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W.A.Nos.2085 and 2086 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.2085 of 2022 & C.M.P.Nos.15745 and 15746 of 2022
and

W.A.No.2086 of 2022 & C.M.P.No.15743 of 2022

In W.A.No.2085 of 2022 :-

1.The Commissioner of Food Safety,
5th Floor, 359, Anna Salai,
Chennai - 600 006.

2.The Designated Officer,
Food Safety Wing,
219, Race Course Road,
Coimbatore - 641 018.

... Appellants

Versus

1.The Lakshmi Mills Company Ltd,
Represented by N.Singaravel

2. M/s.Rolling Dough Cafe,
Represented by its Partner Mahesh Kumar

... Respondents



W.A.Nos.2085 and 2086 of 2022

In W.A.No.2086 of 2022 :-

1.The Commissioner of Food Safety,
5th Floor, 359, Anna Salai,
Chennai - 600 006.

2.The Designated Officer,
Food Safety Wing,
219, Race Course Road,
Coimbatore - 641 018.

... Appellants

Versus

M/s.Rolling Dough Cafe,
No.605-693, Avinashi Road,
P.N.Palayam,
Coimbatore - 641 037,
Represented by its Partner Mahesh Kumar

... Respondent

Prayer in W.A.No.2085 of 2022 : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order, dated 01.08.2022 made in W.P.No.7804 of 2022 and allow this Writ Appeal.

Prayer in W.A.No.2086 of 2022 : Appeal filed under Clause 15 of the Letters Patent, to set aside the order, dated 01.08.2022 made in W.P.No.3526 of 2022 and allow this Writ Appeal.



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For Appellants
(in both Appeals)

::

Mr.Kumaresan,
Additional Advocate General.

For R1 in W.A.2085/22 ::

Mr.A.R.L.Sundaresan,
Senior Counsel,
for Mr.S.Mukunth
for Sarvabhauman Associates.

For R2 in W.A.2085/22

and R1 in W.A.2086/22 :: No Appearance

COMMON JUDGMENT

D.Bharatha Chakravarthy,J.,

These Writ Appeals arise out of the common order of the learned Single Judge, passed in W.P.Nos.3526 and 7804 of 2022, dated 01.08.2022, in and by which, the learned Single Judge allowed the Writ Petitions on the following terms:

“17. For the foregoing reasons, both these writ petitions are disposed of by quashing the impugned orders after recording the undertaking given by the petitioner in W.P.No.3526 of 2022 that he shall hand over possession of the subject property to the petitioner in W.P.No.7804 of 2022 and consequently this Court directs the respondents to remove the lock and seal of the said premises within a period of one week from the date of receipt of a copy of this order.



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18. It is made clear that the petitioner in W.P.No.3526 of 2022 shall, cooperate with the respondents for the completion of the trial, pending on the file of the Judicial Magistrate No.VI, Coimbatore and the trial court is directed to complete the trial as expeditiously as possible.

19. After removal of the lock and seal, pursuant to the order passed by this Court, the respondents are at liberty to remove the equipments from the premises and keep it under safe custody at the place of their choice. ”

2.Lakshmi Mills Company Ltd., the petitioner in Writ Petition No.7804 of 2022/ Respondent in W.A.No.2085 of 2022, is the owner of the property at Avinashi Road, *Pappanaickenpalayam*, Coimbatore, and it had developed the property into commercial spaces. By an agreement dated 30.10.2020, it had granted leave and license to one M/s.Rolling Dough Cafe, the petitioner in W.P.No.3526 of 2022/respondent in W.A.No.2086 of 2022, for the purpose of running Cafe / Restaurant and Ice-cream Parlour. A permanent container like superstructure is put up in the above premises and the said M/s.Rolling Dough Cafe, was running its business. Instead of monthly rent, a part of profits had to be paid to the said Lakshmi Mills Company Ltd., as the license fee.



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3.While so, on 20.10.2021, the Designated Officer (D.O) under the Tamil Nadu Food Safety and Standards Act, 2006, along with the Food Safety Officer (FSO), upon receipt of telephonic information, inspected the food establishment of the said M/s.Rolling Dough Cafe. In the inspection, it was found that the Food Business Operator (FBO) was storing liquor namely, Rare Whisky – Signature, French Brandy – King Louis. Further investigation revealed that they mixed alcohol in the preparation of Dark Chocolate, Whisky Mousse Dessert, Caramel Custard Dessert products. The said fact was also admitted by the said Food Business Operator. Thus, upon finding unauthorised storing of alcohol, mixing of alcohol in the food without approval and selling the products to School children, College students, who are below the age of 21 years, an Emergency Prohibition Order was passed on 20.10.2021, prohibiting the functioning/running of M/s.Rolling Dough Cafe, represented by its Partner *Mahesh Kumar*, No.605/638, Avinashi Road, P.N.Palayam, Coimbatore, with immediate effect until further orders.

4.This apart, a criminal prosecution was launched against the said



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M/s.Rolling Dough Cafe. So as to seize and secure the relevant utensils, equipments, etc., which were used for the commission of offenses, the entire premises were sealed under Lock and Key by the Authorities.

