

(2011) 12 MAD CK 0176

In the Madras High Court

Case No : Writ Petition (MD) No's. 4313 and 12360 of 2009 and M.P. (MD) No's. 1, 1, 1, 1, 2, 2 and 3 of 2009

V. Kannan

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Citation : (2011) 12 MAD CK 0176

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : T. Kokilavane, for the Appellant;

Judgement

K. Chandru, J.

(i) W.P. (MD) No. 4313 of 2009

(ii) W.P. (MD) No. 4314 of 2009

(iii) W.P. (MD) No. 12360 of 2009 and

(iv) W.P. (MD) No. 12361 of 2009

1. The first two writ petitions were filed against the order of the State Government dated 05.03.2009. By the impugned order, the State Government was acting on the basis of a letter sent by the Member of Legislative Assembly, Madurai West Constituency, stating that the two TASMACH retail shop Nos. 5145 and 5329 were situated close to a school as well as a place of worship. The Christian Higher Secondary School in the Town Hall Road Jammath which situated in the West Marret Street, Madurai have also sent representations in this regard. Therefore, the Principal Secretary to Government, Prohibition and Excise Department informed the two organizations viz., the R.G. of the Jammath Mosque, No. 1, Town Hall Road, Madurai and the Principal of Christian Higher Secondary School, Madurai that reports were called from the officials including the District Collector, Madurai. On receipt of the said information, the General

Manager, TASMAC informed the Senior Regional Manager, Madurai to act as per the instructions issued by the Government letter.

2. Unfortunately, the District Manager cum Sub Collector, TASMAC, Madurai had a different design. According to him, the average sale of these shops were around Rs. 33 lakhs per month and Rs. 17 lakhs per month respectively. Since it is a commercial area and hence, it will be difficult to locate these two shops to some other place and that the shops were functioning over two decades. There was no hindrance to the place of worship as well to the school. Therefore, the State Government can reconsider its decision in giving the direction to relocate the shops. On the basis of the letter sent by the District Manager, TASMAC two licence holders of the two bars attached to the two TASMAC shops filed writ petitions challenging the communication sent by the State Government.

3. The Writ petitions were admitted on 27.05.2009. Pending the Writ petitions, the same two petitioners also filed two other Writ petitions subsequently being W.P.(MD) Nos. 12360 and 3261 of 2009 seeking for a direction to forbear the respondents from closing the shop No. 5145 at 6D, West Marret Street, Madurai and shop No. 5329 at No. 10 West Marret Street, Madurai-1.

4. The third respondent viz, the Senior Regional Manager, TASMAC, Madurai by the communication dated 25.11.2009 informed the learned standing counsel for TASMAC that since the earlier two writ petitions were coming up for hearing on 26.11.2009 and that the licence of the shops will be expiring on 28.11.2009 the shops will be closed down on 28.11.2009.

5. These two Writ petitions were filed on 27.11.2009 and brought up for admission on the same day. This Court directed the writ petitions will be tagged along with the earlier writ petitions viz., W.P.(MD) Nos. 4313 and 4314 of 2009. Pending the Writ petitions, in the application for interim injunction, no interim orders were passed.

6. The grounds taken by the petitioners in the subsequent Writ petitions were more or less identical to the first two writ petitions. Though in the affidavit filed in support of the subsequent Writ petitions, the petitioners claimed that they had not filed any similar writ petitions for identical relief and no such writ petitions were pending, the fact that the very same two petitioners had filed the earlier two writ petitions viz., W.P.(MD) Nos. 4313 and 4314 of 2009 and the subsequent, two writ petitions were directed to be tagged along with the earlier writ petitions, will show the statement made by the petitioners are knowing to be false. It is not expected of such persons to come to this Court making such superficial declaration about the non pendency of the previous cases.

7. It is the case of the petitioners that they had invested huge amounts in running the bar. The rules relating to the location of shops had not been violated, even as per the statement of the District Manger, TASMAC. However, the petitioners alleging mala fide against the then member of Legislative Assembly had filed two applications being M.P.(MD) Nos. 4 and 4 of 2009 for impleading Mr.

K.S.K. Rajendran, member of the Legislative Assembly, Madurai West Constituency as a party 5th respondent to the Writ petitions viz., W.P.(MD) Nos. 4313 and 4314 of 2009. This Court ordered the application holding that he is necessary and proper party to the Writ petitions.

