



W.P.(MD)No.6057 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD)No.6057 of 2025

and

W.M.P.(MD)No.4447 of 2025

R.Manivannan

... Petitioner

-VS-

1.The Food Safety Officer,
Food Safety Office,
Puliyankudi,
Tenkasi District.

2.The Inspector of Police,
Sivagiri Police Station,
Tenkasi District.
(Crime No.107 of 2025)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to remove the lock and seal of the petitioner's premises in Survey No.203/1, 203/2 and 203/4A, situated in Sivagiri Bit II Village, Sivagiri Taluk, Tenkasi District, forthwith.

For Petitioner

: Mr.V.Kathirvelu
Senior Counsel
for Mr.K.Jeyamohan



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For R1

: Mr.G.Suriyananth
Additional Government Pleader

For R2

: Mr.M.Karunanithi
Government Advocate (Criminal side)

ORDER

The petitioner seeks a Writ of Mandamus to direct the respondents to remove the lock and seal over his premises in Survey Nos.203/1, 203/2 and 203/4A, situated at Sivagiri Bit II Village, Sivagiri Taluk, Tenkasi District, forthwith and for consequential orders.

2. The petitioner states that he is the owner of the property concerned with this Writ Petition. He had purchased the same along with his wife Petchiammal in the year 2011. In the said property, the petitioner is running a small scale sugarcane processing unit. In the unit, sugarcane is crushed, converted into juice and jaggery is manufactured therefrom.

3. He pleads that he is running the unit for the past 23 years. The unit has about 30 employees. The petitioner claims he has obtained the approval from the appropriate authorities.

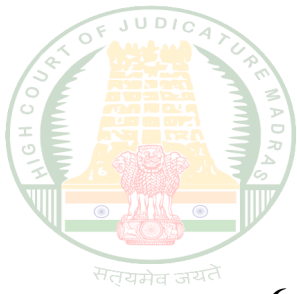


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4. He pleads that the second respondent/Inspector of Police, Sivagiri Police Station, Tenkasi District, visited the premises on 24.02.2025 and arrested the petitioner. It was then that the petitioner came to know that an F.I.R. has been registered against him in Crime No.107 of 2025, on the file of Sivagiri Police Station. He is accused of having committed the offences under Section 24(1) of the Cigarette and Other Tobacco Products Act, 2003 [hereinafter referred to as "the Act"] and Section 132 of B.N.S., 2023. The accusation against him is that he had purchased tobacco products from the State of Kerala and had secreted the same in his premises.

5. The petitioner obtained bail and is complying with the conditions. He pleads that the first respondent had locked and sealed the premises in an arbitrary manner. According to the petitioner, there are about 1400 Kilograms of processed jaggery in the premises. In addition, he states about 130 Kilograms of jaggery is was in the burning unit, at the time of sealing. Being perishable goods, he seeks an order to remove the lock and seal.



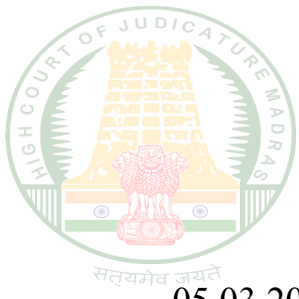
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6. The petitioner pleads that he has availed loans from the several Nationalized Banks and it is only from and out of the income generated from the jaggery unit, he is repaying the installments. He states that the first respondent has no jurisdiction to lock and seal the premises and hence, he has come forward with this Writ Petition for the above said reliefs.

7. When the matter came up for admission, Mr.G.Suriyananth, learned Additional Government Pleader took notice for the first respondent and Mr.M.Karunanithi, learned Government Advocate (Criminal side) has entered appearance for the second respondent.

8. Mr.G.Suriyananth, learned Additional Government Pleader states that the FSSAI registration of the petitioner had expired on 11.10.2022. He further states that as the petitioner has secreted tobacco products in the premises, the Police were constrained to initiate action under Section 24(1) of the Act. He states that the petitioner has violated Section 132 of B.N.S., and consequently, the tobacco products were seized and the premises were locked and sealed. He further points out that the first respondent has passed an order in Aa.No.699/A2/2025, dated

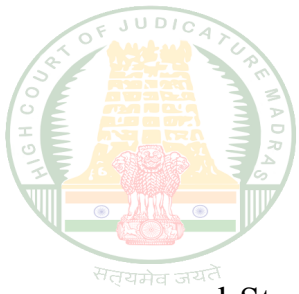


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05.03.2025, imposing a fine of Rs.25,000/- on the petitioner. He states that if the fine amount is paid, the premises will be unlocked.

