

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8924 of 2017

M.B.Rajan

... Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Marketing
Corporation Ltd. (TASMAC),
Thalamuthu Natarajan Buildings,
Egmore, Chennai-600 008.

2.The Senior Regional Manager,
Tamil Nadu State Marketing
Corporation Ltd. (TASMAC),
L.L.A.Buildings, Mount Road,
Chennai-600 002.

3.The District Manager,
(Chennai Central),
Tamil Nadu State Marketing
Corporation Ltd. (TASMAC),
Ambattur-11, Industrial Estate,
Chennai-600 058.

.... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned order dated 02.08.2016 made in Na.Ka.No.B1/264/446/2015 passed by the 3rd respondent, quash the same and consequently direct the 3rd respondent to return the earlier balance of deposited amount of Rs.1,76,700/- together with applicable interest to the petitioner.

For Petitioner : Mr.A.T.Jayaraman

For Respondents : Mr.K.Sathish Kumar

O R D E R

Heard Mr.A.T.Jayaraman, learned counsel for the petitioner and Mr.K.Sathish Kumar, learned counsel for the respondent/TASMAC.

2.The petitioner has challenged an order passed by the third respondent/District Manager dated 02.08.2016, by which the third respondent after adjusting the licence fee payable for the month of February, 2015 for the licence granted to the petitioner to sell eatables and collect empty bottles in TASMAC retail vending shop No.446, has forfeited the balance amount on the ground that the petitioner has not been able to obtain 'No objection certificate' from his landlord to continue the bar beyond November, 2014. From the impugned order, it is not clear as to what is the amount forfeited by the third respondent. Equally, the counter affidavit does not specifically mention the amount.

3.The prayer in the writ petition is for a direction upon the third respondent to return the balance of the deposited amount of Rs.1,76,700/-. This according to the third respondent is the security deposit paid by the petitioner in respect of the licence granted on 28.12.2013, which was adjusted for the payments due for the subsequent licence dated 27.11.2014 and such amount is non refundable. However, the Court will test the correctness of the impugned order, as to whether the forfeiture as done by the third respondent is correct or not.

4.The learned counsel for the respondent/TASMAC after referring to the counter affidavit and the typed set of papers filed along with the counter affidavit, submitted that the landlord had addressed several representations to the third respondent stating that she has not renewed the 'No objection certificate' beyond November, 2014 and therefore, the petitioner should not be permitted to run the bar in the said premises. Pursuant to such representation given by the landlord, the petitioner was issued with a notice dated 02.01.2015 directing the petitioner to file copy of the Lease Deed or 'No objection certificate' from the landlord, failing which, the licence will be cancelled. As the petitioner did not produce the Lease Deed or the 'No objection certificate', by proceedings dated 26.02.2015, the licence was cancelled with effect from 01.03.2015.

5. It is to be noted that there is already a dispute between the landlord and the petitioner and it is stated that eviction petition was filed by the landlord. Thus, the possession of the petitioner was litigious and the question of him obtaining a fresh Lease Deed or a 'No objection certificate' was next to impossible. However, this should have been a pre-condition even prior to issuance of the licence on 26.11.2014. Presumably, the third respondent granted the licence dated 27.11.2014, as he was existing licensee in respect of previous eleven months vide licence dated 26.12.2013. In the licence dated 27.11.2014, there is a condition that the licensee should produce a 'No objection certificate' or a valid Lease Deed given in his favour. This has to be insisted as a precondition and the third respondent having not done so and issued licence, permitting the petitioner to carry on business for more than four months, cannot now forfeit the security deposit on the ground that 'No objection certificate' was not given by the landlord. In any event, if the respondent/TASMAC had permitted the petitioner to run the shop by issuing a licence without insisting upon production of a 'No objection certification' from the landlord as a pre-condition, the question would be, whether the same can be the reason for cancellation and forfeiture of the security deposit.

6. In my considered view, this could not have been a reason, because already there was a landlord and tenant dispute pending, and the question of him obtaining 'No objection certificate' was next to impossible. Thus, having allowed the petitioner to operate the licence from November, 2014, after having collected the entire amount payable by the petitioner, it will be too late for the respondent to state that the petitioner failed to produce the 'No objection certificate' and therefore, action will be initiated against him. The respondent/TASMAC was not justified in cancelling the licence, because there was no valid 'No objection certificate' and the landlord has been repeatedly sending representations thereby putting sufficient pressure on the third respondent to take action against the petitioner.

7. In any event, the petitioner does not seek to challenge the cancellation of the licence and what he is only concerned about the forfeiture. Thus, the respondent/TASMAC having been aware of the fact that the petitioner did not have a valid 'No objection certificate' or a Lease Deed from his landlord as on date when the licence was issued in his favour and in spite of that having granted a licence, could not have invoked clause 45 of the terms and conditions of the licence for forfeiture of the security deposit. That apart, prior to cancellation, though the

notice was issued to the petitioner on 02.01.2015, no enquiry appears to have been conducted and the notice merely states that the petitioner should produce a valid Lease Deed or a valid 'No objection certificate', otherwise, licence would be cancelled. Thus, as mandated under clause 45 of the terms and conditions, enquiry has not been conducted in the matter. Thus, for the above reasons, while upholding the cancellation of the petitioner's licence, it is held that the forfeiture of the security deposit as done in the impugned order dated 02.08.2016, is not sustainable.

8. Accordingly, this writ petition is partly allowed and that portion of the impugned order, directing forfeiture of the security deposit after adjustment of the licence fee for February, 2013 is held to be illegal and the third respondent is directed to refund the forfeited amount to the petitioner within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar

/true copy/

Sub Assistant Registrar

abr

To

1. The Managing Director,
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(Chennai Central),
Tamil Nadu State Marketing
Corporation Ltd. (TASMAC),
Ambattur-11, Industrial Estate,
Chennai-600 058.

1 cc to Mr.A.T.Jayaraman, Advocate, Sr. 5709
1 cc to Mr.K.Sathish Kumar, Advocate Sr. 5600

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