THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2016

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.No.32271 of 2016
and
W.M.P.No.27992 of 2016

S.Govindaraj ... Petitioner

Vs.

1. The Chairman,
   Tamil Nadu State Marketing Corporation Limited
   (TASMAC Ltd)
   Secretariat, Fort St.George,
   Chennai - 60 009.

2. The Managing Director,
   Tamil Nadu State Marketing Corporation Limited,
   (TASMAC Ltd),
   4th Floor, CMDA Tower - II,
   Gandhi Irwin Bridge Road,
   Egmore, Chennai - 600 008.

3. The District Manager,
   Tamil Nadu State Marketing Corporation Limited,
   (TASMAC Ltd)
   Ambattur - 1, Chennai North,
   Chennai - 600 058. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.A3/1355/2016 dated 22.08.2016 on the file of the 3rd respondent quash the same in sofar as the petitioner is concerned and direct the respondents 1) to pay the arrears of rent with interest at 12% per annum from the due date, 2) to pay the six months rental advance, 3) to increase the rent once in three years at 15% and 4) to pay the rent every month.

For Petitioner : Mr. S.Doraisamy

For Respondents : Mr. C.Kasirajan

O R D E R

With the consent of either side, the writ petition itself is taken up for final disposal.

2. Heard Mr.S.Doraisamy, learned counsel appearing for the petitioner and Mr.C.Kasirajan, learned counsel appearing for the respondents.

3. The petitioner is the absolute owner of the property bearing Door No.16, Broadway High Road, Chennai - 600 001 and the said property has been leased out to the respondents (TASMAC Ltd), for running a retail IMFL (Indian Made Foreign Liquor) shop No.167 with bar attached to the shop. Undisputed fact is that the monthly rent for the shop is Rs.40,000/- and the advance is Rs.4,00,000/-. A lease arrangement was entered into between the petitioner and the respondents (TASMAC) on 08.09.2009.

4. The petitioner's complaint is that he was not at all paid the lease amount for the shop. Therefore, he submitted several representations and those representations were not considered. Therefore, the petitioner, along with three other persons, filed W.P.Nos.10489 & 10490 of 2016, 10245 & 10246 of 2016 praying for considering their representations and payment of arrears of rent due and payable to them.

5. The said writ petitions were disposed of by a common order dated 24.03.2016 by directing the first respondent to consider the representations, pursuant to which, the impugned order has been passed. It is a common order in respect of all four writ petitions. Sofaras the petitioner's case is concerned, the respondents would admit that there is arrears of rent, but, while calculating the arrears of rent, after arriving at arrears of rent, the respondents had deducted a sum of Rs.7,31,359/-, apart from deduction of 10% of Tax Deducted at Source and that they are ready and willing to pay a sum of Rs.7,22,441/-. The reason for deduction of Rs.7,31,359/- is stated to be that the petitioner is in arrears of payment of licence fee, for the licence, which was granted to the petitioner to sell eatables and collect empty bottles and cups from the bar attached to shop No.167.

6. The petitioner would seriously dispute such contention stating that there is absolutely no arrears of any licence fee and the deduction is arbitrary. However, the learned counsel for the petitioner contended that without opportunity to the petitioner and without even issuing any notice, the respondents

straight away deducted Rs.7,31,359/- which is arbitrary and unreasonable.

7. After hearing the learned counsel for the petitioner and perusing the materials placed on records, it is clear that before deducting a sum of Rs.7,31,359/-, from and out of the total amount due, the petitioner was not given any opportunity. Therefore, the procedure adopted by the respondents, in effecting deduction, is incorrect.

8. In so far as the undisputed amount of Rs.7,22,441/-, the learned counsel for the respondents (TASMAC), on instructions, would submit that they would pay the money to the petitioner.

9. In the light of the above, the writ petition is disposed of on the following conditions:

1. The Respondent TASMAC shall pay Rs.7,22,441/- to the petitioner within a period of one week from today, without awaiting for the certified copy of this order.

2. The third respondent, within one week from today, shall issue notice to the petitioner clearly stating as to how they arrived at the amount of Rs.7,31,359/- which, according to the respondents, is the arrears of license fee payable by the petitioner. The notice should contain full details, so as to enable the petitioner to give an effective reply. On receipt of such notice, two weeks time is granted to the petitioner to submit his reply, after which, an enquiry shall be conducted by the third respondent, verifying the receipts or documents that may be produced by the petitioner and thereafter, pass a speaking order on merits and in accordance with law.

3. The petitioner is entitled to take assistance of an authorised representative to represent him during the course of hearing before the third respondent.

4. It is also open to the petitioner to make a request for enhancement of the lease rent and if the same is made, that shall be also considered in accordance with law.

there is no orders as to costs in the writ petition. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sms/tar

To

1. The Chairman,
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3. The District Manager,
Tamil Nadu State Marketing Corporation Limited,
(TASMAC Ltd)
Ambattur - 1, Chennai North,
Chennai - 600 058.

+1cc to Mr.S.Doraisamy, Advocate, S.R.No.52358
+1cc to Mr.C.Kasirajan, Advocate, S.R.No.52264
+1cc to the Special Government Pleader(T), S.R.No.54052

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TRM(CO)
CA(04/10/2016)