

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.11609, 11610, 11611, 27814 and 27815 of 2006

P.R.Palanisamy	...	Petitioner in WP.11609/06
A.Vajjiram	...	Petitioner in WP.11610/06
A.Annadurai	...	Petitioner in WP.11611/06
D.Babu	...	Petitioner in W.P.27814/06
K.G.Raja	...	Petitioner in W.P.27815/06

Vs.

The Assistant Commissioner,
Prohibition and Excise,
Dharmapuri District,
Dharmapuri. ... Respondent in all WPs

W.P.No.11609 of 2006 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the proceedings of the respondent in Na.Ka.No.47302/2005/H1 dated 30.12.2005 and in Na.Ka.No.22409/2005 [H1] dated 29.07.2005 and quash the same, consequently direct the respondent to refund Rs.1,50,000/- deposited towards the Security Deposit for IMFL Licence & Bar Licence for the shop No.7, Dharmapuri Municipality.

W.P.No.11610 of 2006 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the proceedings of the respondent in Na.Ka.No.47302/2005/H1 dated 30.12.2005 and in Na.Ka.No.22407/2005 [H1] dated 29.07.2005 and quash the same, consequently direct the respondent to refund Rs.1,50,000/- deposited towards the Security Deposit for IMFL Licence & Bar Licence for the shop No.7, Dharmapuri Municipality.

W.P.No.11611 of 2006 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the proceedings of the respondent in Na.Ka.No.47302/2005/H1 dated 30.12.2005 and in Na.Ka.No.22921/2005 [H1] dated 29.07.2005 and quash the same, consequently direct the respondent to refund Rs.1,50,000/- deposited by the petitioner towards the Security Deposit for

IMFL Licence & Bar Licence for the shop No.7, Dharmapuri Municipality.

W.P.No.27814 of 2006 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the proceedings of the respondent in Na.Ka.No.47302/2005/H1 dated 29.12.2005 and in Na.Ka.No.22922/2005 [H1] dated 29.07.2005 and quash the same, consequently direct the respondent to refund Rs.1,00,000/- deposited towards the Security Deposit for IMFL Licence & Bar Licence for the shop No.93, Dharmapuri Municipality.

W.P.No.27815 of 2006 : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus calling for the proceedings of the respondent in Na.Ka.No.47302/2005/H1 dated 30.12.2005 and in Na.Ka.No.22408/2005 [H1] dated 29.07.2005 and quash the same, consequently direct the respondent to refund Rs.1,00,000/- deposited towards the Security Deposit for IMFL Licence & Bar Licence for the shop No.7, Dharmapuri Municipality.

For Petitioner : Mr.P.K.Haribabu
in all Wps for Mr.R.Karthikeyan

For Respondent : Mr.J.Pothiraj, Spl.GP
in all WPs

COMMON ORDER

In all these Writ Petitions, the petitioners have challenged the order passed by the respondent which are identical orders in all the cases, whereby, the request made by the petitioners for refund of security deposit paid by them for allotment of IMFL shop in the respective area was refused to be refunded, after the expiry of the licence period.

2.The petitioners had earlier approached this court with a grievance that in spite of representation have been made, the respondent did not process the refund application. Those writ petitions were disposed of, by directing the authorities to consider the representation. Even after the direction was issued, no action was initiated. Therefore, the petitioners sent contempt notice stating that the respondent has wilfully disobeyed the order passed by this court. Immediately, thereafter, the impugned communication has been sent to the petitioners.

3. On a reading of the communication, it is seen that the reason assigned for refusing to grant refund of the security deposit is on the ground that in certain other cases, where penalty was imposed, direction has been issued by this Court in other writ petition, by order dated 26.04.2005, directing the Government to reduce the penalty and the same is under the consideration of the Government and only after a decision is taken by the Government on such proposal, the request of the petitioner for refund can be considered.

