

W.P(MD).No.13372 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.07.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).No.13372 of 2022

and

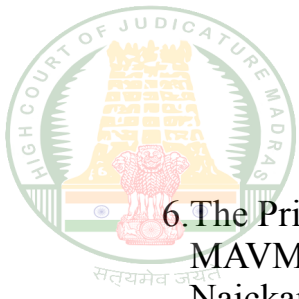
W.M.P(MD).Nos.9487, 9490 and 9491 of 2022

Jayalakshmi

... Petitioner

Vs.

- 1.The Managing Director,
Tamil Nadu State Marketing Corporation (TASMAC)
Thalaimuthu Varadarajan Building,
Egmore,
Chennai.
- 2.The Senior Regional Manager,
Tamil Nadu State Marketing Corporation (TASMAC)
Anna Nagar,
Madurai-625020.
- 3.The District Collector,
Office of the District Collector,
Madurai District.
- 4.The District Manager,
Tamil Nadu State Marketing Corporation (TASMAC)
Madurai North District,
Madurai.
- 5.The Supervisor,
TASMAC Shop No.5258,
Naickanpatti Village,
Kallanthiri,
Madurai District.



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6. The Principal,
MAVM Polytechnic College,
Naickanpatti,
Alagarkovil,
Madurai.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, calling for the records pertaining to the impugned order passed by the fourth respondent vide his proceedings in Na.Ka.No.233/2022/A5, dated 02.05.2022 and quash the same as illegal and consequently direct the respondents 4 and 5 to reopen the TASMACH Shop No.5258, situated at Block No.12, Naickanpatti Village, Kallanthiri, Madurai within the time stipulated by this Court.

For Petitioner : Mr.B.Arun
For R1, R2 & R4 : Mr.H.Arumugam
Standing Counsel
For R3 : Mr.P.Subbaraj
Special Government Pleader
For R6 : Mr.R.Gandhi

ORDER

The petitioner seeks opening of Shop No.5258 in her premises. The petitioner is the owner of the property comprised in S.No.8/21 of an extent of 5 acres, 67 cents situated at Naickenpatti, Kallanthiri, Madurai. The fourth respondent TASMACH Shop No.5258 situated at Door No.7475, Mela Perumal Maistry Street, Madurai, due to some misunderstandings between the landlord and the fourth respondent, the fourth respondent decided to shift the said shop to some other location. The fourth respondent identified the petitioner's



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premises and agreed to shift Shop No.5258 to the petitioner's property. The petitioner gave a representation, dated 21.01.2022 and her willingness to have the shop in her property. Thereafter, TASMAC officials inspected the property on 24.01.2022, submitted a detailed proposal to the District Collector, Madurai to approve the shifting of the said shop. Further, found no objections, contemplated as per Rules and Acts, permitted TASMAC to shift Shop No. 5258 in the petitioner premises. The petitioner constructed the building to put up the shop is now informed due to some objections, the shop cannot function in her property, closing the shop without information is an arbitrary decision of the fourth respondent, causing huge loss to the petitioner. After obtaining clearance from the concern, the shop was shifted. After shifting the shop, the sixth respondent sent representation to the District Collector on 02.05.2022 making objections and the shop was temporarily closed. Thereafter till date it has not commenced its business, putting petitioner to severe financial loss.

2. The learned standing counsel for the fourth respondent filed counter and relied on the following passage:

“5. I submit that the averment made in the affidavit that it has been decided to open the shop from 30.04.2022 onwards, but more than two months lapsed, the shop has not been opened is not correct since as per the order of the third respondent the shop was opened on 30.04.2022 and thereafter, it was temporarily closed on 02.05.2022 due to public objection. This respondent does not know about the investment of the petitioner for construction of building and the same

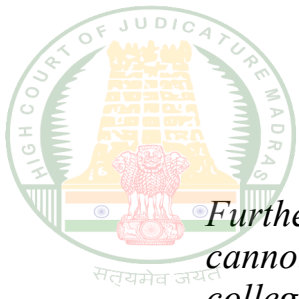


is also not relevant since the decision was taken to temporarily close the shop by considering the objection of public to avoid the law and order problem. The petitioner has no say, in taking a decision to close the shop. The petitioner cannot have any say with regard to running or closing of shop and he has no right to insist to run the shop in his building. This Court in W.A(MD)No.1582 of 2018, dated 29.11.2018, has categorically held that “the owner of the premises has no right to question the closure of the TASMALC shop or shifting of TASMALC shop to any other locality and as against the grievance of the public, personal interest of owner of the building cannot have any preference”. Further the issue is purely contractual in nature, neither his fundamental right nor constitutional or any other violation of provisions pointed by the petitioner hence the writ is not maintainable and the same is liable to be dismissed.

