



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

W.P (MD) No.21758 of 2019

and

WMP (MD) No.18504 of 2019

Arunachalam

... Petitioner

vs.

1.The District Revenue Officer,
Madurai District, Madurai.

2.The Designated Officer,
Tamil Nadu Food Safety and
Drug Administration Department,
Viswanathapuram,
Madurai.

3.The Food Safety Officer,
Tamil Nadu Food Safety and
Drug Administration Department,
Viswanathapuram,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of mandamus directing the respondents to remove the seal affixed in the petitioner's flour mill which was in occupation of his tenant Karukkuvel at Door.No.489, Manthoppu, Madurai by considering his representation dated 30/09/2019.

For Petitioner	: Mr.T.Lenin Kumar
For Respondents	: Mr.J.Gunaseelan Muthiah Additional Government Pleader

O R D E R

This writ petition is filed seeking direction to the respondents to remove the seal affixed in the petitioner's flour mill which was in occupation of his tenant viz., Karukkuvel at Door.No.489, Manthoppu, Madurai, by considering his representation dated 30.09.2019.

2.Section 38 of the Food Safety and Standards Act, 2006, reads as under:

38. Powers of Food Safety Officer.



(1) The Food Safety Officer may -

(a) take a sample -

(i) of any food, or any substance, which appears to him to be intended for sale, or to have been sold for human consumption; or

(ii) of any article of food or substance which is found by him on or in any such premises; which he has reason to believe that it may be required as evidence in proceedings under any of the provisions of this Act or of the regulations or orders made thereunder; or

(b) seize any article of food which appears to the Food Safety Officer to be in contravention of this Act or the regulations made thereunder; and

(c) keep it in the safe custody of the food business operator such article of food after taking a sample; and in both cases send the same for analysis to a Food Analyst for the local area within which such sample has been taken:

Provided that where the Food Safety Officer keeps such article in the safe custody of the food business operator, he may require the food business operator to execute a bond for a sum of money equal to the value of such article with one or more sureties as the Food Safety Officer deems fit and the food business operator shall execute the bond accordingly.

(2) The Food Safety Officer may enter and inspect any place where the article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food, or exposed or exhibited for sale and where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for analysis.

(3) Where any sample is taken, its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(4) Where any article of food seized under clause (b) of subsection (1) is of a perishable nature and the Food Safety Officer is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the Food Safety Officer may, after giving notice in writing to the food business operator, cause the same to be destroyed.

(5) The Food Safety Officer shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to the search or inspection of a place by a police officer executing a search warrant issued under that Code.

(6) Any adulterant found in the possession of a



manufacturer or distributor of, or dealer in, any article of food or in any of the premises occupied by him as such and for the possession of which he is unable to account to the satisfaction of the Food Safety Officer and any books of account or other documents found in his possession or control and which would be useful for, or relevant to, any investigation or proceeding under this Act, may be seized by the Food Safety Officer and a sample of such adulterant submitted for analysis to a Food Analyst:

Provided that no such books of account or other documents shall be seized by the Food Safety Officer except with the previous approval of the authority to which he is subordinate.

(7) Where the Food Safety Officer takes any action under clause (a) of sub-section

(1), or sub-section (2), or sub-section (4) or sub-section (6), he shall, call one or more persons to be present at the time when such action is taken and take his or their signatures.

(8) Where any books of account or other documents are seized under sub-section (6), the Food Safety Officer shall, within a period not exceeding thirty days from the date of seizure, return the same to the person from whom they were seized after copies thereof or extracts there from as certified by that person in such manner as may be prescribed by the Central Government have been taken:

Provided that where such person refuses to so certify and a prosecution has been instituted against him under this Act, such books of account or other documents shall be returned to him only after copies thereof and extracts there from as certified by the court have been taken.

(9) When any adulterant is seized under sub-section (6), the burden of proving that such adulterant is not meant for purposes of adulteration shall be on the person from whose possession such adulterant was seized.

(10) The Commissioner of Food Safety may from time to time issue guidelines with regard to exercise of powers of the Food Safety Officer, which shall be binding:

Provided that the powers of such Food Safety Officer may also be revoked for a specified period by the Commissioner of Food Safety."

3. Power under Section 38 of the Food Safety and Standards Act, 2006 [hereinafter referred to as 'the Act'] confers on the Food Safety Officer only to seize the articles of food and take samples of articles and send them for lab analysis. The Food Safety Officer, for that purpose is empowered to enter and inspect any place, where article of food is manufactured or stored for sale, or stored for



manufacture of any other article of food, or exposed or exhibited for sale and take samples of such articles of food or adulterant for analysis. But the above said proviso, does not confer any power on the Food Safety Officer to lock and seal the premises and take possession of the premises.

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4. In the instant case, the petitioner's tenant was caught in manufacturing adulterated grain flour in contravention to the Food Safety and Standards Act, 2006. The third respondent had inspected the premises and taken samples and seized the things and went ahead to lock and seal the premises on 04.10.2018. Thereafter, the manufacturer of the adulterated articles of food namely Karukkuvel, tenant of the petitioner, handed over possession of the premises and left, for which, action could be taken only against the vendor namely Karukkuvel, whereas, the premises of the petitioner, continued to be under lock and seal. Despite efforts, the third respondent refused to hand over the premises to the petitioner. Hence, the petitioner has preferred the above writ petition.

5. The learned Additional Government Pleader, on instructions, submitted that the premises will be unlocked and it can be handed over to the petitioner. He would further submit that if the petitioner approaches the third respondent, possession will be handed over to him.

6. This Court considered the relevant provision of the Food Safety and Standards Act, 2006. The Food Safety Inspector, as provided under Section 38 of the Act, has to exercise his power only to the limited extent of entering into the premises, inspect the place and take samples and at the most, he can seize the adulterated food and send it for analysis. He has not conferred with the power of locking and sealing the premises. In that view of the matter, the third respondent has exceeded his power, locked and sealed the premises. Under such circumstances, he has to hand over possession of the premises to the petitioner.

7. Accordingly, a direction is issued to the third respondent to hand over possession of the premises to the petitioner by visiting his place. Such exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.

8. The Writ Petition is ordered accordingly. No costs. Consequently, WMP(MD)No.18504 of 2019 is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)



1.The District Revenue Officer,
Madurai District,
Madurai.

2.The Designated Officer,
Tamil Nadu Food Safety and
Drug Administration Department,
Viswanathapuram,
Madurai.

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+1CC TO MR.T.LENIN KUMAR, Advocate Sr. No. 92413

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TR(23.10.2019) 5P 5C