



W.P.No.1048 of 2024

In the High Court of Judicature at Madras

Reserved On : 06.2.2024	Delivered on : 09.2.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.1048 of 2024
& WMP.No.1111 of 2024

M/s.MNS Enterprises, rep.by its
Proprietor Mrs.V.Mohana Priya

...Petitioner

Vs

- 1.The District Collector, Office
of the District Collector,
Chengalpet District,
Chengalpet.
- 2.The President, Vengadamangalam
Panchayat, Kattangulathur
Panchayat Union, Chengalpet
District.
- 3.M/s.Casa Grande Urbano Owners
Association, rep.by its Secretary,
Casa Grande Palm Meadows
Main Road, Vengadamanagalm,
Chennai-127.
- 4.The Revenue Divisional Officer,
Tambaram Division, Tambaram
Taluk Office Complex, Chennai-45.

...Respondents



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PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order passed by the fourth respondent in R.C.No. 1220/2023/B dated 05.1.2024 and quash the same as illegal and arbitrary.

For Petitioner : Mr.Adinarayana Rao
For R1, R2 & R4 : Mr.A.Gopinath, GA (Crl.Side)
For R3 : Mr.P.R.Raman, SC for
Mr.Ashwin Premsundar

ORDER

This writ petition has been filed challenging the order passed by the fourth respondent in R.C.No.1220/2023/B dated 05.1.2024 under Section 133 of the Criminal Procedure Code (for short, the Code) on the ground that the same is illegal and arbitrary.

2. The brief facts leading to filing of this case are as follows :

(i) A company named as Casa Grande developed two projects. One such project was named as Casa Grande Palm Meadows. It consisted of approved layout for both commercial and housing plots. The petitioner purchased one such plot through a sale deed dated 17.7.2019. The petitioner also obtained building permission from the



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second respondent through proceedings dated 14.12.2022 for putting up constructions for an extent of (a) 1760 sq.ft. in the first floor for commercial purposes, (b) 1440 sq.ft. in the second floor for residential purpose and (c) 1440 sq.ft. in the third floor for residential purpose, in a plot measuring an extent of 4640 sq.ft.

(ii) The petitioner had obtained MSME certificate from the Competent Authority and was carrying on the business of distribution of lubricant oil. The petitioner had also obtained necessary permission from the Fire Licence Authority and the GST Authorities and was doing the business. According to the petitioner, she procured only sealed barrels in bulk numbers and it was distributed to customers as per their requirements.

(iii) There was yet another project developed by Casa Grande called as Casa Grande Urbano, which is a villa project. There were some conflicts between the villa owners and the owners of the layout in Casa Grande Palm Meadows on the enjoyment of the common facilities. In view of this dispute, an attempt was made to close down the business run by the petitioner by giving false complaints and every time when an action was initiated, it was challenged by the petitioner and she succeeded before the court of law.



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(iv) In this background, the fourth respondent issued summons calling for enquiry based on the complaint given by the third respondent and the report submitted by the Tahsildar, Vandalur Taluk. An enquiry was conducted under Section 133 of the Code on the ground that the business conducted by the petitioner is causing public nuisance. The petitioner participated in the enquiry and also submitted her reply along with supporting documents. However, the fourth respondent, through the impugned proceedings dated 05.1.2024, directed the petitioner to stop the trade activities since it was a residential area on the ground that the business conducted by the petitioner is causing nuisance in terms of health disorder and physical discomfort to the inhabitants living nearby. Aggrieved by the same, the above writ petition has been filed.

3. Heard the learned counsel for the petitioner, the learned Government Advocate (Crl.Side) appearing for respondents 1, 2 and 4 and the learned Senior Counsel appearing on behalf of the third respondent.



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4. The main ground that is taken by the learned counsel for the petitioner is that the impugned order has been passed without any application of mind and without considering the materials that were relied upon by the petitioner. According to the petitioner, she was dealing with lubricant oil, which is neither inflammable nor was causing any health hazard and the business was conducted after getting proper permission in a building, for which, sanction was also given by the second respondent. Hence, it is contended that the fourth respondent had exceeded his jurisdiction and passed the impugned order.

