HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.19503 and 19638 of 2015

Date: 26.10.2015

W.P.No.19503 of 2015

Between:

Nageti Narsinga Rao s/o late Appa Rao,
Aged about 42 years, R/o.D.No.57-1-24,
Gokul Nagar, Main Road, Kancharapalem,
Visakhapatnam.

.... Petitioner

AND

The State of Andhra Pradesh, rep.by its
Prl.Secretary, Revenue M.A. & U.D.
Secretariat, Hyderabad and others.

.... Respondents

W.P.No.19638 of 2015

Between:

Gadela Venkata Rao, s/o late Shobhanandri,
Aged about 50 years, Occu: Business,
R/o D.No.57-1-2/2, Vijayawada Mess, Main Road,
Kancharapalem, Visakhapatnam.

.... Petitioner

AND

The State of Andhra Pradesh, rep.by its
Prl.Secretary (Municipal Administration and Urban
Development), Secretariat Buildings, Hyderabad and
others.

.... Respondents

The Court made the following:

HON'BLE SRI JUSTICE P.NAVEEN RAO
WRIT PETITION NOs.19503 & 19638 of 2015

COMMON ORDER:

Petitioner in W.P.No.19503 of 2015 is the owner of the adjacent building bearing Door No.57-1-22 situated on main road, Kancharapalem, Visakhapatnam. Petitioner in W.P.No.19638 of 2015 is the tenant of the said building operating hotel in the name and style of "Vijayawada Mess". Petitioner in W.P.No.19638 of 2015 claims that consequent to the lease granted to him, he has been running "Vijayawada Mess" in the said premises since 1997.

2. The Greater Visakhapatnam Municipal Corporation (GVMC) acquired the front portion of the subject building for the purpose of widening of main road at Kancharapalem. After acquisition front portion of the subject building was demolished. The GVMC issued notice on 22.05.2015 in exercise of power under Section 456 of the Hyderabad Municipal Corporation Act, 1955 calling upon the owner of the subject premises as well as the tenant to pull down and remove the remaining portion of the building within seven days as it is in ruinous condition and dangerous.

3. Challenging the inaction of the Municipal Corporation in not taking further course of action in consequence to the notice issued on 22.05.2015, W.P.No.19503 of 2015 is filed. Petitioner is the owner of adjacent building.

4. Challenging the action of the respondent corporation in seeking

demolition of structures, in which petitioner is operating his hotel business for long time, without causing notice on him and contending that the structural stability of the subject building is in good condition and without any inconvenience, petitioner continues to operate his business, the tenant of the subject building filed W.P.No.19638 of 2015.

5. Since the subject matter in both the writ petitions is same, both the writ petitions are taken up for hearing and disposed of by this common order.

6. Head learned counsel Sri S.Subba Reddy counsel for the petitioner in W.P.No.19503 of 2015 and Sri M.A.Mukheed counsel for the petitioner in W.P.No.19638 of 2015, learned Government Pleader for respondent no.1 and Sri S.Lakshminarayana Reddy, standing counsel for respondent no.2 in both the writ petitions and with their consent, these writ petitions are disposed of at this stage.

7. For convenience sake, the respective parties are referred to as arrayed in W.P.No.19503 of 2015.

8. Learned counsel for the petitioner Sri Subba Reddy contends that consequent to the demolition of front portion of the subject building, it has lost the structural stability and there is likelihood of collapse and apprehends danger to neighbouring buildings. Petitioner filed photographs which would show that major portion of the building is demolished and certain temporary support is put up to ensure that the building does not fall. Counsel for the petitioner contends that petitioner being the owner of the adjacent building, apprehends danger to his building if the subject building collapses and complaints against deliberate inaction by the respondent municipal corporation in taking further course of action as required by law even though the Corporation noticed that the building is not in good condition and has

to be demolished and notice was issued on 22.05.2015.

