



W.P.(MD).No.13125 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD)No.13125 of 2022

and

W.M.P.(MD).No.9324 of 2022

R.Vishnu

... Petitioner

VS.

The Senior Divisional Commercial Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli District.

... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, forbearing the respondents from forfeiting the petitioner's security deposit made in the form of bank guarantee No.IBG104654 dated 22.01.2020 issued by the Federal Bank Ltd., Tindivanam Branch and thereby direct the respondent to refund the Earnest Money deposit, Fixed deposit and license fee balance, by considering his representation dated 07.06.2022.



WEB COPY



W.P.(MD).No.13125 of 2022

For Petitioner : Mr.M.Sam Eugene Jebakumar
For Respondent : Mr.K.R.Laxman
Standing counsel

ORDER

This writ petition has been filed for issuance of a Writ of Mandamus, forbearing the respondent from forfeiting the petitioner's security deposit made in the form of bank guarantee No.IBG104654 dated 22.01.2020, issued by the Federal Bank Ltd., Tindivanam Branch and direct the respondent to refund the earnest money deposit, fixed deposit and license fee balance, by considering his representation dated 07.06.2022.

2. According to the petitioner, he has made an application for grant of license to carry out the work of Manning the Omnibus Stand at Tiruchirapalli. Accordingly, his application was accepted and granted license for temporary use and occupation of the said land on making security deposit of Rs.38,47,800/- in the form of bank guarantee dated 22.01.2020, issued by the Federal Bank Limited, Tindivanam Branch.

2/7



W.P.(MD).No.13125 of 2022

WEB COPY

When the petitioner was entering the premises under license, there were 50 tenants, who were already in occupation by running shops by raising temporary structures. When the petitioner demanded security deposit and daily rent from them, they refused to give the same. Hence, the petitioner has intimated the same to the respondent to take necessary action. Under such circumstances, the said occupants filed a suit in O.S.No.109 of 2020 before the II Additional Sub Court, Tiruchirapalli seeking the relief of injunction and the same is pending as on date. In the circumstances, the petitioner intended for foreclosure of the contract and the respondent also agreed for the same and terminated the contract on 30.04.2022. However, the respondent directed the petitioner to remove the temporary structures. Therefore, the petitioner has sent a notice to the occupants to vacate the shops and hand over the same to the respondent. But the said occupants refused to receive the said notice. Hence, the petitioner has sought for the assistance of the railway police. But the respondent has failed to consider the same and issued a remainder notice to the petitioner to clear the temporary structures, or otherwise, he would forfeit the security deposit made by the petitioner. Hence, the petitioner has made a representation to



W.P.(MD).No.13125 of 2022

the Commissioner of Police, Trichy City seeking police protection. But they refused to give police protection to him citing the pendency of the civil suit. Therefore, the petitioner has made a representation to the respondent on 07.06.2022, requesting him to refund the earnest money deposit, fixed deposit and licence fee balance. Since the said representation has not been considered, the petitioner has filed the present writ petition.

3. The respondent has filed a counter stating that the petitioner was permitted to use the railway land measuring 9,282.63 sq.m. as Omnibus stand. After the expiry of the earlier contract period, the petitioner took over the contract from 23.01.2020 and he collected rent from those shops and permitted the shopkeepers to continue. During the contract period, the petitioner permitted the shopkeepers to extend and modify their shops by creating an entry from the roadside by damaging the compound wall of the Omnibus stand. The Railways have filed a rejection petition in the suit filed in O.S.No.109 of 2020. Even though sufficient time was given, the petitioner delayed in handing over the subject land and repeatedly



W.P.(MD).No.13125 of 2022

sought time to rectify the damaged wall. Hence, as per Clause 30 of the agreement conditions, action was taken and the contract was terminated on 17.06.2022, duly forfeiting all amounts paid in advance including security deposit.

4. According to the respondent, the writ petition is not maintainable as the occupants have already filed a suit and as per the agreement, if any dispute arise, the matter has to be settled only before the Arbitrator. Clause 55.2 of the agreement reads as follows:

*55.2 (i) **Appointment of Arbitration Tribunal:-** In cases where the total value of all claims in question added together does not exceed Rs.1,00,00,000/- (Rupees one crore only), the Arbitral Tribunal shall consist of a sole arbitrator who shall be a Gazetted officer of Railway not below the grade of JA grade nominated by the General Manager in that behalf. The sole arbitrator shall be appointed within 60 days from the day when a written and valid demand for arbitration is received by the General Manager. The sole Arbitrator shall have its seat in Tiruchirapalli or such other place in India as may be mutually agreed to between the parties.*



W.P.(MD).No.13125 of 2022

WEB COPY

5. It is made clear that the writ petition cannot be maintained as the agreement itself has an arbitration clause and it is left open to the petitioner to approach the authorities seeking for appointment of an Arbitrator or the Railway authorities can appoint an Arbitrator and inform the same to the petitioner, to enable him to raise the issue before the Arbitrator and to conclude the issue, within a period of six weeks from the date of receipt of a copy of this order.

6. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

23.01.2024

akv

To

The Senior Divisional Commercial Manager,
Southern Railway,
Tiruchirapalli Division,
Tiruchirapalli District.

6/7



WEB COPY



W.P.(MD).No.13125 of 2022

V.BHAVANI SUBBAROYAN,J.

akv

W.P(MD)No.13125 of 2022

23.01.2024