5. Per contra, the learned Government Advocate (Crl.Side) appearing for respondents 1, 2 and 4 has submitted that the fourth respondent had taken into consideration the entire materials and also conducted an inspection in the site along with the Tahsildar concerned, that only thereafter, the fourth respondent came to the conclusion that the business conducted by the petitioner was causing public nuisance to the residents living nearby, that the business that was carried on by the petitioner lead to physical discomfort and health disorder to the nearby residents and that there is no ground to



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interfere with the impugned order passed by the fourth respondent.

6. The learned Senior Counsel appearing on behalf of the third respondent has submitted that the fourth respondent applied his mind, took into consideration all the materials and came to the conclusion that the business conducted by the petitioner was causing public nuisance. According to him, the petitioner was dealing with a lubricant, which was found to fall within the category of hazardous substances and the exposure to the oil also causes health disorder. He further submitted that the petitioner was storing and mixing the oil in the premises and thereby she had also polluted the wells of the adjacent land owners and contaminated water by leaking the oil content and that the facts of the present case clearly fall within the scope of Section 133(1)(b) of the Code. He ultimately sought for dismissal of the above writ petition.

7. This Court carefully considered the submissions of the learned counsel on either side and perused the materials available on record.

8. The above writ petition has been filed for the issuance of a



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Writ of Certiorari to quash the impugned order passed by the fourth respondent.

9. The scope of a Writ of Certiorari was discussed in the latest judgment of the Supreme Court in the case of **Central Council of Research Vs. Bikartan Das [reported in 2023 (5) MLJ 289]** wherein the relevant portions read thus :

"64. Thus, from the various decisions referred to above, we have no hesitation in reaching to the conclusion that a writ of Certiorari is a high prerogative writ and should not be issued on mere asking. For the issue of a writ of Certiorari, the party concerned has to make out a definite case for the same and is not a matter of course. To put it pithily, Certiorari shall issue to correct errors of jurisdiction, that is to say, absence, excess or failure to exercise and also when in the exercise of undoubted jurisdiction, there has been illegality. It shall also issue to correct an error in the decision or determination itself, if it is an error manifest on the face of the proceedings. By its exercise, only a patent error can be corrected but not also a wrong decision. It should be well remembered at the cost of repetition that Certiorari is not appellate but only supervisory.

65. A writ of Certiorari, being a high prerogative writ, is issued by a superior court in respect of the exercise of judicial or quasi-judicial functions by another authority when the contention is that the exercising authority had no jurisdiction or exceeded



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the jurisdiction. It cannot be denied that the tribunals or the authorities concerned in this batch of appeals had the jurisdiction to deal with the matter. However, the argument would be that the tribunals had acted arbitrarily and illegally and that they had failed to give proper findings on the facts and circumstances of the case. We may only say that while adjudicating a writ-application for a writ of Certiorari, the court is not sitting as a court of appeal against the order of the tribunals to test the legality thereof with a view to reach a different conclusion. If there is any evidence, the court will not examine whether the right conclusion is drawn from it or not. It is a well-established principle of law that a writ of Certiorari will not lie where the order or decision of a tribunal or authority is wrong in matter of facts or on merits. (See: King v. Nat Bell Liquors Ltd., [(1922) 2 AC 128 (PC)]."

10. The above judgment was rendered by the Apex Court after taking into consideration of earlier judgments. The Apex Court made it clear that the Writ of Certiorari can be issued only when there is an error of law on the face of the record, that this writ can also be issued to correct the errors of jurisdiction i.e. when the jurisdiction is exercised in a case where the authority did not have any such jurisdiction or where the authority has exceeded his jurisdiction or where the authority failed to exercise a jurisdiction available, that it



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can also be issued where an illegality has been committed while exercising the jurisdiction, that while determining the illegality, only a patent error can be corrected and not a wrong decision and that an error of fact gets elevated to an error of law only when the findings of fact are based on no evidence or such findings are given purely on surmises and conjectures or where such findings, on the face of it, are perverse.

11. When the above test is applied to the impugned order passed by the fourth respondent, it can be seen that the fourth respondent had taken note of the fact that the petitioner had taken advantage of a building approval granted by the second respondent and constructed a godown and is storing huge quantity of lubricant oil. Carefully, the petitioner did not construct any residential building even though permission was given to the petitioner to that effect.