9. Learned counsel for the 4th respondent contends that without following due process Respondent Corporation is taking action to remove the subject building. He further contends that no notice was issued to the tenant, whereas it is mandatory to cause notice on the tenant and an opportunity be afforded to attend to defects in the building before seeking to remove the building whose structural stability is doubted. He further submits that there is no danger to the structural stability of the building and with minor repairs stability of the building can be ensured and there would be no danger to the people living in the building or to the adjacent buildings as contended by the counsel for the petitioner.

10. With reference to the specific assertion of the 4th respondent that he was not put on notice before seeking to demolish the subject building and that notice dated 22.5.2015 was not served on him, the original record was called. On verification of the original record, it was found that the notice was served on the 4th respondent as well as the owner of the subject building. Therefore, the contention of the 4th respondent that he was not put on notice has no legs to stand.

11. Since there was no authentic structural stability report of the subject building, this Court by order dated 07-07-2015 directed the respondent corporation to obtain report on the present status of the building by Structural Engineer in the presence of neighbours as well as occupants and to file the report on 14.07.2015. The Professor of Civil Engineering of Andhra University College of Engineering submitted report dated 11.07.2015. On evaluation of the technical parameters to assess the structural stability of the building, the Professor recommended that building is in severely distressed condition and should be evacuated immediately and opined that building be demolished.

12. The 4th respondent was not satisfied with the report submitted by the Professor of Andhra University College of Engineering and sought permission of the Court to obtain second report. By order dated 17.07.2015, petitioner was granted permission to obtain report on structural stability of the subject building either from the Jawaharlal Nehru Technological University, Kakinada or Geetam University (Deemed), Visakhapatnam. It was directed that the evaluation has to be made in the presence of petitioner and the Engineers of GVMC.

13. Having regard to the structural stability report dated 11.07.2015 furnished by the Andhra University College of Engineering; the GVMC was directed to take possession of the building.

14. In terms of the direction issued by this Court, the University College of Engineering, Kakinada, Jawaharlal Nehru Technological University, Kakinada, submitted report on 06.08.2015. On evaluation of the technical parameters of the structural stability of the subject building, this report also holds that the subject building is in severe dilapidated condition and is not safe for living and should be demolished.

15. Thus, the two structural reports by two eminent institutions hold that the building is severely in dilapidated condition and building has to be demolished. Thus, I do not see any irregularity or illegality in the GVMC in issuing notice dated 22.05.2015 for demolition of the subject building. I see no merit in the contention urged by the 4th respondent.

16. The GVMC is directed to take immediate steps to demolish and remove the debris of the subject building, by taking all precautions; ensure that demolishing the building does not impact the adjacent buildings; cordon the area at the time of demolition; and put up warning sign boards. Before taking up demolition work, the GVMC

shall permit the 4th respondent to remove all his belongings.

17. Learned counsel for the 4th respondent further contends that the 4th respondent cannot be evicted from the subject premises; that aggrieved by the illegal eviction by owner of the building, the 4th respondent instituted O.S.No.49 of 2015 which is pending on the file of the Principal Junior Civil Judge, Visakhapatnam and injunction order is granted in favour of the 4th respondent. For the purpose of demolishing the structures and removing the debris, 4th respondent has to be evicted. In fact, possession of the building was taken over by GVMC in pursuant to the direction of this Court dated 17.07.2015. However, it is made clear that such eviction cannot affect the claim of 4th respondent vis-à-vis the owner of the building and all other incidental issues relating to tenancy that are the subject matter of O.S.No.49 of 2015 and this Court has not expressed any opinion regarding *inter se* dispute between the 4th respondent and the owner of the subject premises and dismissal of the W.P.no.19638 of 2015 do not come in the way of the 4th respondent prosecuting his grievance.

18. Accordingly, the W.P.No.19638 of 2015 is dismissed and W.P.No.19503 of 2015 is disposed of. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petitions shall stand closed.

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JUSTICE P.NAVEEN RAO

Date: 26.10.2015

Note:
Issue C.C. by three days.

B/o.

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION Nos.19503 and 19638 of 2015

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