5. Feeling aggrieved, the said M/s.Rolling Dough Cafe, filed a Writ Petition in W.P.No.3526 of 2022, challenging the said order dated 22.01.2021, praying to quash the same and to direct the respondent to remove the seal and permit the petitioner to carry on business. The Lakshmi Mills Company Ltd., filed a Writ Petition in W.P.No.7804 of 2022, challenging the notice dated 01.03.2022, seeking particulars from them under Section 41 and 66 of the Tamil Nadu Food Safety and Standard Act, 2006 and Rule 2.5 of the Tamil Nadu Food Safety and Standard Rules, 2011 and consequently, to remove the seal of the container shop ad-measuring the extent of 320 sq.ft.

6. When the matter came up for hearing before the learned Judge, the aforesaid M/s.Rolling Dough Cafe, submitted that they will cease and desist to carry on business at the said site and would like to handover the



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possession to the landlord/The Lakshmi Mills Company Ltd. Therefore, the

learned Judge, allowed the Writ petition on the terms extracted supra.

Aggrieved by the same, the present Writ Appeals are filed.

7.Heard *Mr.Kumaresan*, learned Additional Advocate General, for the Appellants and *Mr.A.R.L.Sundaresan*, appearing on behalf of the respondent/The Lakshmi Mills Company Ltd. None appears on behalf of the respondent/M/s.Rolling Dough Cafe.

8.After hearing the submissions made on either side and perusal of the material records of this case, we find that the learned Single Judge, allowed the Writ Petitions on the above terms extracted supra, only based on the undertaking given by the Food Business Operator. We find that the same is relevant only to the extent of opening the Lock and Seal of the premises and handing over of the premises to the landlord, namely, The Lakshmi Mills Company Ltd. But by Paragraph No.17 of the Judgment under Appeal, the learned Single Judge has also quashed the impugned orders. *Mr.A.R.L.Sundaresan*, learned Senior Counsel would fairly submit



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that the impugned orders need not be quashed but the landlord is entitled to the possession of the premises. The Additional Advocate General, appearing for the appellants would submit that the possession of premises is being held only to secure utensils/equipments, which are used for the commission of the offense before the Criminal Court to prove the offenses committed by the accused and if six months time is granted, the Trial itself can be completed.

9.We are of the view that when the said Food Business Operator, M/s.Rolling Dough Cafe, had mixed alcohol in the preparation of eatables and sold the same to the children, the Appellant authorities are well within their powers in passing the Emergency Prohibition Order and no exception can be taken. Similarly, by a notice dated 01.03.2022, some particulars are demanded from the landlord, namely, The Lakshmi Mills Company Ltd., so as to determine whether they had complexity in the offenses. The same is well within the jurisdiction and powers of the Appellant authorities. No ground was made out are agitated before the learned Single Judge, or before this Court, challenging the said orders. Therefore, the quashing of the above



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orders by the learned Single Judge was uncalled for.

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10.As far as consequential relief of handing over the possession of the premises by removing the lock and seal is concerned, We find that the prayer of the Lakshmi Mills Company Ltd., is justifiable, especially, when the Food Business Operator of M/s.Rolling Dough Cafe, had filed an affidavit undertaking that they will cease and desist to carry on the business at the licensed/demised premises and that they are ready and willing to handover the possession and that possession can be handed over to the landlord. Once the inspection is carried out and the offences have been investigated, the Appellants authorities can Photograph/Videograph the place for the purpose of evidence necessary for prosecution and also seize the necessary articles etc., which they deem to fit and proper, which may be a required for the purposes of the criminal proceedings /statutory proceedings and the same can be removed and kept under custody in accordance with the law and for the said purposes. The demise premises itself need not be kept under lock and key, in view of the stand taken by the accused/tenant/licensee M/s.Rolling Dough Cafe.



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WEB COPY 11. In view thereof, we are inclined to allow these Writ Appeals in part by granting the following reliefs to the parties:-

i) The order of the learned Single Judge, dated 01.08.2022 in W.P.No.3526 & 7804 of 2022 stands set aside, in as much as it quashes the orders impugned in the Writ Petition;

ii) The Appellants shall comply with the directions of the learned Single Judge to remove the lock and seal of the premises and handing over the same to the Lakshmi Mills Company Ltd., the first respondent in W.A.No.2085 of 2022, within a period of two weeks from the date of receipt of a copy of this order, as directed by the learned Single Judge;

iii) It will be open for the Appellants to seize/remove such utensils/equipments/other articles from the premises and to have the custody of the same in accordance with law;

iv) The Appellant authorities can also Videograph/Photograph the premises as it exists today and the same, if necessary, shall be produced before the Competent Criminal Court and also can be used in the Statutory proceedings in proof against the Food Business Operator, namely,



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M/s.Rolling Dough Cafe;

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v) The parties shall comply with the directions of the learned Single Judge, in Paragraph No.18, that they will co-operate with the Appellants in the completion of a trial, pending on the file of the Judicial Magistrate No.VI, Coimbatore, and the direction to complete the trial expeditiously is also sustained;

vi) There will be no order as to costs.

vii) Consequently, the connected miscellaneous petitions are closed.

(T.R.,A.C.J.) (D.B.C.,J.)

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Index : yes/no

Speaking/Non speaking order

klt

To



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**THE HON'BLE ACTING CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.**

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