

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.16048 of 2015

and

M.P.No.1 of 2015

Chennai Bhattai 1st Street,
Resident's Welfare Association,
Represented by its Secretary,
Mr.K.Ganesan, S/o Kuppuswamy
No.31/68, Chennai Bhattai 1st Street,
Villivakkam, Chennai - 600 049.

...Petitioner

vs.

1. The Commissioner
Corporation of Chennai
Rippon Buildings,
Chennai - 600 003.

2.The Junior Engineer,
Corporation of Chennai
Zone 21, Ward 95,
Villivakkam, Chennai - 600 049.

3.The Commissioner of Police,
Egmore, Chennai.

4.The Inspector of Police (Law & Order)
K-7, ICF Police Station,
Ayanavaram, Chennai.
(3rd & 4th respondents are impleaded
as per order of this court dt.24.08.2015
in W.P.No.16048 of 2015)

...Respondents

Prayer:- Writ petition filed under Article 226 of the constitution of India praying for a writ of mandamus directing the respondents to consider and pass orders on the representation dated 20.02.2015 as per law within a reasonable time.

For Petitioner : Mr.B.Divakaran

For Respondents : Mr.P.V.Selvakumar
for R1 & R2

Mr.V.Jayaprakash Narayanan
Spl G.P. for R3 & R4.

O R D E R

The petitioner contends that it is the Resident's Welfare Association and it has got about 40 members. As per the resolution passed by the Association, an arch was desired to be erected in the Chennai Bhattai 1st Street, Villivakkam for the purpose of beautification. After erection of the arch on the road, the respondents are attempting to remove the same and therefore the petitioner association has given a representation on 20.02.2015 addressed to the 2nd respondent stating that the arch is of public use and it is a landmark which is constructed without causing any hindrance or disturbance to the traffic movement or to the pedestrians in any manner and therefore they request the respondents not to remove the said arch.

2. Heard Mr.B.Divakaran, learned counsel appearing for the petitioner, Mr.P.V.Selvakumar, learned counsel appearing for the first and second respondents.

3. The learned counsel for the respondents would submit that already notice was served upon the petitioner Association on 09.02.2015, under Section 222 of the Chennai City Municipal Act to remove the encroachment. Since the petitioner did not come forward to remove the encroachment, the respondents have approached police authorities vide communication dated 23.05.2015 to provide police protection to remove the encroachment and a reply dated 26.05.2015 was received from the Inspector of Police, K.7, ICF Police Station, Ayanavaram, Chennai stating that there are two groups in the said area and if the arch has to be removed, there will be law and order problem and hence they seek to compromise the two rival groups.

4. Taking into consideration, the representation made by the learned counsel for the respondents, this Court, suo moto impleads the Commissioner of Police, Egmore, Chennai and the Inspector of Police (Law & Order) K-7, ICF Police Station, Ayanavaram, Chennai as the third and fourth respondents in this case. Mr.V.Jayaprakash Narayanan, learned Special Govt. Pleader takes notice on behalf of the newly impleaded parties.

5. It is admitted by the petitioner themselves in the resolution that the arch has been erected only for the landmark for which they do not have any right. If the petitioner's association wants to beautify the area, they can do it so only in the private properties and not on the road which is meant for movement of vehicles as well as for pedestrians. Therefore, it is very clear that the erection is illegal and contrary to the Chennai City Municipal Corporation Act. In paragraph 12 of the affidavit, the petitioner has contended that if the arch causes any hindrance or disturbance to the public, the petitioner association itself undertakes to remove the said arch for the welfare of the public. The said paragraph is usefully extracted as follows -

12. I submit that in the event of the respondent rejecting the proposal as per law submitted by the petitioner association on the ground that it caused any hindrance or disturbance to the public, the petitioner association undertakes to remove the said arch for the welfare of the public.

6. In the affidavit, petitioner has undertaken that in the event of the respondent rejecting the proposal submitted by the petitioner association, they shall remove the said Arch. Therefore, the petitioner is directed to remove the arch as it has been constructed in the road, on or before 31.08.2015. In case, as per the undertaking if the petitioner does not remove the arch by 31st of this month, the first and second respondents, with the aid of police protection provided by the third and fourth respondents shall demolish and remove the arch put up in the Chennai Bhattai 1st Street, Villivakkam, Chennai - 600 049, on the same day itself and collect the expenses incurred in this regard from the petitioner association.

WEB COPY

7. The writ petition is disposed of with above direction. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

rgr

To

1. The Commissioner,
Corporation of Chennai
Rippon Buildings, Chennai - 600 003.

2. The Junior Engineer,
Corporation of Chennai
Zone 21, Ward 95,
Villivakkam, Chennai - 600 049.

3. The Commissioner of Police,
Egmore, Chennai.

4. The Inspector of Police (Law & Order)
K-7, ICF Police Station,
Ayanavaram, Chennai.

1 CC to Mr.B.Divakaran, Advocate SR.No. 45006

W.P.No.16048 of 2015

PUR (CO)
PSI (27.08.2015)

WEB COPY