12. According to the petitioner, there are several shops that are located in that place and that the petitioner alone is being singled out.



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13. There is a lot of difference between running a shop and running a huge godown full of lubricant oil stored in cans. Ultimately, considering the scope of enquiry conducted by the fourth respondent, it must only be seen as to whether any public nuisance has been caused on account of the business conducted by the petitioner to the nearby residents.

14. Apart from considering the materials placed, the fourth respondent also conducted an inspection of the site along with the Tahsildar concerned and rendered the following findings in the impugned order :

"The site was inspected along with the Tahsildar, Vandalur Taluk on 27.12.2023. During inspection it was noticed that Casa Grande by way of approved layout had sold 200 individual villas and 50 individual houses and 80 vacant residential plots at the rear end. The MNS Enterprises is located in the portion of the vacant plots area which has to be accessed only through the main street of the layout crossing the villas and houses location. The entire residential plot No.A29 have been totally converted without any land space by MNS Enterprises as 'Oil Godown' in a pucca building with blue sheet roof fixed with 8 numbers of exhaust fans on top of the roof. This building is exclusively utilized for distributing Gulf Oil in which there is also an office



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attached in a pucca concrete building (G+1) exclusively utilized for looking after the commercial transactions of the company. During inspection, it was observed that 202 oil barrels, each consisting of 210 litres of Gulf Oil were found stored in the premises. Two truck vehicles were found stationed in the street which is said to be used for transporting the oil barrels from this Godown to the needy companies. Further, three persons were also found working in the Godown."

15. The above findings rendered by the fourth respondent would show that the petitioner has stocked huge quantity of oil barrels and what was being run by the petitioner was a godown. The fourth respondent took into consideration the grievance that was expressed by the residents living nearby, who were complaining that there was frequent heavy vehicle movement carrying oil barrels in and out of the warehouse in a residential community. That apart, the oil residue, which leaked oil, was also contaminating the well water. It was also emanating toxic oil vapour, which resulted in people falling sick due to eye irritation, vomiting, wheezing, etc.

16. Section 133(1)(b) of the Code reads as follows :

"133. Conditional order for removal of nuisance.

(1)



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(a)

(b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated."

17. It is clear from the above provision that the District Magistrate will have the jurisdiction to take action under this provision where he finds that the conduct of any trade or occupation or the keeping of any goods or merchandise is injurious to the health or physical comfort of the community. This was the basis of the enquiry that was conducted by the fourth respondent and he found that the business conducted by the petitioner had a very serious impact in the residential community causing physical and health discomfort/hazards to the inmates in that locality. That apart, the oil was also contaminating the well water.

18. Even though the petitioner claims that she was not manufacturing oil, the fact that the petitioner was dealing with huge quantity of oil barrels, leakage of oil can never be ruled out. In the



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light of the above materials, the fourth respondent came to the definite conclusion that the business that was run by the petitioner posed threat to the residents in the locality, who were experiencing physical ailments and health hazards. The fourth respondent found that the business done by the petitioner was causing public nuisance and hence, directed the petitioner to cease the trade activities within a period of seven days.

19. The impugned order passed by the fourth respondent does not suffer from any error of law on the face of the record. The fourth respondent properly exercised the jurisdiction and no illegality is found in the impugned order passed by the fourth respondent. This Court is not sitting in an appellate jurisdiction and therefore, this Court cannot substitute its views to the views taken by the fourth respondent in the impugned order. This Court cannot issue a Writ of Certiorari, which is a high prerogative Writ, for a mere asking. Considering the facts of the present case, this Court does not find any ground to interfere with the impugned order passed by the fourth respondent.



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20. For the foregoing reasons, the writ petition stands dismissed. Consequently, the WMP is also dismissed. No costs.

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N.ANAND VENKATESH,J

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Index : Yes o
Neutral Citation : Yes
Speaking Order : Yes

To

- 1.The District Collector, Chengalpet District,
Chengalpet.
- 2.The Revenue Divisional Officer,
Tambaram Division, Tambaram
Taluk Office Complex, Chennai-45.
- 3.The President, Vengadamangalam
Panchayat, Kattangulathur
Panchayat Union, Chengalpet
District.
- 4.The Public Prosecutor,
High Court, Madras.

ORDER IN
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