

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.3760 of 2012 and
M.P.Nos.1 & 2 of 2012

M.E.Amanullah

... Petitioner

Vs.

The Zonal Health Officer,
Zone-IX,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

... Respondent

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari to call for the records relating to the notice issued by the respondent dated 13.02.2012 having Ref.No.Se.Ma.AA(Ki-2)-Su.Thu.IV 664/200Pu.,150 Tha-412/03-04 February 2004 to the petitioner and quash the same.

For Petitioner : Mrs.C.Uma

For Respondent : Mr.S.Saravanan

O R D E R

Heard Mrs.C.Uma, learned counsel appearing for the petitioner and Mr.S.Saravanan, learned counsel appearing for the respondent.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorari to call for the records relating to the notice issued by the respondent dated 13.02.2012 having Ref.No.Se.Ma.AA (Ki-2)-Su.Thu.IV 664/200Pu.,150 Tha-412/03-04 February 2004 to the petitioner and quash the same."

3. The case of the petitioner is as follows:

According to the petitioner, he is carrying on the business of sale and purchase of iron scraps in the name of Tvl.Rahmathnisa Steel Traders. He has been in the said business for the last 25 years in the address in the same locality as averred in the affidavit filed in support of the writ petition.

4. While so, the respondent had issued a notice dated 13.02.2012 under Section 44 of the Tamil Nadu Public Health Act, 1939, alleging that the business activity of the petitioner was causing health hazards for the general public in the locality. By invoking the said Section of the Act, the petitioner was directed to stop forthwith his business activity, failing which there will be a levy of fine as stipulated in the notice dated 13.02.2012, which is impugned in the writ petition.

5. The petitioner has challenged the above said notice principally on the ground that no prior notice was issued to him calling for his explanation. The respondent had straight away invoked the Section 44 of the Tamil Nadu Public Health Act, 1939, seeking to evict the petitioner from the premises where he is running business for last several years.

6. The learned counsel appearing for the petitioner would draw this Court's attention to Section 44 of the Tamil Nadu Public Health Act, 1939, which envisages issuing of notice to the citizen concerned when action is taken under the Act by the Corporation Official. According to the impugned notice, there was some complaint given by the public against the business activity of the petitioner and in view of the same, the notice was necessitated under the Act.

7. Upon notice, the learned counsel appearing for the respondent entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is stated that the business activity of the petitioner had been causing severe health hazards to the general public in the locality and without obtaining proper permission from the Corporation, the petitioner had been using welding gas etc.,

8. However, the point for consideration before this Court is whether the petitioner had been given any prior notice calling for his explanation before seeking to evict him under the impugned notice. No where in the counter affidavit it is stated that such notice was given to the petitioner and copies of the complaints received from the public had been forwarded to him. In the absence of notice and proper opportunity to the petitioner, the impugned action cannot be countenanced both in law and on facts.

9. In view of the above, this Court has no hesitation to allow this writ petition. The impugned order of the respondent dated 13.02.2012 having Ref.No.Se.Ma.AA(Ki-2)-Su.Thu.IV 664/200Pu.,150 Tha-412/03-04 February 2004, is hereby quashed. It is open to the respondent to issue proper notice along with the copies of the complaints received from the public to the petitioner and on receipt of the explanation from the petitioner, further action may be taken by the respondent as it deems fit.

10. In the circumstances of the case, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

gsk

To

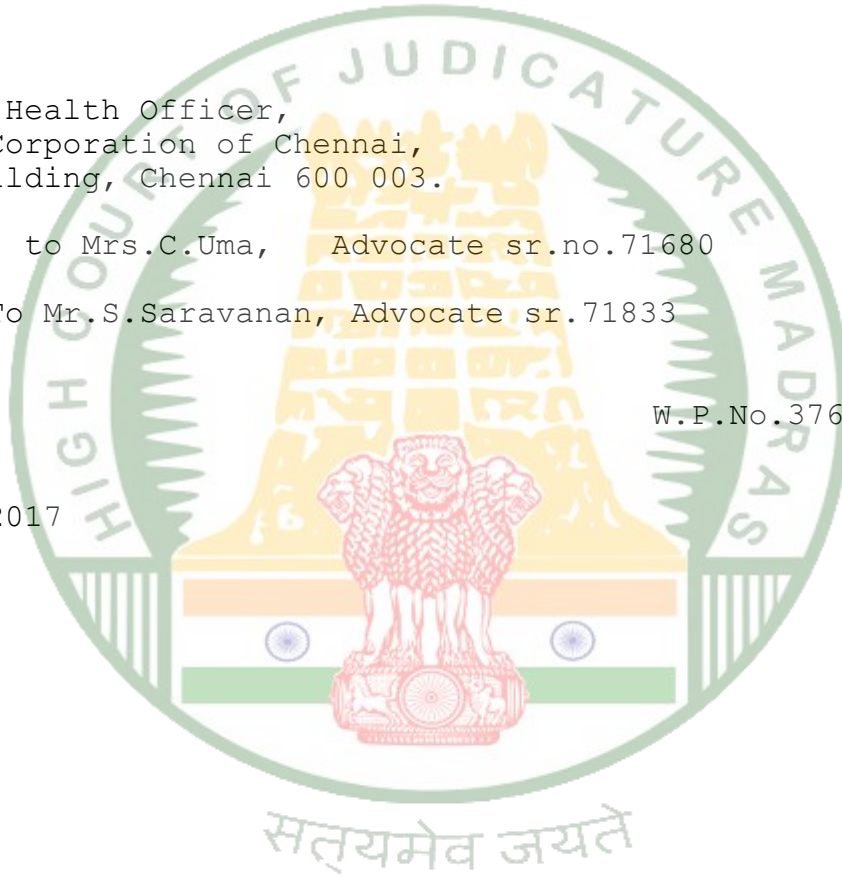
The Zonal Health Officer,
Zone-IX, Corporation of Chennai,
Rippon Building, Chennai 600 003.

+ 1 C.C. to Mrs.C.Uma, Advocate sr.no.71680

+ 1 C.C. To Mr.S.Saravanan, Advocate sr.71833

W.P.No.3760 of 2012

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