

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.22080 of 2017

M/s.Chesney Townhouse Owners
and Residents Association,
rep. by its Secretary
Mr.H.Sathak Ahmed Shaw,
No.72, Ethiraj Salai, Egmore,
Chennai 600 008.

... Petitioner

vs.

1. The Executive Engineer,
Corporation of Chennai,
Zonal Office-V,
Chennai.
2. The Assistant Executive Engineer,
Unit - 14,
Corporation of Chennai,
Zonal Office-V,
Chennai.
3. The Assistant Engineer,
Division - 61,
Corporation of Chennai,
Zonal Office - V,
Chennai.

4. Rebecca Chandy

... Respondents

(R4 impleaded as per order dated 24.10.2017 in
W.M.P.No.28859/2017
in W.P.No.22080/2017)

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the impugned lock and seal Notice, dated 28.06.2017 vide Ref. Letter No.Dn.61/48/2017 issued by the respondents to the petitioner's premises and quash the same and consequently to direct the respondents to remove the lock and seal made to the petitioner's

Toilet and Watchman Cabin at Chesney Township, Ethiraj Salai, Egmore, Chennai 600 008.

For Petitioner : Mr.D.Senthil Kumaar

For Respondents 1 & 3 : Mr.V.C.Selvasekaran

For 4th Respondent : Mr.P.J.George

O R D E R

(Order of the Court was made by S.VAIDYANATHAN,J.)

This Writ Petition is filed challenging the impugned Lock and Seal Notice, dated 28.06.2017 issued by the respondents to the petitioner's premises and for a consequential direction to the respondents to remove the lock and seal made to the petitioner's Toilet and Watchman Cabin at Chesney Township, Ethiraj Salai, Egmore, Chennai 600 008.

2. According to the petitioner/M/s.Chesney Townhouse Owners and Residents Association, it is a Township comprised in land measuring an extent of 17 Grounds and 1740 sq. ft. at Ethiraj Salai, Egmore, wherein, there are 20 Villas and the constructed area measures about 7 1/2 Grounds out of 17 1/2 Grounds and the remaining land area of about 10 Grounds is kept as open to sky with garden and car parking and access road. It is further stated by the petitioner that the Villas were built after obtaining due sanction from the authorities vide Approval No.1241/75 and that during the year 1979, the Promoter had built a Watchman room along with a Toilet, all together measuring an extent of 127 sq. ft. alone, to serve the basic needs of Watchman, Gardener, Drivers, Sweepers, Plumbers, Electricians, Servants, etc.

3. During the Vardha Cyclone, many trees in Chesney Township were uprooted and one such Tree fell on the side of the Toilet and Watchman Room and completely damaged it, thereby, the room and Toilet were found not suitable for usage. Thereafter, the petitioner Association repaired the damaged Watchman room and Toilet and brought back to its original shape. The petitioner goes on to state that on 13.06.2017, the 2nd and 3rd respondents inspected the premises and enquired about the repairs carried out in the Toilet and Watchman Room and the petitioner gave his Written Submissions on 14.06.2017, explaining as to how and when the said building was damaged and the repairs done in furtherance.

4. Pursuant thereto, the 2nd and 3rd respondents issued Stop Work Notice on 19.06.2017 to the petitioner herein under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town

and Country Planning Act, 1971 vide Letter No.DN 61/47/2017. The respondents also conducted an enquiry and the petitioner reiterated the damages done to the Watchman Room and Toilet due to Vardha Cyclone. Thereafter, on 28.06.2017, the respondents sent a Lock and Seal and Demolition Notice to the petitioner under Section 57 read with Section 85 of the Town and Country Planning Act, 1971, to which, the petitioner duly sent a reply on 10.07.2017. However, on 04.08.2017, the 2nd and 3rd respondents came to the petitioner's premises with police officials and sealed the premises, despite the petitioner's request to grant them time. According to the petitioner, there is violation of the principles of natural justice and the impugned notice is liable to be interfered with.

5. The respondent/Corporation has filed a counter affidavit, dated 21.08.2017, wherein, it is stated that one Chandy, one of the residents of Chesney West has given a complaint stating that she is a senior citizen, aged about 94 years and requested to take action against the owners of the petitioner's Association, as they are dumping garbage near the fencing of her property, which causes breathing trouble and health hazards and also requested to take action against the unauthorized construction of Toilet and Room, being constructed by the petitioner's Association.

