

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.37220 of 2016

ORDER:

This writ petition is filed by the petitioner seeking a *Mandamus* declaring the action of the 2nd respondent in issuing notice under Section 456 of the HMC Act in Roc.No.3209/2013/G1, dated 24.10.2016 as illegal and arbitrary and consequently direct the 2nd respondent not to interfere with the possession of petitioner in respect of residential house bearing No.78-11-1/2, Motheyvari Old Building, Eastern Street, 8th Division, Eluru, West Godavari District.

2. Heard Sri Krishna Kishore Kovvuri, learned counsel for the petitioner and the learned Government Pleader for Municipal Administration (AP) representing the respondent-authorities.

3. The specific contention of the learned counsel for the petitioner is that the impugned notice dated 24.10.2016 under Section 456 of the HMC Act has been issued at the instance of the 3rd respondent who is none other than the brother-in-law of the petitioner and that though in the said notice dated 24.10.2016 the respondent-authorities referred to inspection said to have been conducted over the petitioner's property by their engineering staff, no such assessment report has been made available to the petitioner. The learned counsel would also submit that there are disputes between the petitioner and the 3rd respondent and the 3rd respondent, with the intention to develop the property through real estate agents, had influenced the respondent-authorities to issue the impugned notice and that the building is strong and sturdy

and it is not in ruinous condition satisfying the conditions specified under Section 456 of the HMC Act necessitating pulling down of the structure.

4. The learned counsel appearing for the respondent-authorities opposed the writ petition.

5. In any view of the matter, the argument of the petitioner at this stage cannot be brushed aside, especially considering the orders of the civil Court in O.S.No.96 of 2013 on the file of the learned Principal Junior Civil Judge, Eluru. However, one aspect of the matter which needs to be considered is that before the civil Court, though various documents have been marked, the crucial document, viz., assessment report of the engineering department was not marked and as such, there was no cause for the Civil Court to consider the structural stability or the condition of the building. As the respondent-authorities have asserted in the impugned notice dated 24.10.2016 that the engineering staff has inspected the building, it is but fair that the said assessment report should be furnished to the petitioner, so as to enable her to submit her explanation and if need be there, by obtaining third party engineering opinion with respect to the stability of the building.

6. This Court also notices that Section 459 of the HMC Act mandates that an opportunity must be given to the petitioner before initiating any action under Section 456 of the HMC Act. Inasmuch as there was no opportunity given to the petitioner before issuing the impugned notice dated 24.10.2016, the respondent-authorities shall furnish a copy of the assessment

report of the engineering staff with respect to the stability of the structure to the petitioner and give her an opportunity to submit her explanation, if she so chooses. Till the said exercise of furnishing a copy of the engineering assessment report to the petitioner; submission of explanation by the petitioner; and passing of the final orders after considering the explanation offered by the petitioner is completed, no precipitative action of pulling down the structure shall be taken by the respondent-authorities. However, in the interregnum period if any untoward incident happens, the petitioner shall be solely responsible for any damages that may be caused to the life and limb of themselves or to any third party. This entire exercise shall be completed with a period of eight (08) weeks from the date of receipt of a copy of this order.

7. The Writ petition is disposed of accordingly. There shall be no order as to costs. As a sequel, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

31st October, 2016

Note:-

Furnish C.C. by 02.11.2016

(B/O)

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