

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.2554/2018 & CMP.No.20577/2018

Veerpandi Sri Balaji Garden Peoples
Welfare Association, rep.by its President
M.Durairaj, No.64, Sri Balaji Gardens,
Press Colony Post, Coimbatore 641 019.

Appellant /
Writ Petitioner

Versus

- 1 The Executive Officer
No.04, Veerapandi Town Panchayat
Coimbatore 641 019.
- 2 Srivari Builders
rep.by its Proprietor,
M.R.Rathindran
S/o.A.N.Ramamoorthy Nadiru
No.3/12, Gandhi Nagar
K.Vadamadurai
Coimbatore 641 017.
- 3 The Secretary
Municipal Administration
Water and Sewerage Board
Fort St George, Chennai.
- 4 The Director,
Town Panchayat, Kuralagam
Chennai.
- 5 The Assistant Director,
Town Panchayat, Collectorate Campus
Coimbatore, Coimbatore District.
- 6 Press Colony Sri Balaji Gardens Kudiyerupor
Murpoku Nala Sangam, Water Tank 1st Floor
1st Street, Sri Balaji Gardens, Press Colony
Post, Coimbatore-19.

Respondents /
Respondents

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent against the order made in WP.No.26391/2017 dated 23.07.2018.

W.P. 26391/2017:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records of the 1st Respondent notice dated 06.09.2017 and quash the same as illegal , arbitrary and non est in law.

For Appellant : Mr.R.Veeraraghavan
For RR 1,3,4&5 : Mr.R.Udhayakumar, AGP

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment. Mr.R.Udhayakumar, learned Additional Government Pleader accepts notice on behalf of the respondents 1, 3, 4 and 5.

2 The appellant is the writ petitioner and he made a challenge to the notice dated 06.09.2017 in and by which, it was informed that the petitioner and other house owners of the Group Housing Scheme at Balaji Garden, Coimbatore District, have to construct Septic Tanks individually in respect of each house and however, they are letting out the sewerage and other wastage into the Rain Water Drains and as a consequence, there is a serious health and environmental hazard and hence, informed them that in compliance of the porders passed by this Court, the connections illegally given, as pointed out, will be cancelled as well as the two septic tanks constructed, would also be removed. The writ petition was entertained and after contest, came to be dismissed vide impugned order dated 23.07.2018 and challenging the legality of the said order, the present writ appeal is preferred.

3 The Special Commissioner of Town and Country Planning, Chennai-2, vide proceedings dated 17.01.2002 in Pa.Mu.27804/2001/PA1, had accorded approval for the Plots in A to E Blocks, in Veerapandi Panchayat and Village S.Nos.531/1A1A1, Part 2, 521/1 [Part] and 528/1 Part, for the purpose of constructing 167 houses and one of the conditions for according such approval was that the drinking water as well as disposal of the sewerage water should be made by the petitioner and others on their own accord and septic tanks have to be constructed.

4 It appears that the individual septic tanks have not been constructed and unauthorisedly, two septic tanks have been

constructed wherein sewerage water was let in and it has also become full and started overflowing and no steps have been taken to clear the same.

5 The 1st respondent, on an earlier occasion, had issued a notice dated 07.07.2015 under sections 26 and 33 of the Public Health Act, 1939, and it was challenged by the individual Group House Owners in WP.No.30805/2015 batch etc., and the same were disposed of vide common order dated 19.11.2015 with the following directions:-

"11 Accordingly, in stead of setting aside the impugned order, the petitioners are directed to submit a representation with undertaking to the first respondent, clearly setting out, as to within what time, they will be able to complete the construction of individual septic tank. If anyone of the petitioner is unable to construct individual septic tank for any valid reason, then, they shall mention the same in their representation, which shall be considered by the first respondent. The above directions shall be complied by the petitioners within a period of eight weeks from the date of receipt of a copy of this order and thereafter, the 1st respondent shall pass appropriate orders considering those individual requests. In all other cases, the petitioners should comply with the impugned orders, for which this Court is of the view that they should be granted minimum of four months time, to comply with the direction and complete the construction of individual septic tank."

6 Subsequently, some more owners of the Group Housing Scheme had also filed WP.No.25564/2015 batch etc., and the said writ petitions were disposed of vide common order dated 22.06.2017 on similar directions as that of the common order dated 19.11.2015 made in WP.No.30805/2015 batch etc.

7 It appears that despite such directions given in the above said writ petitions, the owners of the Group Houses, did not construct the individual septic tanks and therefore, the 1st respondent had issued the impugned notice dated 06.09.2017 and the writ petition, after contest, came to be dismissed vide impugned order dated 23.07.2018.

8 The learned counsel for the appellant/writ petitioner has drawn the attention of this Court to the common counter affidavit filed by the 1st respondent as well as to the Report of the Advocate Commissioner and pointed out that the petitioner was not aware of such stipulation and since there are enough vacant lands are available, septic tanks can be constructed and

connections from the individual houses to the common septic tank can be given and it can be cleared by the Local Body and in the event of the impugned notice being implemented, the residents will be put to extreme hardship and lot of inconvenience and mental agony and prays for appropriate orders.

9 This Court has carefully considered the submissions made by the learned counsel for the appellant ; Mr.R.Udhayakumar, learned Additional Government Pleader appearing for the respondents 1, 3, 4 and 5 and also perused the materials placed before it.