6. I submit that the fact remains that there is no distance violation and there is no religious or educational institution situated within the prohibited distance of 100 meters as contemplated under “Rule 8” of the Tamil Nadu Liquor Retail Vending (In shops and Bars) Rules, 2003. This respondent sent a proposal to the third respondent to shift the shop as per “Rule 9”. The third respondent after scrutinizing the records and satisfying about the non-existence of Religious and Education institution within the prohibited distance granted permission on 03.03.2022 to relocate the TASMALC Shop No. 5258. Accordingly, the shop was shifted and opened on 30.04.2022. Thereafter, the same was temporarily closed on 02.05.2022, due to public objection.”

3. The learned counsel for the sixth respondent filed counter and relied on the following passages:

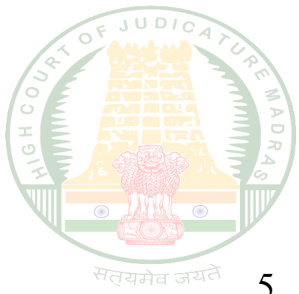
“5. The sixth respondent stated that prayer sought for in this writ petition is diametrically opposed to the order passed by this Court in a Public Interest Litigation filed by the sixth respondent in W.P(MD).No.16180 of 2019. In 2019 there was an attempt made by the fourth respondent to shift the TASMALC shop near our college and a De Addiction Centre. There after I filed a Public Interest Litigation since the same was caused inconvenience to the professors and students and general public. That on 19.09.2019 in W.P(MD).No. 16180 of 2019 this Court was pleased to allow the writ petition.



Further, the Division Bench has categorically held that Distance Rule cannot be a criteria for allowing a TASMACH shop to run near a college. There is a prohibition to shift or establish the TASMACH shop in the present premises.

6. The sixth respondent stated that the writ petitioner has not approached this Court with clean hands. The averment made in the writ petition that she newly constructed the shop is a blatant lie. In 2019 it was constructed and the document annexed by the writ petitioner would confirm the same. The typed set of papers and photographs filed by the sixth respondent in Public Interest Litigation would confirm the building is old and the writ petitioner manipulates the records to suit his convenience. As per the objection raised by the sixth respondent, the fourth respondent is entitled to act and cancel the agreement and as such writ petition is not maintainable. Hence, it is just a necessary to dismiss the writ petition filed by the petitioner as frivolous and not maintainable in law.”

4. The petitioner produced the order passed by this Court in W.P(MD)No.16180 of 2019, dated 19.09.2019, wherein, it is held that the location, where TASMACH shop No.5436 proposed to be shifted, is within 200 metres from the petitioner's institution and there are temples in the locality. During festival season, more number of devotees thronged in the area and in order to attract them, the shop is proposed to be shifted. Considering the proposed location and its surrounding facilities, which are already in existence, more particularly, a De-addiction center, directed the first respondent should not grant permission to the second respondent to shift or re-locate the shop to the premises of the petitioner.



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5. Further, from the petitioner's type set, it is seen, in the Stability Certificate, it is recorded that the construction was put in the year 2019 in the same survey number, would confirm that the TASMALC shop now shifted in the same place, which was earlier objected ordered closure during the year 2019. He further submitted that there are some powerful political persons, who are attempting to shift the shop for their own benefit not considering the objections of the students, local residents and society at large. If the shop is shifted, the entire peace and tranquility in the area would get affected, further it would be in clear violation of the order earlier passed by this Court. The demography of the property has not changed, the shop which was found located in an objectionable area during 2019 cannot have a turn around now.

6. Considering the submission and perusal of the material, it is seen that now District Manager finding that the earlier order passed by this Court in W.P(MD)No.16180 of 2019, dated 19.09.2019 not brought to notice, the authorities unknowingly earlier recommended the Shop No.5258 to be shifted to the petitioner's place. The sixth respondent made objections, causing legal notice along with documents to substantiate their objections. Thereafter, the objections of MAVM considered, finding earlier this Court in W.P(MD)No. 16180 of 2019, by order dated 19.09.2019 ordered closure of TASMALC shop



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in the same place. Further the petitioner suppressing the survey number, disclosing only the plot number and managed to get the order for shifting the TASMAC shop No.5258. Now, the authorities found the place of shifting to be one and same, which this Court earlier ordered closure. Hence, fourth respondent in Na.Ka.No.233/2022/A5, dated 27.07.2022 had ordered permanent closure of Shop No.5258 in the petitioner plot and land.

7. In view of the same, this Court is not inclined to entertain this petition. Hence, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

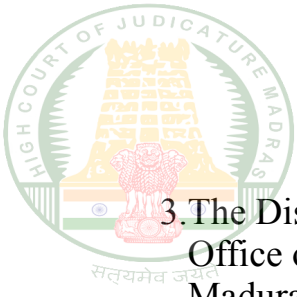
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Index : Yes / No
Internet : Yes/ No
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M.NIRMAL KUMAR, J.

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