



W.P.(MD).No.20693 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD). No.20693 of 2023

P. Syed Mohideen

... Petitioner

Vs.

**1. The District Food Safety Officer,
Food Safety Department,
Tiruchendur Road,
Maharaja Nagar,
Palayamkottai,
Tirunelveli – 627 002.**

2.M.Kannan

...Respondents

(R2 is impleaded vide order dated 22.09.2023 in W.M.P(MD).No.18581 of 2023 in W.P(MD).No.20693 of 2023)

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondent to issue Food Safety License to the petitioner's shop known as Raja Sweets and Bakery at No.152, Tiruchendur Road, Palayamkottai, Tirunelveli 627 002 made vide application No.20230518104771202 dated 18.05.2023 within a time frame to be fixed by this Honble Court.



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For Petitioner : Mr. K.A. Mariappan

For Respondents : Mr. M. Sarangan
Additional Government Pleader
for R1
Mr. R. Anand for R2

ORDER

This Writ Petition has been filed seeking a Mandamus to the first respondent to issue Food Safety License to the petitioner's shop known as Raja Sweets and Bakery, situated at No.152, Tiruchendur Road, Palayamkottai, Tirunelveli, based on his application dated 18.05.2023.

2. The Petitioner claims to be the Proprietor of Raja Sweets and Bakery. The said bakery, according to the petitioner, was established in the year 1994 by his father, namely, P.Sulthan. It was jointly administered by the petitioner and his brother, namely, Raja Mohammed. Though the licence for the said bakery has been taken in the names of the petitioner and the said Raja Mohammed in the year 2018 for a period of three years i.e., from December 2018 to December 2021, in the year 2019, the petitioner's brother wanted to hand over the administration to the



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petitioner and therefore, a fresh rental agreement was entered into between the petitioner and the original land owner of the building, namely, Israel Devathas Suresh, wherein, the petitioner's brother is also stated to be a witness. In this context, since the license for the said bakery was expired in the year 2021, the petitioner has approached the first respondent for renewal of license and the same has not been considered on the objections raised by the present land owner. Therefore, the petitioner has filed the present writ petition seeking a Mandamus to the respondents to issue a Food Safety License to the petitioner's shop situated at No.152, Tiruchendur Road, Palayamkottai, Tirunelveli, by considering his application, dated 18.05.2023.

3. According to the petitioner, one M.Kannan, who has filed an impleading petition, has purchased the subject property in the year 2021 and has raised objections before the Food Safety Officer not to grant license to the petitioner in the said shop and based on his objections, the Food Safety Officer is not processing the application of the petitioner.



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4. The learned Special Government Pleader appearing for the first respondent submits that the licence of the petitioner was over in the month of December 2021, however, the petitioner has made an application for renewal only on 18.05.2023. He further submits that for the application to be processed, the petitioner has to produce the proof of possession/Rental Agreement from the landlord. The application of the petitioner has been made through Online and since the petitioner has not furnished the required documents within a period of 60 days, it has been automatically rejected on 18.07.2023. The petitioner is having an appeal remedy. Without exhausting the appeal remedy, the petitioner has filed the present petition.

5. The learned counsel appearing for the newly impleaded respondent submits that the petitioner is not the real owner of the said Bakery and he is not in occupation of the property and the license has not been renewed. Therefore, he is not entitled for any relief.

6. This Court considered the rival submissions made by both sides.



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7. The petitioner, with a grievance that his application made through Online on 18.05.2023 for renewal of license to run the bakery in the name of Raja Sweets and Bakery, has not been considered, has filed the present writ petition. The said bakery appears to be in existence from the year 1994 and it was established by the father of the petitioner, namely, P.Sultan, in the year 1994 and was administered by the petitioner and his brother and his brother was relieved from the partnership in the year 2018 and a separate Rental Agreement was entered into between the petitioner and the said Israel Devathas Suresh. The learned counsel has also relied on the Rental Agreement dated 01.08.2019 which was entered into between the petitioner and the original land owner and the petitioner's brother, namely, Raja Mohammed is a witness to the said agreement. The learned counsel has also relied on a judgment of the Hon'ble Supreme Court in C.A.No.5435 of 2016 in the case of ***Sudhakaran vs. Corporation of Trivandrum*** and another and the relevant paragraph No.8 is extracted hereunder:

8. After due consideration of the issues involved, we find merit in the submission made on behalf of the appellant. The statutory provision already quoted above shows that the requirement of consent of landlord is applicable only when a



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person intends to obtain a licence for the first time. Renewal or subsequent application for obtaining licence on expiry of the period of the existing licence, during the currency of the tenancy, is not applicable for obtaining licence. Even in the case of application for obtaining licence for the first time, the tenant cannot be deprived of running lawful business merely because the landlord withheld the consent. Valid tenancy itself has implied authority of the landlord for legitimate use of the premises by the tenant.

8. In view of the above decision of the Hon'ble Supreme Court of India, this Court directs the petitioner to submit a fresh application before the first respondent within a period of two weeks from the date of receipt of a copy of this order and on such application being made, the first respondent shall consider the same in the light of the judgment of the Hon'ble Supreme Court of India in C.A.No.5435 of 2016 within a period of four weeks from the date of receipt of a copy the application. However, it is left open to the second respondent to work out his remedy in the manner known to law to evict this petitioner. The observations made by this Court in the present writ petition shall not be considered as a ground in other proceedings if any initiated by the second respondent.



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9. Accordingly, this Writ Petition is disposed of. There shall be no order as to costs.

22.09.2023

Index: Yes/No

Internet: Yes/No

ssb

Note: Issue order copy on **09.11.2023**

To

The District Food Safety Officer,
Food Safety Department,
Tiruchendur Road,
Maharaja Nagar,
Palayamkottai,
Tirunelveli – 627 002.



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B.PUGALENDHI, J.

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