
(2014) 11 MAD CK 0455

In the Madras High Court

Case No : Writ Petition No. 22339 of 2014, M.P. Nos. 1 and 2 of 2042

S.P.N. Krishnamurthy

APPELLANT

Vs

The Senior Regional Manager, TASMAL Limited

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Citation : (2014) 11 MAD CK 0455

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Judgement

M. Sathyanarayanan, J.—By consent, the writ petition is taken up for final disposal.

2. The petitioner claims that by virtue of a registered partition deed dated 26.02.2014 entered into between him and his elder brother, Thiru.S.P.N.Sathiyamurthy, the "B" schedule properties were allotted to him and the property in question is the Item No. 1 - land and superstructure in R.S.No. 121/1, T.S.No. 6544/11, Block No. 141, No. 1, South Boag Road, T.Nagar, Chennai-17. The grievance expressed by the petitioner is that respondents 1 and 2, namely, Tamil Nadu State Marketing Corporation Limited (TASMAL), intend to give licence to the third respondent to run a TASMAL Retail Vending Liquor Shop with Bar, though the petitioner being the owner of the property by virtue of the above said partition deed, has not given his "no objection certificate".

3. This Court admitted the writ petition on 19.08.2014 and granted an order of ad interim injunction restraining respondents 1 and 2 from in any way granting any licence to the third respondent to run a Bar situate at Shop No. 521, No. 1, South Boag Road, T.Nagar, Chennai-17. The Third respondent has filed M.P.No. 2 of 2014 to vacate the said interim order stating among other things that he approached the petitioner for lease of the above said building for the purpose of running a TASMAL shop coupled with a Bar and the writ petitioner has also accepted the said offer and entrusted a portion in pursuance of an agreement for lease dated 28.12.2010 and the tenancy is for a period of 11 months initially

with option for renewal. Later on, the petitioner has rescinded from his promise and started disturbing his possession and therefore, he was constrained to file O.S.No. 4514 of 2013 on the file of XIV Assistant Judge, City Civil Court, Chennai, praying for permanent injunction restraining the writ petitioner herein / defendant from interfering with his peaceful possession and enjoyment of the said property. The suit was decreed ex parte on 08.04.2014 and as on date, the decree for permanent injunction is subsisting in his favour and therefore, he is entitled to get licence from respondents 1 and 2, namely, TASMAL.

4. In response to the above submission, learned counsel appearing for the petitioner would submit that he has filed two applications, one is to condone the delay in filing the application to set aside the ex parte decree and the other is to set aside the ex parte decree dated 08.04.2014, and those two applications are pending and therefore, it is not open to TASMAL to grant any licence in favour of the third respondent.

5. The learned standing counsel appearing for the TASMAL / respondents 1 and 2 would submit that on account of the pendency of the litigation, no licence to run a Bar to shop No. 521 at Door No. 1, South Boag Road, T.Nagar, Chennai, has been granted and a fresh auction is going to be held during the last week of November, 2014 and grant of licence would be commencing from December, 2014. It is the further submission of the learned standing counsel appearing for the TASMAL that with regard to the partition that took place between the petitioner and his brother, no representation has been received from the petitioner by the TASMAL in this regard.

6. This Court has carefully considered the rival submissions and also perused the materials available on record in the form of typed set of documents. The fact remains that as on today, no licence to run a Bar in respect of shop No. 521 at Door No. 1, South Boag Road, T.Nagar, Chennai, has been granted. It is also pointed out at this juncture that the third respondent is having the benefit of ex parte decree dated 08.04.2014 made in O.S.No. 4514 of 2013 and the applications filed by the writ petitioner for condoning the delay in filing the application to set aside the abatement and to set aside the abatement are pending adjudication and therefore, this Court is not expressing any opinion as regards the ex parte decree passed in the above said suit.

7. In view of the stand taken by respondents 1 and 2, namely, TASMAL, that they are going to conduct a fresh auction for granting licence to run a Bar in respect of Shop No. 521, at Door No. 1, South Boag Road, T.Nagar, Chennai, this Court is inclined to pass the following order:

"It is open to the petitioner herein to submit a representation to respondents 1 and 2 / TASMAL with regard to grant of licence to run a Bar in respect of Shop No. 521, Door No. 1, South Boag Road, T.Nagar, Chennai-17, within a period of one week from today and respondents 1 and 2 / TASMAL, on receipt of the said representation, shall hear the petitioner and the third respondent and take a

decision as expeditiously as possible and not later than two weeks from the date of receipt of the said representation."

8. Writ Petition is disposed of accordingly. No costs. Consequently, connected M.Ps. are closed.