4. In terms of Rule 30[2] of the IMFL Retail Vending Rules, 1989, the respondent would be entitled to levy penalty, if the petitioner/licensee does not comply with the minimum of take requirement. However, to invoke Rule 30[2] of the IMFL Retail Vending Rules, 1989, notice sought to have been given to the petitioner stating as to the period during which, the petitioners are not complied with the minimum of take requirement. Only then, proceedings will be initiated to recover the amount which could be done by way of security deposit on the expiry of lease. Admittedly, no such proceedings were issued against the petitioners and no notice was issued.

5. Even in the impugned orders, the respondent does not state as to during which period, the petitioner failed to fulfill the minimum of take requirement. That apart, TASMAL has also issued a No Objection Certificate stating that there are no dues payable by them. In any event, the respondent could not have denied refund of the security deposit without putting the petitioner on notice and the impugned communication has been issued in a hurried manner only with a view to avoid contempt proceedings being initiated against the respondents.

6. Thus, for the above reasons, I find that the impugned order rejecting the petitioners request for refund of security deposit is not sustainable, as it is devoid of reasons and held to be bad in law. Hence, all the Writ Petitions are allowed and the impugned orders dated 30.12.2005 and 29.07.2005 are set aside and the respondent is directed to refund the security deposit to the petitioners, after deducting administrative charges if any, if refund has not already been granted. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gya

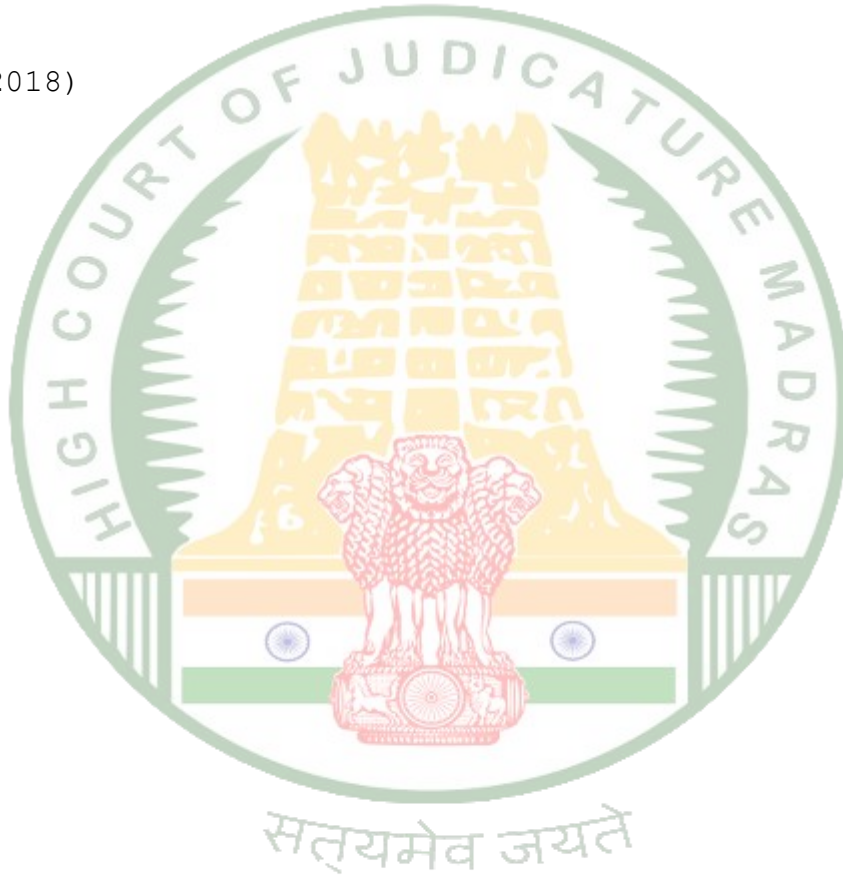
To

The Assistant Commissioner, Prohibition & Excise,
Dharmapuri District, Dharmapuri.

+1cc to Mr.R.KARTHIKEYAN, Advocate, S.R.No. 20182
+1cc to the Government Pleader, S.R.No. 20437

W.P.Nos.11609, 11610, 11611,
27814 and 27815 of 2006

KAN(CO)
TR(04/04/2018)



WEB COPY