

**IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA
PRADESH**

W.A.Nos.243 AND 280 OF 2015

W.A.No.243 OF 2015

Between:

Mr.Dharmender Jain

....Appellant

A n d

The State of Telangana,
Rep. by the Principal Secretary,
Municipal Administration,
Secretariat, Hyderabad
and others

....Respondents

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W.A.No.280 OF 2015

Between:

Mr.Manoharlal U.Rohra

....Appellant

A n d

The State of Telangana,
Rep. by the Principal Secretary,
Municipal Administration,
Secretariat, Hyderabad
and others

....Respondents

DATE OF JUDGMENT PRONOUNCED: 28.07.2015

SUBMITTED FOR APPROVAL:

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT**

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | Yes/No |
| 3. | Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

**HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND**

THE HON'BLE SRI JUSTICE S.V. BHATT

W.A.Nos.243 and 280 OF 2015

PC: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

Heard learned counsel for the parties.

The appeals are directed against the common order dated 30.01.2015 in W.P.Nos.1330 and 1332 of 2015. The writ petitioners are appellants. The issue arises under the Hyderabad Municipal Corporation Act, 1955.

The appellants challenge notice No.455/DIL/TP-18/2014 dated 13.01.2015 of the 3rd respondent. Through the impugned notice, the 2nd respondent directed vacation/removal of the existing building as the building is in dilapidated and not safe for human habitation. Through the order dated 30.01.2015, the learned Single Judge, after taking note of the case of writ petitioners and the respondents, held as follows:-

“Though, the learned counsel for the petitioners stated that petitioners were asked to produce structural stability certificate, but they have not chosen to file anything and when the owner approached the said authority, inspection was done and recommended for demolition of the building and report is also made by Professors in Civil Engineering, JNTUH College of Engineering on 15.12.2014. However, this Court cannot decide whether the building is structurally stable or whether it endanger the lives of the people occupying the same and also neighbours and passers by. It is for the technical team to assess the same. The Engineering Department of Municipal Corporation as well as experts in the relevant field from JNTUH, clearly opined that the building is in dilapidated condition and it will endanger the lives of the people and that the building is 70 years old. This Court cannot go into the opinion given by the experts in the relevant field by exercising the power under Article 226 of the

Constitution of India and it is for the technical experts to decide the said issue. Inspection team as well as experts from Jawaharlal Nehru Technological

University opined that building occupied by petitioners is in dilapidated and dangerous condition. There is no reason to disbelieve the said reports. No mala fides are attributed. This Court cannot conduct roving enquiry into the said aspect. This Court cannot also postpone the demolition of the structure extending the time against experts' opinion as the same will affect lives of people".

Hence, these appeals.

This Court, through order dated 24.03.2015, with a view to having another opinion on structural soundness of the subject premises, directed as follows:

"Issue pre-admission notice to the 5th respondent.

The matter to appear on 31.3.2015.

In the meantime, the Municipal Corporation shall not take up demolition immediately. However, in the event, any action is required under Section 456(3) of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act'), then such action may be taken upon intimation to the owner and occupier and neither the owner nor the appellant shall prevent and obstruct the officials from taking action under Section 456(3) of the Act. We make it clear that in the event, any casualty takes place, then it may be at the risk and cost of the appellant in civil and criminal side. If any accident occurs, meaning thereby, if any loss of life or property is caused by sudden collapse of any portion of the building, then obviously, the appellant will be liable for legal action. In the meantime, it will be open for the Municipal Corporation to obtain an independent expert opinion from an institution of repute at the cost of the appellant about the structural and otherwise stability and usability of the building in question".

The parties have placed on record the structural soundness report from Osmania University. The relevant portion of the report reads thus:

"With reference to your letter of request cited above, we have inspected the said building (Anand Bhavan Hotel Building at R.P.Road, Hyderabad) on 12.06.2015 at 3.00 P.M. The members of our technical team include Prof.N.Murali Krishna and Prof.V.Bhikshma of the Civil Engineering of Department, University College of Engineering, Osmania University. Our team members were accompanied at the site by the owner of the building

Mr.P.V.Ranveer and others.

The building under interest is a very old building of two storey height constructed in lime cement mortar masonry with madras terrace roof. The building is a load bearing structure. There is no access to inspect the condition of the foundation of the building. As the building is made only in lime cement motor, it is not congenial for the present day Non Detective Testing methods to test the material strengths. Hence, the inspection is confined to visual scrutiny only. Following is the text of our opinion based on the inspection and the information furnished at the site.”

The learned counsel for the appellants vehemently assails the method and manner of inspection either by the Jawaharlal Nehru Technological University, Hyderabad (JNTUH) or the Department of Civil Engineering, Osmania University, primarily on the ground that the inspections have been carried out behind the back of appellants and the same is not binding on the appellants and such report ought not to be forming basis for further decision under Section 456 of the Act. According the learned counsel, the structure is safe enough and there is no need to demolish the same.

We have taken note of the contentions of learned counsel for appellants and perused the material available on record.

The learned Single Judge, having recorded a finding that the controversy between the parties is examined by experts and that the experts have opined on the debility of the building, declined to exercise the jurisdiction under Article 226 of the Constitution of India. As a few procedural objections are stated against the manner of collection on the report from the JNTUH, this Court considered it appropriate to have yet another report on the structural soundness of subject building. Once the appellants have accepted for such a course and report is made available by the Osmania University, reinforcing the view expressed by the JNTUH, we are of the view that this Court against notice issued under Section 456 of the Act cannot sit in appeal, examine the structural soundness and accept the plea of the appellants. The material available on record does not warrant further scrutiny of the case.

The writ appeals are dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

ACJ

DILIP B. BHOSALE,

S.V.BHATT,

J
Date: 28.07.2015
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