictions prohibiting the location of

the liquor shop in the area in question.

4. A counter affidavit, dated 15.12.2011, has been filed on behalf of the third respondent, wherein, the averments in the affidavit filed in support of

the writ petition have been denied. It has been stated that there is no Sivan temple situated close to the Tamilnadu State Marketing Corporation

shop, as alleged by the petitioner. It has also been stated that regular poojas are not performed at the place, said to be a temple. Only a single

stone idol had been kept in an open space. There is no disturbance to the worshippers, as alleged by the petitioner.

5. It has also been stated that the Deputy Commissioner (Excise), Coimbatore, had conducted an inspection through the District Manager and a

report had been submitted to the first respondent, vide Na.Ka. En.4530/07/K5, dated 4.10.2007. In the said report it had been clearly stated that

no disturbance is being caused due to the location of the shop in the area in question. It has also been stated that there is no temple, mosque,

church, hospital, school, or bus stand, within a radius of 100 meters from the Tamilnadu State Marketing Corporation shop in question. It has also

been stated that the petitioner, who belongs to a political organization, named as ""Adi Tamilar Peravai"", had been threatening the supervisor,

salesmen, bar owner and the attenders at the shop, compelling them to yield to his illegal demands.

6. It has also been stated that the Tamilnadu State Marketing Corporation shop in question is selling high quality liquor and the quantity of liquor

sold in retail, in the bar attached to the said shop, is very low. As such, the incidence of disturbances, if any, is insignificant. It has also been stated

that the daily sale of liquor, in the shop in question, is to the tune of Rs. 2,50,000/. If the shop is relocated as requested by the petitioner, it would

cause serious loss of revenue to the State Government.

7. In view of the averments made in the affidavit filed in support of the writ petition and in the counter affidavit filed on behalf of the third

respondent, and in view of the submissions made by the learned counsels appearing on behalf of the parties concerned and on a perusal of the

records available and in view of the decisions cited supra, this Court is of the considered view that the relief sought for by the petitioner, in the

present writ petition, cannot be granted. The petitioner has not been in a position to show that there has been a number of incidents that had

occurred, disturbing the peaceful life of the residents in the area in question, due to the drunken misbehaviour by persons consuming liquor at the

shop in question. Even though it has been claimed that a number of representations had been submitted to the authorities concerned, it has not been

shown that cases of nuisance have been registered by the fourth respondent police.

8. No doubt the constitutional guarantee of life and personal liberty, guaranteed under Article 21 of the Constitution of India, is an inalienable right.

It is also not in dispute that every person, whose right is infringed, could seek his remedy before an appropriate authority or forum in the manner

known to law. However, in the present case the petitioner has not been in a position to establish his claims by placing sufficient documentary

evidence before this Court. Further, the claim of the petitioner that a Sivan temple, worshipped by a number of devotees, has been in existence

near the liquor shop, for a long time, has been refuted by the third respondent. Though in certain cases it may be appropriate for this Court to

direct the authorities concerned to shift the liquor shop to another locality, based on available evidence, it may not be the appropriate remedy, in

the present case. Further, if such directions are issued to the authorities concerned for the shifting of the liquor shops, merely on the request of an

individual, it could set a wrong precedent for unscrupulous persons to misuse such a benevolent relief. Therefore, in such matters, unless this Court

is sufficiently convinced about the bona fide intention of the petitioner, as well as the interest of the public at large, such reliefs would not be

granted. In such view of the matter, as the petitioner, in the present case, has not been in a position to sufficiently convince this Court, on the merits

of his claims, this Court does not find it appropriate to grant the relief, as prayed for by the petitioner, in the present writ petition. However, the first

respondent is directed to conduct a detailed enquiry, with regard to the claims made by the petitioner, by giving an opportunity of hearing to the

petitioner and to the other persons concerned, and to take suitable action, if found necessary, to relocate the shop in question, as per the relevant

provisions of law. The writ petition is disposed of, with the above directions. No costs.