8. In the mean while, the Senior Regional Manager, TASMAL, Madurai had filed a vacate stay application in M.P. (MD) No. 3 of 2009 together with a supporting counter affidavit dated 13.07.2009. In the counter affidavit it is stated that the shop No. 5145 had been functioning nearly for two years. The averments made by the petitioners that there was no school and religion institution closely located, was not correct. There is a school by name, Christian Higher Secondary School, (TELC) and a religious institution by name, Town hall road Jammath. The location of the shops causing hindrance to the general public and there is a disturbance of law and order problem affecting free flow of traffic. The Headmaster of the school had sent a letter dated 24.03.2006 to the 2nd respondent viz., Managing Director, TASMAL for shifting the shop from that place. The religious people from the Jammath had also requested the 2nd respondent, the TASMAL shop should be shifted to some other place. Hence, the shifting of the shop was ordered only in the interest of general public and no motive can be attributed.

9. The petitioner in W.P. (MD) No. 4313 of 2009 is only a successful bidder for collection of empty bottles and for selling eatables. He cannot have any right over the shifting of the TASMAL shop. The TASMAL shops were run by the Government and the petitioner cannot have any legal right. The licence issued to the petitioner was renewable every month. There is no permanent right pressing upon to state that the shops should function only in the places where it was functioning. The paramount consideration is in the interest of the general public. The people living in that area were genuinely requesting that the shops should be shifted to another place. The sentiments and feelings of the general public which alone is relevant for consideration. There is no fundamental right for the petitioner to running the shops in the same area. While dealing with liquor, there was no fundamental right involved.

10. The claim that more than Rs. 25 lakhs had been invested was also denied. The involvement of the member of Legislative Assembly was also denied. In the affidavit filed in support of the impleading application, the petitioners stated that for running a hotel by name and style of Madurai Residency with a bar at door No. 14, West Marret Street, Madurai had approached the Writ petitioners for several occasions to shift and sell the shop licence to him. When it was not obliged, he had raised the plea that the shops should be closed.

11. However, the 3rd respondent Senior Regional Manager had also enclosed in a typed set the two letters sent by the School as well as by the Mosque dated 24.03.2008 and 25.03.2008. The school in their letter addressed to the Chief Minister of Tamil Nadu stated that these two shops were already closed on the basis of their earlier representation. It was again opened and they requested that

the shops to be closed in the light of the students' interest. Similarly, the President of Jammath had stated that both the shop nos. 5145 and 5329 are hindrance to the persons, who are coming for attending the Mosque and the school is also affected. Considering the future interest of the students, the state Government must remove the shop from the said place and also see to it that wherever the TASMACH shop in the city, it should not be near to either a Temple or Mosque or any other school.

12. The sheet-anchor of the petitioners as reflected in the affidavit and also in the typed set was that the District Manager, TASMACH in his report had stated that the shop No. 5145 is situated from the Mosque if it is measured on the basis of the road distance it comes to 58 mtrs. to the shop and from the emergency gate 53 mtrs.. distance. From the main gate of the school, the shop is situated at 153 mtrs. distance. So far as the shop No. 5329 is concerned, if it is measured on the basis of road distance it comes to 20 mtrs. from the emergency gate and from the shop to the Mosque the distance is 88 mtrs. and from the shop to the school main gate it comes 122 mtrs. distance. The distance rule by which the retail TASMACH shop can be located. There is no hindrance to the school and the Mosque. Therefore, the State Government can reconsider for shifting the TASMACH shops. However, this Court had more than one occasion had pointed out that the distance rule only enables the state to provide a location of a shop. But that is not a ground to permit a shop, if there was a nuisance created by the location of the shop.

13. A Division Bench of this Court vide its judgment in TASMACH Vs. R.M. Shah and others reported in 2010(2) CWC 337 has held that apart from the distance rule, if there is any public nuisance, the Court in public interest can order for closure of any TASMACH shop. In the present case, the TASMACH is only running the shop and the petitioners were having right to sell eatables and collect empty bottles from the bar attached to the shops which was an additional facility. Therefore, the petitioners who are not even running the shops or having licences to carry out to some accessories for the shop in the bar right to sell eatables cannot have any locus standi to challenge the State action.

14. In the present case, the MLA or at the instance of the school management and the Jammath of the Mosque projected their grievances for shifting the TASMACH shops was not doing with any bad motives. He was only disclosing his function as a representative of the people. It cannot be called as a mala fide action. So long as the authorities of the TASMACH had consciously taken a decision to close down the shops upon being directed by the State Government to consider such a request. There being a material for such closure of shops, at the instance of the petitioners, such actions cannot be forestalled. It is rather unfortunate that the petitioners had obtained an order of interim stay without having any legal right on their side.

15. In the light of the order passed by the Division Bench and in view of the action taken by the respondents / TASMACH, the Writ petitions are not

maintainable. Accordingly, they will stand dismissed. No costs. Consequently, connected M.Ps. are closed.

16. Since the TASMAG had already taken a conscious decision of not to locate the shops near the school and the Mosque, the District Collector must ensure that the shops are not located both near the Christian Higher Secondary School and also near the Pallivasal, Town Hall Road. Post this matter on 22.12.2011 for reporting compliance.