6. Pursuant to the complaint of the 4th respondent/Chandy, an inspection was made by the officials of the respondent Corporation and they found that the place in question behind the 4th respondent's residence, is full of dumped garbage and construction is also in progress at the disputed place. Immediately after inspecting the site in question, a Stop Work Notice/Notice calling for Approved Plan under Sections 56 and 57 read with Section 85 of the Tamil Nadu Town and Country Planning Act, 1971, dated 19.06.2017 was issued to the petitioner Association. Since the petitioner failed to comply with the said notice and continued to construct the Toilet and Watchman Room and completed the construction, the impugned Lock and Seal Notice was issued on 04.08.2017.

7. The 4th respondent has filed a counter affidavit stating that she is a senior citizen, aged 93 years and that she has given a complaint with regard to the illegal acts of the petitioner, which are still causing her mental anguish. According to her, the illegal Watchman Shed and Toilet are health hazards, besides being an unsightly eyesore. She further stated that one of the conditions of the Deed of Sale executed in favour of the members of the petitioner/Association was that they should not put up any construction in the common open area and should not interfere with the amenities of the owners of flats in the other two buildings. She further stated that she

has never influenced any authority, but has only exercised her right as a citizen.

8. Heard the learned counsel on either side and perused the material documents available on record.

9. It is not in dispute that the petitioner/Association applied and obtained due sanction from the authorities in 1975 for constructing the Villas and the construction was completed in the year 1979. The issue is whether the Watchman Room and Toilet, constructed by the petitioner/Association in the premises in question, is in accordance with the Plan. In respect of the request made by the respondent/Corporation, no Plan/document has been produced by the petitioner/Association. The contention of the petitioner/Association that there is no complaint by the 4th respondent is incorrect, more particularly, when the 1st respondent itself has stated in their counter that only based on the complaint made by the 4th respondent, the officials of the respondent/Corporation went to the petitioner's premises, inspected the site in question and found that garbage is being dumped near the fencing of her property.

10. That apart, the Tamil Nadu Pollution Control Board has also given a notice stating that bad odour emanates from the Toilet in question, which is in violation of the provisions of Tamil Nadu Public Health Act, 1939 and that the said complaint has been forwarded to the respondent/Corporation for necessary action. From the said communication, it is clear that the action taken by the respondent/Corporation is only based on the complaint given by the 4th respondent.

11. Admittedly, as on date, the petitioner/Association has not been granted Planning Permit to construct the two disputed portions, viz. Watchman Room and the Toilet. That apart, as rightly pointed out by the 4th respondent and the respondent/Corporation, the petitioner/Association has dumped garbage in and around the Watchman Room and Toilet. As the site, where the disputed construction is made, is not meant for construction and that the petitioner/Association has not applied for any regularisation even prior to the cut-off date, and that the time prescribed by the authorities has lapsed, this Court is of the view that the petitioner will not be entitled to any relief, muchless the one sought by them in the present Writ Petition.

12. In view of the above, the petitioner/Association is directed to demolish the unauthorised constructions viz. the Watchman Room and Toilet in their premises, within one month from the date of receipt of a copy of this order, failing which, it is open to the respondent/Corporation to demolish the same

and recover the costs towards demolition, from the petitioner/Association. The respondent/Corporation shall ensure that till the unauthorised constructions in the petitioner's premises are removed, the same shall be locked and sealed and electricity connection is disconnected to that violated portion.

In fine, the Writ Petition is dismissed with the above directions and observations. No costs. Consequently, connected W.M.P.No.23138 of 2017 is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

(aeb)
To:

1. The Executive Engineer,
Corporation of Chennai,
Zonal Office-V, Chennai.
2. The Assistant Executive Engineer,
Unit - 14, Corporation of Chennai,
Zonal Office-V, Chennai.
3. The Assistant Engineer,
Division - 61,
Corporation of Chennai,
Zonal Office - V, Chennai.

+3cc to Mr.D.Senthil kumar, Advocate Sr.No.2500/18
+1cc to Mr.P.J.George, Advocate Sr.No.3021/18

NRJK(CO)
sm:7.2.2018

Order in
W.P.No.22080 of 2017

WEB COPY