

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.01.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.21955 of 2017
and
W.M.P.No.23004 of 2017

S. Govindaraj

...Petitioner

Vs.

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

...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for records, relating to the impugned order in Na.Ka.No.A4/75/2016, dated 27.04.2017, on the file third respondent and to quash the same and to direct the respondents 1 to pay Rs.3,44,775/- to pay the arrears of rent with interest at 12% per annum from the due date, 3) to pay the six months rental advance, 4) to increase the rent once in three years at 15% and 5) to pay the rent every month.

For Petitioner : Mr.S. Doraisamy
For Respondent : Mr.Arumugarajan
Standing Counsel

O R D E R

Heard Mr.S. Doraisamy, the learned counsel appearing for the petitioner and Mr.Arumugarajan, the learned Standing Counsel for the respondent/Tamil Nadu State Marketing Corporation Limited (TASMAC).

2. The petitioner has filed this Writ Petition, challenging the proceedings of the respondent, dated 27.04.2017, whereby, the respondent has directed the petitioner to pay a sum of Rs.3,44,775/-, being the licence fee payable for the licence granted to the petitioner to sell eatables and collect empty bottles from the bar attached to the TASMAC Retail Vending

Liquor Shops, bearing Nos. 10 and 109, apart from the arrears of rent with interest.

3. The issue, which falls for consideration in this Writ Petition is as to whether the licence was granted in favour of the petitioner, to enable the respondent to make the impugned demand.

4. The matter was heard on several dates, and the respondent/TASMAC filed a counter affidavit, reiterating the stand taken in the impugned proceedings that the licence was granted to the petitioner for the said purpose, in respect of Shop Nos.10 and 109. In order to ascertain the factual position, this Court directed the learned Standing Counsel for the respondent/TASMAC to produce the original files to establish that the licence was granted in favour of the petitioner. Accordingly, the files were produced today, and the respondent seeks to rely upon the notice, dated 24.11.2010, to state that the licence was granted in favour of the petitioner, in respect of the aforementioned shops.

5. On a perusal of the notice, dated 24.11.2010, it is seen that, it is not a licence, but an intimation given to the petitioner that the bid submitted by the petitioner, being for licence in respect of Shop No.10, for Rs.87,804/- and in respect of Shop No.109, where, the petitioner offered Rs.1,11,906/- has been provisionally accepted, and the petitioner was directed to remit the amount on or before 29.11.2010 by 3.00 p.m. The notice further states that, if the petitioner fails to remit the amount within the said time, the petitioner's tender will stand cancelled and the security deposit of Rs.25,000/- shall stand forfeited by the respondent/TASMAC.

6. Therefore, the respondent cannot rely upon the notice, dated 24.11.2010, to state that, it is a licence granted to the petitioner to sell eatables and collect empty bottles in the bar attached to the TASMAC Retail Vending Liquor Shops, bearing Nos.10 and 109. Unless and until, the petitioner had paid the money and licence had been issued, and thereafter defaulted, the question of effecting recovery from the petitioner would arise. Thus, the respondent having failed to establish that the licence was granted in favour of the petitioner, in respect of both the shops, the impugned demand is unsustainable.

7. Accordingly, this Writ Petition is allowed, and the impugned order is quashed. It is made clear that, since the petitioner did not comply with the condition, the

respondent/TASMAC is entitled to forfeit the Earnest Money Deposit paid by the petitioner for both the Shops, and the petitioner cannot claim refund of the said amount. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

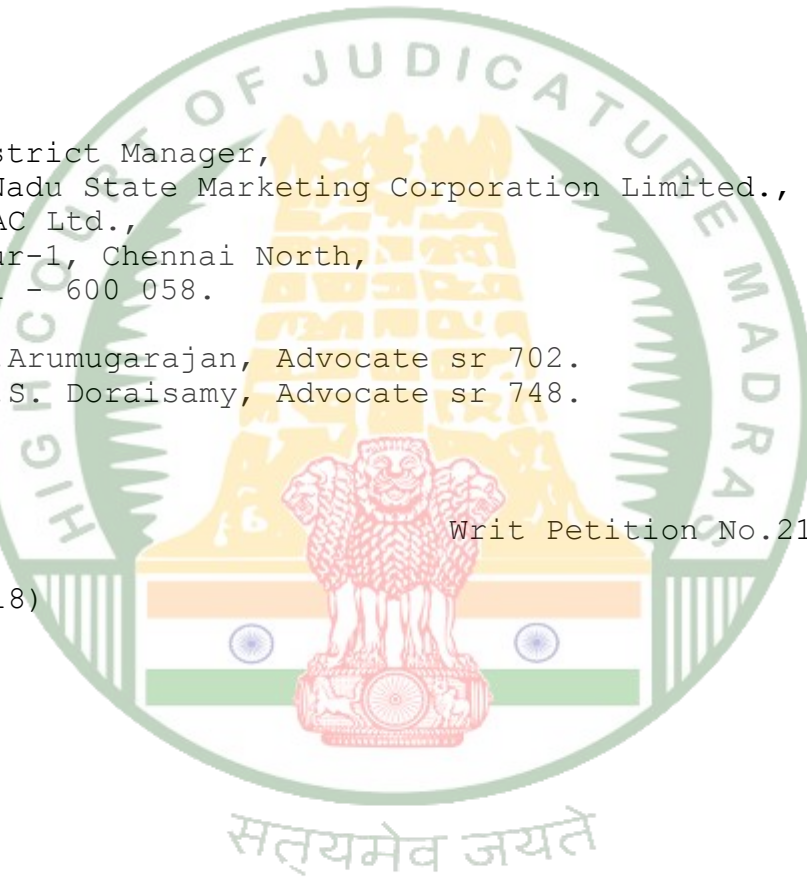
msm/sd
To

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

+1 CC to Mr.Arumugarajan, Advocate sr 702.
+1 CC to Mr.S. Doraisamy, Advocate sr 748.

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SP(11/01/2018)



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