LEGALLY SPEAKING

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AN UNFORTUNATE INCIDENT?

Act 171 of the Local Government Act does not expressly state that the local authority can lock out the owner or occupier of the premises if the assessment has not been paid

"WE have moved from 3Rs to 2Gs," Nik Ibrahim (not his real name), a respected town planner, said to me recently. We were having breakfast in Putrajaya and he was commenting on a recent case in Penang where a resident at a particular housing estate found himself locked out when his apartment unit was padlocked by the Penang Island City Council (MBPP) due to overdue assessments.

"It should not have happened," he added. Elaborating, he said the initial role of a local authority was to focus on "roads, rates and rubbish" (3Rs).

"Most (if not all) of our local authorities began as sanitary boards, before they became town boards and town councils, and subsequently many grew to full-fledged city councils, embracing and upholding the principles of good governance (2G)."

In that unfortunate incident, the apartment unit at Taman Seri Hijau in Van Praagh Road was padlocked by the local authority because the owner failed to pay two years of assessment arrears totalling RM468.86.

He got back the keys from the local authority after he had settled the outstanding sum, as well as the current amount and a penalty of RM20. Subsequently, he lodged a police report.

The 37-year-old salesman had been renting out the apartment unit over the last three years. He said it was dangerous for the local authority to lock the premises as there could be people trapped inside should there be an emergency.

"Thankfully, there was no one in the apartment as I think my tenants had gone out of town," he added.

The local authority insisted that its action was permitted under the Local Government Act 1976 (Act 171). Treasury revenue head Suhaida Kamalul Ariffin said Section 148(3) empowered the local authority to seal premises when owners defaulted on a year's assessment payment, but it usually did so after the arrears had accumulated for two years.

"We can actually break down the door and seize the belongings inside. If we don't do that, to avoid destroying the door, we will seal the premises as an indication to the owner.

"This is, however, only carried out after we have checked to see if anyone is inside. Only after we are sure it is unoccupied, do we seal the premises," she said.

She explained that the local authority had pasted a notice demanding the owner to settle the arrears on the property in May this year. As there was no response, the apartment unit was sealed.

Section 148(1) of Act 171 states that if a premises owner is in arrears of his rate (assessment) due to the local authority, the local authority may issue a warrant of attachment and "may seize by virtue thereof any movable property" belonging to the owner or occupier of the property. However, under the proviso of that subsection, no warrant of attachment shall be issued by the local authority unless it has served a notice to the owner, calling upon him to pay the arrears within 15 days of the posting or delivery of the notice.

Under subsection (2), the warrant "shall be executed by an officer of the local authority", who shall make an inventory of the movable property attached.

If in the opinion of the officer executing the warrant, the value of the movable property to be attached is insufficient to pay off the arrears, he shall affix a notice on some conspicuous part of the holding to indicate that recovery shall be instituted under section 151 (which is attachment and sale of the holding).

Under subsection (3), the officer executing the warrant "may break open in the daytime any house or building for the purpose of effecting such attachment". As indicated above, it is to avoid "breaking down the door and seizing the belongings inside" as the MBPP's officer in this case had chosen to padlock the premises.

Locking in or locking out the owner or occupier in the event of default in paying assessment has not been expressly spelt out in Act 171. Can subsection (3) be interpreted to give the local authority that power?

When I asked my friend what are the principles of good governance (2G) in respect of local governments, he said the principles were only too well-known, and that most of our local authorities had been able to embrace and uphold them.

Among them are "accountability and transparency, following the rule of law, equitability and inclusivity, effective and efficient, and participatory".

He reminded me that in May 2015, the Federal Government announced the transformation plan for local authorities. In February last year, the National Council on Local Government at its 70th annual meeting had approved the plan.

In April, it was announced that the Transformation Plan for Local Authorities (PBT) was expected to be launched this year. The objective, among others, is to improve the quality of service delivery by local authorities nationwide and to enhance cooperation and understanding between the community and the local authority.

Was the Penang case an "unfortunate incident"?

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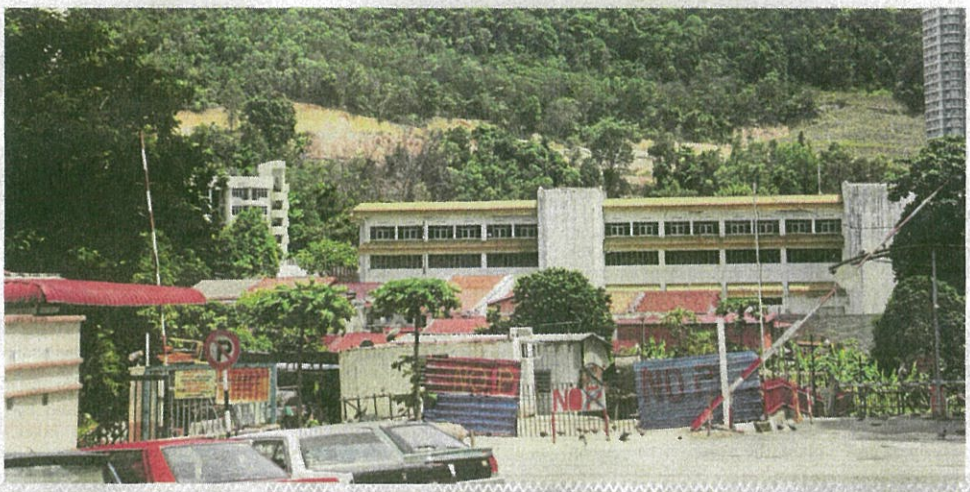

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