

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2018

CORAM

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

ORIGINAL PETITION No. 198 of 2015

K.Chandrasekaran

... Petitioner

Vs.

1.Tamil Nadu Tourism Development Corporation Limited
Represented by its Managing Director
Tamil Nadu Tourism Complex
No.2, Wallajah Road, Chennai - 600 002.

2.The Managing Director
Tamil Nadu Tourism Development Corporation Limited
Tamil Nadu Tourism Complex
No.2, Wallajah Road, Chennai - 600 002.

3.The Chief Accounts Manager-cum-Secretary
Tamil Nadu Tourism Complex
No.2, Wallajah Road, Chennai - 600 002.

4.The Manager
Hotel Tamil Nadu, Madurai Unit-II
Alagar Koil Road, Madurai - 625 002.

5.The Regional Manager
Hotel Tamilnadu, West Veli Street
Madurai - 625 001.

6.Justice Shri.K.Venkataraman
Former Judge Madras High Court
Sole Arbitrator
L-125, 17th Street
Anna Nagar East, Chennai - 600 102.

.... Respondents

Petition filed under Section 34(1) of Arbitration and Conciliation Act, 1996, (a) to set aside the award dated 28.10.2014 insofar as disallowed portion of the claim of the petitioner and direct the Respondents 1 to 5 to hand over the alleged additional area of 2503 sq. ft. which was taken possession by them, as it was before, so as to enable the petitioner to continue hotel business as it was done prior to illegal dispossession and (b) to direct the Respondents 1 to 5 to pay Rs.1,26,15,475/- towards damages together with interest at 18% p. a.

For Petitioner : Mr. Yashod Vardhan, Senior Counsel
For M/s. P. Rajagopal

For Respondents : Mr. P. H. Arvinth Pandian,
Additional Advocate General
Assisted by
Mr. C. H. Vinay Datha (For R1 & R2)

ORDER

The Petitioner has come forward with this petition challenging a portion of the Arbitration Award dated 28.10.2014, that has gone against him.

2. Learned counsel for the Petitioner submitted that the claim and the counter-claim have been rejected and it is suffice, if this Court answers the issue with regard to the so-called unauthorized occupation of the extra area, which has been found to be not sold, as held by the Arbitrator and that the amount deposited shall be refunded.

3. According to the learned counsel for the petitioner, when the finding of the Arbitrator is in favour of the petitioner, the Respondents/Tamil Nadu Tourism Development Corporation Limited (in short 'TTDC') need to pay the amount deposited by him, pursuant to the order dated 12.03.2012 passed by this Court in O.A. No.169 of 2012, whereby, the Petitioner was directed to pay additional rent for additional space.

4. Learned counsel for the Petitioner further submitted that even though the Petitioner is challenging the Award as of now, there is nothing much less in the Arbitration Award insofar as the Petitioner's claim is concerned, except the fact that the finding rendered in paragraph 15(iv) of the Arbitral Award is in favour of the Petitioner.

5. Learned counsel appearing for Respondents 1 and 2/Tamil Nadu Tourism Development Corporation Limited, submitted that the Petitioner was given additional space, for which, additional rent was claimed, which was directed to be paid and the same was paid. He further submitted that aggrieved by the order dated 12.03.2012 passed by this Court in O.A.No.169 of 2012, an Appeal has been preferred by Respondents 1 to 5 before a Division Bench of this Court, wherein, the order of the learned Single Judge dated

12.03.2012 was interfered with and the matter was remitted to the learned Single Judge for considering the matter afresh and deciding the same in accordance with law.

6. According to the learned counsel for Respondents 1 and 2, in terms of paragraph No.35 of the order of the learned Single Judge dated 08.04.2013 in O.A.No.169 of 2012, it is very clear that the Petitioner is in occupation of the additional space and that he is liable to pay additional rent. Even assuming that there is a dispute, the parties have to raise fresh Arbitration proceedings and that the Petitioner cannot seek any relief in the present Original Petition, as it is not the subject matter of Arbitration.

7. It is further stated by the learned counsel appearing for Respondents 1 and 2 that Tamil Nadu Tourism Development Corporation (TTDC) has also filed an Original Petition challenging the rejection of the counter-claim in O.P.No.219 of 2015, but the same was withdrawn on the ground that TTDC intends to initiate fresh proceedings on account of other disputes arising out of the said Agreement.

8. It is further contended by the learned counsel for the respondents 1 and 2/TTDC that when the issue with regard to the refund of

amount was not raised before the Arbitrator, the Petitioner cannot seek a direction in the present Original Petition for refund of the amount and that the Petitioner will have to claim the amount by initiating fresh Arbitration proceedings, as he had extended the Bank Guarantee, which was to be in force till the disposal of the Original Petition.