10 Pendency of the writ petition, the Advocate Commissioner was appointed and he has given the summary of observations in paragraph No.19 and it is relevant to extract the same:-

'Summary of Observations:-

I. The houses in which no septic tanks have been constructed have sufficient space to construct septic tanks though not of any standard measurements.

II. Majority of the residents in the Southern portion have not constructed the septic tank and majority of the residents of the Northern portion have constructed the septic tank. Refer Annexure 10 above.

III. In the southern portion when the terrain is said to be very rocky there are water tanks which are even 8 feet deep.

IV. Given the fact that the water tanks are of varied sizes from 3 feet to 8 feet and the fact that the septic tanks have been constructed/under construction in the southern portion, the version that the terrain is rocky and cannot be dug beyond 3 feet is unbelievable.

V. The septic tanks constructed have no walls separating the chambers as found in traditional septic tanks. There is no concrete flooring also in the said tanks and fecal matter is allowed to percolate into the ground.

VI. Both the common septic tanks are full and there is a steady discharge of a white, transparent liquid into the nearby channel which was dry.

VII. When the common septic tanks were opened there were no mosquitoes. However, when an individual septic tank was opened in Plot No.274, there were thousands of mosquitoes.

VIII. Majority of the residents of the southern portion who have constructed the septic tank have not given connection to the same.

IX. The existing drainage system is working perfect and all the water gets discharged into both the common septic tanks.

X. The persons who have constructed the septic tanks have connected only their fecal line to the tanks and are using the existing drainage system for their bathroom and kitchen waste water.

XI. The discharge of fecal matter into the grounds seems to be of concern and the issue is to be looked into if the same system has to be continued. Both the residents and the 1st respondent have to be sensitized on this issue."

11 An alternate proposal was also submitted as to the generation of bio-gas [Methane] from human fecal matter and the name of one of the Entities carrying out the said method of disposal, viz., 'SKG Sangha' has also been indicated for which, the petitioner has also filed his objection. The Counter affidavit of the 1st respondent would also disclose that as per the approval, 167 houses were constructed in Phase-I and 222 houses were constructed in Phase-II, at Sri Balaji Garden, Coimbatore District and as far as one of the conditions imposed in the Approval as to the water and sewerage connection, the same has not been complied with and it is also pointed out that no septic tank was constructed by the respective house owners for their individual houses ; on the other hand, they let in sewerage water directly into the rain water harvesting tank, which is in clear contravention of the layout conditions and also in violation of the Tamil Nadu Public Health Act, 1939. It is also pointed out that despite the orders passed by this Court to give a representation and work out the remedy, the petitioner Association has not bestowed its best attention to the said directions and as on date, out of 389 houses only 172 houses had constructed septic tanks and rest of 217 houses, are not having individual septic tanks.

12 It is also pointed out that a common septic tanks said to have been constructed for use of occupants also wholly unauthorised for the reason that there is no approval for putting up such a septic tanks. The Report of the Advocate Commissioner also point out that the said septic tanks are also overflowing. The residents of the Group Housing Scheme, even for the sake of argument, without admitting, are rustic or illiterate, is expected to know that the disbursal of spillage or sewerage water directly into the rain water tank, is per se unsustainable and would lead to serious health hazard as the rain water harvesting tank is not meant for the said purpose. Admittedly, as the Report of the Advocate Commissioner also point out that there is water/irrigation drain channel which encircles both septic tanks as per the sketch attached to Annexure - 7 and though no water was flowing in the channel, found out that flow of water is only from the septic tanks, which according to the 1st respondent, came to be put up unauthorisedly. A faint attempt was made by the learned counsel for the appellant by submitting that person/s who promoted the layout, have not put the petitioner Association on notice as to the said conditions. In the considered opinion of the Court, that is a hardly satisfactory explanation for the reason tha the petitioner Association, even by applying common sense, should have known that untreated spillage/sewerage water cannot be let in, in a rain water harvesting tank and the Report of the Advocate Commissioner also point out that it is further getting drained into an irrigation / drain channel and it is in total violation of the conditions stipulated.

13 The learned Judge after taking note of the said materials, had rightly reached the conclusion to dismiss the writ petition and this Court, on an independent application of mind to the entire materials as well as to the reasons assigned by the learned Judge, is of the considered view that there is no error apparent on the face of the record or infirmity in the said reasons and finds no merit in this writ appeal.

14 In the result, the writ appeal is dismissed, confirming the order dated 23.07.2018 made in WP.No.26391/2018. No costs. Consequently, connected miscellaneous petition is also dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

AP

To

1 The Executive Officer
No.04, Veerapandi Town Panchayat
Coimbatore 641 019.

2 The Secretary
Municipal Administration
Water and Sewerage Board
Fort St George, Chennai.

3 The Director,
Town Panchayat, Kuralagam
Chennai.

4 The Assistant Director,
Town Panchayat, Collectorate Campus
Coimbatore, Coimbatore District.

5 Press Colony Sri Balaji Gardens Kudiyerupor
Murpoku Nala Sangam, Water Tank 1st Floor
1st Street, Sri Balaji Gardens, Press Colony
Post, Coimbatore-19.

+1 CC to Mr.C. Veeraraghavan, Advocate sr 82463.

+1 CC to The Govt. Pleader sr 82947

WA.No.2554/2018

MR (CO)
SP (04/01/2019)

सत्यमेव जयते

WEB COPY