



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2018

CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD)Nos.9804 of 2018

and

W.M.P. (MD)No.8999 of 2018

N.Palpandian

... Petitioner

Vs

1. The Commissioner,
Madurai Corporation, Madurai.

2. The Health Officer,
Madurai Corporation, Madurai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the second respondent in H2/M1A1/09336/17, dated 20.04.2018 and quash the same as illegal and arbitrary.

For Petitioner : Mr.P.Ganapathisubramanian

For Respondents : Mr.N.Shanmuga Selvam

ORDER

This Writ Petition has filed for issuance of Writ of Certiorari to quash the proceedings, dated 20.04.2018 issued by the second respondent, namely, the Health Officer, Madurai Corporation, Madurai.

2.By the impugned order, the second respondent has directed the closure of the petitioner's industry within seven days. It is stated further in the impugned order that in case of failure, the industry will be sealed in exercise of power under Sections 362 and 364 of Madurai City Municipal Corporation Act, 1971.

3.The petitioner states that he established a coconut powder industry adjacent to his house and obtained necessary licence from the competent authority under the Tamil Nadu Food Safety and Drug Administration Department, Madurai District. Since the industrial unit run by the petitioner is classified under category 'A', it is exempted from getting consent from the Tamil Nadu Pollution Control Board. The second respondent has passed an order without providing an opportunity to the petitioner and without conducting any enquiry. Further it is stated that the second respondent is not the competent authority to issue any orders under Sections 362 or 364 of the Act. Since the Commissioner alone is the competent authority to pass order under Sections 362 and 364 of the Act, it is stated that the impugned order is liable to be quashed on the sole ground that the same is passed by an authority, who is not competent and who has no jurisdiction. Sections 362 and 364 of the Act reads as follows:



"362. Commissioner may issue directions for abatement of nuisance caused by gas, steam or other power:-

(1) If any factory, workshop or work-place in which gas, steam-power, water-power, or other mechanical power or electric power is used, nuisance is in the opinion of the Commissioner caused by the particular kind of fuel used or by the noise or vibrations created, he may issue such direction as he thinks fit for the abatement of the nuisance within a reasonable time to be specified for the purpose.

(2) If there has been wilful default in carrying out such directions or if abatement is found impracticable, the Commissioner may-

(a) prohibit the use of the particular kind of fuel; or

(b) prohibit the working of the factory, workshop or work-place altogether until such directions have been carried out or between the hours of 6 p.m. and 8 a.m. or during any particular time or times between such hours.

363.....

364. Power of Commissioner to require owner or occupier of factory, etc., to discontinue the use of such factory, etc.,-

Whenever, it shall appear to the Commissioner that any factory, workshop or work-place or any building or any place in which, steam, water or other mechanical or electrical power is employed is or is likely to become by reason of employment of such power or by noise or by any gas, vapour, smoke, vibration, dust or other impurity generated in the course of the work carried on in such place or by any other cause, a nuisance or danger to the life, health or property of persons in the neighbourhood, he may, by written notice, require the owner or occupier of such factory, workshop, work-place, building or place to discontinue the use of such factory or place for any of the purpose that may be specified in such notice.".....

4. Plain reading of Sections 362 and 364 of the Act indicates that the power is conferred only on the Commissioner of Corporation to issue directions for abatement of nuisance to the owner or occupier of the said factory to close the industrial unit. The learned Counsel for the Corporation, however, submitted that the power of Commissioner has been delegated and that therefore the second respondent is directed to pass an order under Sections 362 and 364 of the Act. However, the learned Counsel for the Corporation could not locate any provision or rules empowering the Commissioner to delegate such power. Unless a statutory power can be delegated to a subordinate officer by a specific provision of the statute, the authority, who has not given such power, cannot exercise the same. Since the impugned order in the present Writ Petition is an order passed by an authority, who has neither jurisdiction nor competent, this Court has no other option, but to set aside the impugned order.



5.As a result, this Writ Petition is allowed and the impugned order passed by the second respondent in H2/M1A1/09336/17, dated 20.04.2018 dated is quashed. Further, having regard to the allegations found in the impugned order, the first respondent is at liberty to proceed further in accordance with law after affording an opportunity to the petitioner before passing any final order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

+1CC to Mr.P.Ganapathisubramanian, Advocate, SR.No.70944
+1CC to Mr.N.Shanmuga Selvam, Advocate, SR.No. 70882

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(1/2)

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