9. Heard both parties and perused the material documents available on record.

10. The only issue to be decided in the present Original Petition is with regard to the additional space said to have been occupied by the Petitioner, for which, additional rent was paid. It is not in dispute that the claim and counter-claim of both the parties have been rejected. Respondents 1 to 5 have also withdrawn O.P.No.219 of 2015 that has been filed challenging the Arbitration Award, insofar as the issues that have gone against them, with liberty to initiate fresh Arbitration proceedings. It is also not in dispute that pursuant to the orders of the learned Single Judge dated 12.03.2012, for additional space, additional rent has been paid and the said order was interfered with by a Division Bench of this Court and the matter was taken afresh by the learned Single Judge, who passed an order. Even though the petitioner referred to paragraph Nos.35 and 36 of the order passed by the

learned Single Judge in O.A.No.169 of 2012, certainly, paragraph No.37 has to be read along with paragraph Nos.35 and 36, only then, all the issues can be decided in the Application.

11. Learned Single Judge, while holding that the Petitioner is entitled for additional space, in paragraph No. 37 of the order passed in O.A.No.169 of 2012, has observed that the entire issue is at large before the Arbitrator and that the Arbitrator will have to pass orders afresh on merits without being influenced by any of the observations made by this Court under Section 9 of the Arbitration and Conciliation Act, 1996.

12. The Arbitrator has come to the conclusion that the claimant namely, the Petitioner herein was not in unauthorized occupation of the extra area more than that what has been let out and also held that when no reason is assigned in the show cause notice, the termination order is not enforceable on that ground. Though the contention of the Respondents/TTDC appears to be sound, there cannot be any order of rejection for refund of amount and that fresh Arbitration proceedings need to be initiated.

13. That apart, the amount has been deposited by the Petitioner with the Corporation without prejudice to the rights of the parties. In all

fairness, when the order was interfered with by the Division Bench of this Court, the amount should have been refunded to the Petitioner. The Arbitrator has rendered a clear finding that the Claimant is not in unauthorized occupation of the extra space more than what has been let out and that no reason was assigned in the Show Cause Notice. Once, it is found that there is no unauthorized occupation and that extra space has not been allotted, the amount has to be refunded.

14. This Court would have gone into the contention of the Respondents in O.P.No.219 of 2015, if the same was not withdrawn with liberty to initiate fresh Arbitration proceedings. The Arbitrator has rendered a clear finding more particularly, in the light of paragraph 37 of the order dated 08.04.2013 passed in O.A.No.169 of 2012. It is needless to mention that both parties are at liberty to initiate fresh Arbitration proceedings, if so advised, in accordance with law, more particularly when the Tamilnadu Tourism Development Corporation has already obtained an order to initiate fresh Arbitration proceedings.

This Original Petition is disposed of accordingly. No costs.

11.12.2018

Index : Yes/No

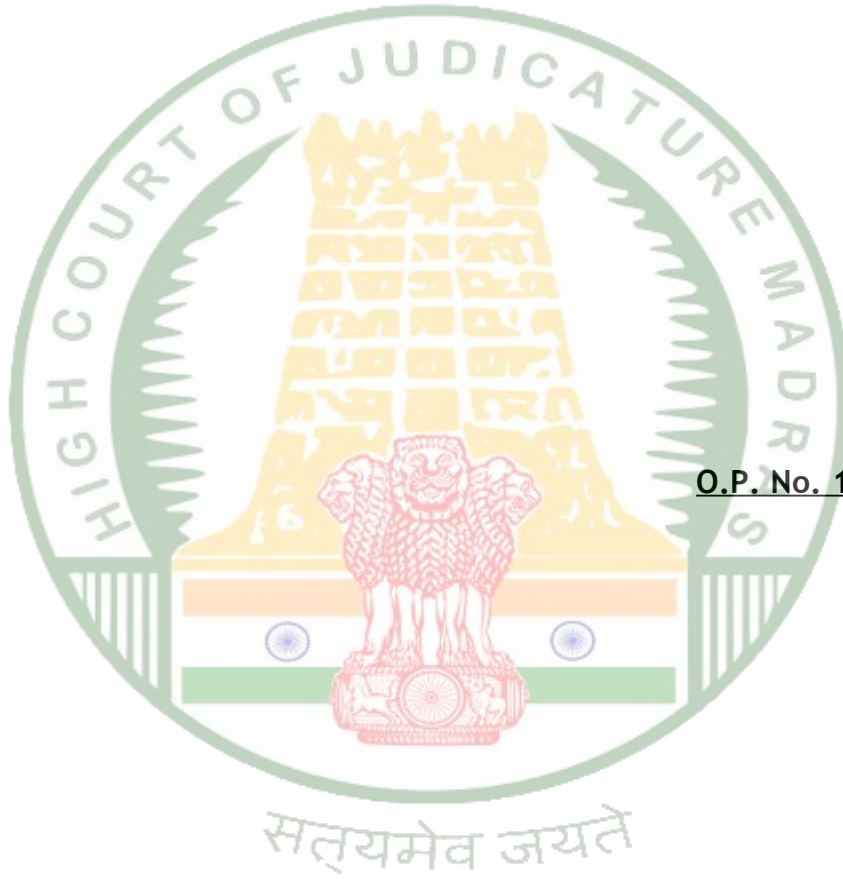
Speaking order : Yes/No

Note to Registry: Issue copy of this order on or before 10.01.2019.

maya/aeb

S. VAIDYANATHAN, J.

maya/aeb



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