9. Mr.M.Karunanithi, learned Government Advocate (Criminal side) appearing for the second respondent echoes the submission made by Mr.G.Suriyananth, learned Additional Government Pleader.

10. It is not in dispute that the first respondent has sealed the premises. The power of the Food Safety Officer is set forth under Section 38 of the Food Safety and Standards Act, 2006. The said Act does not empower the Food Safety Officer to seal the premises. However, the rules that, have been framed in the year 2011, confer certain powers on the first respondent to lock and seal the premises. This is outlined under Rule 2.1.3(4) of the Food Safety and Standards Rules, 2011. In addition to the powers granted to the Food Safety Officer under Section 38 of the Food Safety and Standards Act, 2006, certain additional powers have been conferred upon him. As per the Rules, the Food Safety Officer should be of the opinion or should have reasons to be recorded by him in writing that it is not possible to comply with the provisions of Section 38(1)(c) of the Food Safety



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and Standards Act, 2006 or the proviso to Section 38(1) of the Food Safety and Standards Act, 2006. Thereafter, he/she may seize the adulterant or food, which is unsafe or sub-standard or misbranded or containing extraneous material and then, may proceed to seal the premises for investigation after taking samples of the food material.

11. This process necessarily requires adherence to Section 38(1)(c) and the proviso to Section 38(1) of the Food Safety and Standards Act, 2006. Under Section 38(1)(c) of the Food Safety and Standards Act, 2006, the Food Safety Officer is empowered to place any substance or food in the safe custody of the food business operator and subsequently, send it for sampling. While keeping the product in safe custody, as provided under Section 38(1)(c) of the Food Safety and Standards Act, 2006, the Food Safety Officer is also entitled to require the food business operator to execute a bond equal to the value of the article. In addition to this, he is also entitled to direct the food business operator to give two sureties in order to stand by the bond.



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12. A reading of Section 38(1)(c) and proviso to Section 38(1) together with 2.1.3(4) of the Food Safety and Standard Rules makes it clear that in case, the action of keeping a food or article in the custody of the food business operator is **not** possible, then, he is entitled to seal the premises, after drawing the samples.

[emphasis supplied]

13. It is not in dispute, in the present case, the Food Safety Officer had not proceeded under Section 38(1)(c) of the Food Safety and Standards Act, 2006 or proviso to Section 38 (1) of the Food Safety and Standards Act, 2006. During the search by the second respondent Police, they have allegedly seized tobacco materials in the custody of the writ petitioner and have removed the same from the premises.

14. The condition precedent for exercise of the power under Rule 2.1.3(4) of the Food Safety and Standards Rules, 2011, not having been complied with, the first respondent Food Safety Officer is not entitled to seal the premises.



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15. At this stage, Mr.G.Suriyananth, learned Additional Government Pleader relies upon the minutes of a meeting held under the Chairmanship of the Additional Chief Secretary-cum-Secretary to the Government, Health Department, in order to plead that minutes have been passed by the Government, enables the Food Safety Officer to seize and seal the premises. Minutes of a meeting held under an executive authority cannot substitute the statutory provisions and the Rules made thereunder.

16. The discussion above is no longer *res integra*. It has been discussed in detail by my learned brother **G.R.Swaminathan, J.** in **Nagoorkani and another vs. The Commissioner, Tamil Nadu Food Safety and Drug Administration and another, W.P.(MD)Nos.30871 and 30873 of 2023**, dated **02.01.2024** and this Court in **S.Subramaniyan vs. The Commissioner, Tamil Nadu Food Safety and Drug Administration and others, W.P.(MD)No.5378 of 2025**, dated **28.02.2025**. In both the cases, this Court has held that in case the statutory provision under Section 38(1)(c) and the proviso to Section 38(1) of the Food Safety and Standards Act, 2006 are not followed, then, the question of sealing the premises does not arise.



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17. In the light of the above discussions, the Writ Petition succeeds. The respondents shall forthwith remove the lock and seal over the premises in Survey Nos.203/1, 203/2 and 203/4A, situated at Sivagiri Bit II Village, Sivagiri Taluk, Tenkasi District.

18. It is clarified that nothing in this order will prevent the respondents from taking appropriate action, including the imposition of fine and prosecution of the writ petitioner, or allow the writ petitioner to compound the charges levelled against him. This order is limited solely to the power of the first respondent to seal the premises under the Food Safety and Standards Act, 2006, and the Rules made thereunder.

19. In fine, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No

Index : Yes / No

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Note:- Issue order copy on 07.03.2025.

06.03.2025



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V. LAKSHMINARAYANAN, J.

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