

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.33332 of 2015
and M.P.No.1 of 2015

G.Suresh Kumar

... Petitioner

vs.

1.Tamil Nadu Industrial Investment Corp. Ltd.,
by its Branch Manager,
having office at D.No.20/127 A-5B,
First Floor, 80 Feet Road, Salem Road,
Namakkal - 637 001.

2.Venus Sizing Mills rep.
by its Partner V.S.Balamurugan,
S/o.V.Selvarajan, D.No.27F, East Colony,
Komarapalayam Post, Tiruchengode Taluk,
Namakkal District.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the first respondent in TIIC/NKL/FU/15-16 dated 30.09.2015 and quash the same and consequentially direct the first respondent to consider the petitioner representations dated 10.07.2015 and 22.07.2015 after giving opportunity to the petitioner and thereby enabling him to substantiate his case before first respondent.

For Petitioner : Mr.R.Marudhachalamurthy

For Respondents: Mr.I.Satish

Standing Counsel (For R1)

Mr.K.Vijayaragavan (For R2)

ORDER

Heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner and Mr.I.Satish, learned Standing Counsel appearing for the first respondent and Mr.K.Vijayaragavan, learned appearing counsel for the second respondent. By consent, the writ petition is taken up for final disposal.

2.In this writ petition, the petitioner challenges the proceedings of the first respondent dated 30.09.2015 by which the request made by the petitioner to continue to be in occupation of the sizing mill till the end of the lease period was rejected and the petitioner prays for further direction to consider his representations dated 10.07.2015 and 22.07.2015.

3.The following facts would be suffice to consider as to what relief the petitioner would be entitled in this writ petition:

The second respondent is the owner of the sizing mill who has borrowed loan from the first respondent, TIIC. The second respondent defaulted in payment. Therefore, action for recovery was initiated by the first respondent. The second respondent stated that the first respondent will sell the unit and repay the dues. Accordingly, permission was granted to sell a portion of the property which was sold and the amount was adjusted to the loan account. In respect of the remaining property including the land, building and machinery when the first respondent was taking steps to effect sale, the second respondent without permission of the first respondent leased out the factory, building and machinery to the petitioner for a period of five years. The petitioner came into possession, obtained registration under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and is carrying on business. The petitioner continued to pay the monthly rent of Rs.35,000/- to the second respondent. In the meantime, the petitioner submitted representations to the first respondent to permit him to continue to operate the unit till the end of the lease period i.e., May 2017 and give an undertaking that he will not object the first respondent from initiating the proceedings for selling the unit but their possession may not be disturbed till the end of the lease period i.e. May 2017. Since the representation was not considered, the petitioner filed a writ petition before this Court in W.P.No.22384 of 2015 which was disposed of by directing the first respondent to consider the representation. The representation has been rejected by passing the impugned order.

4.After hearing the learned counsel appearing for the parties for considerable length of time, what appears to be the factual position is that the petitioner is in possession of the unit and in terms of the lease deed between the petitioner and the second respondent, he is entitled to continue as lessee till 31.05.2017. Therefore the prayer sought for by the petitioner is that he may be permitted to continue till then and the first respondent shall initiate action for sale of the industrial unit for recovery of the loan amount borrowed by the second respondent but the possession shall be handed over to the proposed purchaser after May 2017.

5. Considering the peculiar facts and circumstances of the case, this Court is of the view that the following order will meet the ends of justice and also protect the interest of the first respondent Corporation:

1. The petitioner is directed to file an affidavit of undertaking, solemnly undertaking to vacate and hand over the possession of the Unit to the first respondent on 01.06.2017 within a period of two weeks from the date of receipt of a copy of this order.
2. The petitioner is directed to pay the monthly rent of Rs.35,000/- to the first respondent directly and not to the second respondent. The monthly rent shall be paid on or before 10th of every month. This amount shall be adjusted by the first respondent against the dues payable by the second respondent and such adjustment shall be done as against the principal amount and not against the interest.
3. If the petitioner complies with the above two conditions, then he is entitled to be in possession of the Unit till 31.05.2017.
4. During the period in which the petitioner is in possession of the Unit, he shall not be entitled to make any structural alterations or dispose of any machinery or add any other machinery, etc., but to operate the factory in the present condition except to carry out maintenance work.
5. The second respondent is directed to file a separate undertaking agreeing to abide by the above conditions and also agreeing for the payment of the monthly rent directly to the first respondent by the petitioner.
6. The petitioner shall not be entitled to initiate any proceedings against the first respondent and should hand over the vacant possession of the industrial unit to the first respondent on 01.06.2017 without fail. Further, if the petitioner fails to do so, then the first respondent shall evict the petitioner from the premises and if necessary, the police assistance can also be availed.

6. With the above direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

cse
To

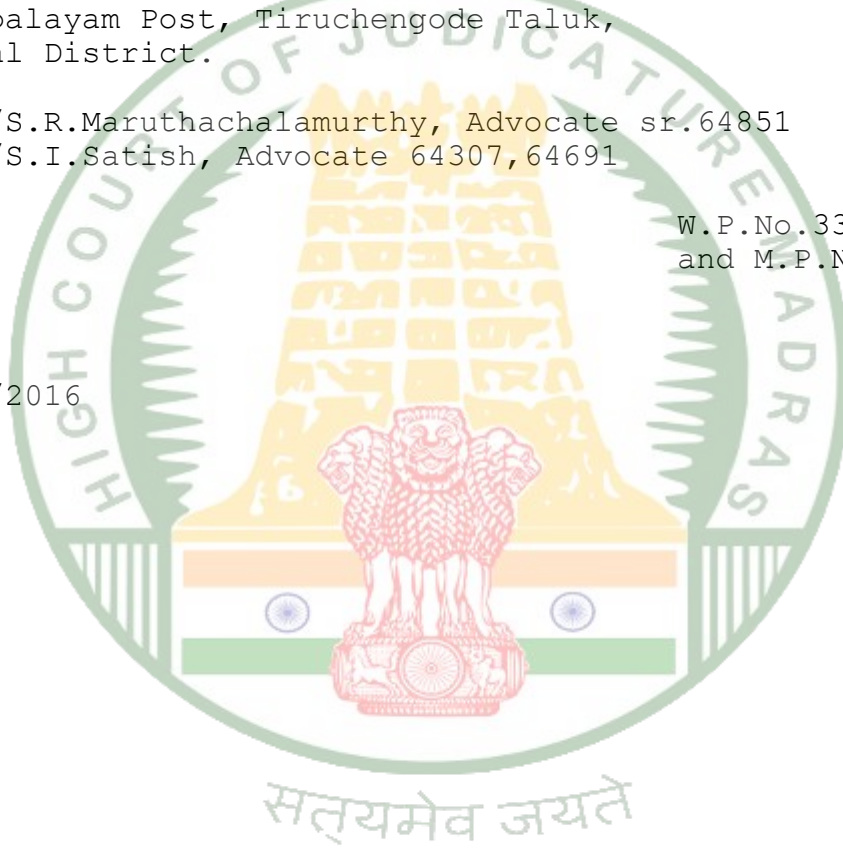
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+1cc to M/S.R.Maruthachalamurthy, Advocate sr.64851
+2cc to M/S.I.Satish, Advocate 64307,64691

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srg 08/12/2016



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