

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

WRIT APPEAL NO.1177 AND 1218 OF 2016

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

These two appeals, one by the tenants and the other by the landlord, are preferred against the common order passed in WP.Nos.20108 and 34551 of 2016 dated 24.10.2016 whereby, while setting aside the notice issued under Section 456 of the GHMC Act in respect of building No.4, the learned Single Judge granted the appellants herein two weeks' time to vacate buildings 1 to 3 holding them solely responsible for all consequences, both civil and criminal, in case any untoward incidents were to happen; and left it open to the Municipal Corporation to carry out the task of demolition of building Nos.1 to 3 either by itself or by the owner/tenants.

The present case has had a chequered history and, as the facts have been narrated in detail in the order under appeal, it is wholly unnecessary for us to refer to them again in this order. Suffice to note that, in the order passed by the Learned III Additional Senior Civil Judge, Vijayawada in CMA.No.41 of 2015 dated 16.02.2016, the appellants were directed to obtain a structural stability report of the scheduled buildings from Jawaharlal Nehru Technological Institute, Kakinada (JNTU), if there was no possibility for them to approach the Siddhartha Engineering College, Vijayawada, after conducting structural stability tests like (1) NDT Test scientifically with sophisticated

instruments; and (2) tests to know whether there were methods of strengthening of the same, if it was weak. Thereafter, the Learned Additional Senior Civil Judge directed the appellants herein to submit the test report to the Municipal Corporation within four weeks from the date of receipt of the order, and the Municipal Corporation was directed after receipt of the report to reconsider the matter, and pass reasoned orders. While making it clear that, if the appellants failed to obtain a report, the Municipal Corporation could proceed in accordance with law after putting them on notice, the learned Additional Senior Civil Judge held that, if any untoward incident happened, the appellants would be personally responsible till the report of the JNTU is filed before the Municipal Corporation.

Pursuant thereto, the JNTU conducted a physical inspection of the building and, in its report dated 23.04.2016, observed that NDT is a tool to assist assessment of the structure, and was not a true index of strength; it could not be adopted on surfaces which are irregular or dilapidated; it could not be used on parts of the structure which had internal moisture which could not be assessed; it could not be used as reliable index in case of old structures, which were above normal age for which the structure is designed; the existing structure was about 90 years old, which could not be assessed based on NDT; and, hence, visual inspection of various components of the structure, starting from slabs, beams, masonry walls, strip footings, structural modifications during life time, structural repairs, faulty construction techniques, deterioration associated with poor maintenance like pooling of water, chocking of drain

pipes and mainly load carrying capacity and load path could be assessed. The report also records that the age of the building under consideration was a huge negative factor to which serious consideration needed to be given.

Thereafter, the report records the inspection team having taken up physical inspection of all the four buildings. The first building is a Madras terrace construction. With respect thereto, the JNTU report records that the said building was in a critical state and could collapse leading to loss of life. With regards the fourth building, which is an asbestos roofed single storeyed structure, the report states that the said building was not connected with the old building, and was safe structurally. In so far as building Nos.2 and 3 are concerned, which are RCC roofed structures, the report notes that it was unsafe to utilise the building as the supporting structure of the building would be in a critical state in view of the age of the structure; it was not safe to utilise these buildings as a few parts of the building may collapse leading to loss of life as it was supported on brick pillars which are not safe to withstand vibrations associated with traffic; the strengthening/retrofitting/rehabilitation/rehabilitating methods in practice may not give the desired results due to age, and also the type of construction; the only alternative was unloading the structure by complete removal of first floor of the building; and this suggestion could not be extended to the Madras terraced portion of the building in view of the deterioration of wooden rafters. On receipt of the JNTU report, the Municipal Corporation issued a final notice dated 03.10.2016 calling upon the appellants herein to vacate the

premises within 24 hours so as to dismantle and demolish the building.

Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the appellants, would fault the report of the JNTU contending that the order passed by the Additional Senior Civil Judge in CMA.No.41 of 2015 dated 16.02.2016, requiring the JNTU to conduct an NDT test, is mandatory; and the learned Single Judge had erred in treating such a direction as directory, more so when the said judgment, *inter parties*, has attained finality. The order of the learned Additional Senior Civil Judge, in CMA.No.41 of 2015 dated 16.02.2016, shows that the JNTU was requested to conduct structural tests like the NDT test. Neither was JNTU directed to conduct only the NDT test, nor could any such direction have been passed, for the nature of the test to be conducted are better left to those with the necessary expertise in this regard to determine. As referred to hereinabove, the report of the JNTU records that the NDT test could not have been conducted for the reasons mentioned therein. We find no merit in the submission of Sri Vedula Venkataramana, learned Senior Counsel, that no action for demolition of the subject buildings could have been undertaken based on the JNTU report, as the NDT test was not conducted.

As noted hereinabove, while setting aside the order passed by the Municipal Corporation dated 03.10.2016, with respect to the asbestos roof building, the learned Single Judge upheld the order in so far as building Nos.1 to 3 were concerned, and gave the appellants two weeks' time to vacate the premises. We find no error in the order of the learned Single Judge in so far as the

building with Madras Terraced roof is concerned. Since the appellants continue to remain in occupation thereof, it would suffice to extend the time granted by the learned Single Judge, for the appellants to vacate the premises, by one more week from today. If the appellants fail to voluntarily vacate the Madras terraced roofed building within the aforesaid period of one week, the Municipal Corporation shall forcibly evict them from the premises to give effect to its earlier order dated 03.10.2016.

In so far as the two RCC roof structures (building Nos.2 and 3) are concerned, the JNTU report suggests that, if the first floor of the building is removed, it is possible for the building to be utilised. Sri Vedula Srinivas, learned counsel for the landlord, would submit that paragraph Nos.1 to 4 of the JNTU report, which relates to these two buildings, should be read in its entirety, and paragraph No.4 ought not to be read in isolation. According to the Learned Counsel, the stray observation in the report, that unloading the structure by complete removal of the first floor of the building may enable the building to be utilised, should be ignored as both these buildings were found by the JNTU to be structurally unsound. It would be wholly inappropriate for us to interpret the JNTU report in the manner suggested by the Learned Counsel appearing on either side, as these are all matters for experts in the field to determine, and Courts are ill-equipped to decide such issues as they lack the necessary expertise in this regard.

We consider it appropriate, therefore, to direct the appellants herein to vacate the ground floor of both the RCC

roofed buildings within two (2) weeks from today. The Municipal Corporation shall keep the ground floor of the RCC roofed structures under lock and key, and shall ensure that no person enters the ground floor of these buildings except in connection with the exercise being undertaken for demolition of the first floor. The entire exercise, of demolition of the first floor of the building, shall be completed within a period of ten (10) days from the date on which the appellants either vacate the premises or are made to vacate the premises by the Municipal Corporation. After the first floor of the building is demolished in its entirety, the appellants herein shall be intimated by the Corporation of the demolition exercise having been completed and, within three (3) days of such intimation, the appellants shall approach the JNTU, along with an application and making payment of the prescribed fee. They shall request the JNTU to cause an inspection of the ground floor of these two buildings. The JNTU shall, on the appellants complying with the aforesaid, cause inspection of both these buildings, and submit its report to the Municipal Corporation within ten (10) days from the date on which the appellants make an application to them for inspection. On receipt of the report from the JNTU and, if the ground floor of both the RCC roofed buildings are found to be fit for occupation, the Municipal Corporation shall permit the appellants to re-occupy the building. If, on the other hand, the report discloses that the building is unsafe, the Corporation shall put the appellants on notice, give them an opportunity of being heard, and thereafter take action for demolition of both the buildings in accordance with law. In the event, the building

is considered unsafe by the JNTU, the Municipal Corporation shall not permit the appellants to occupy the buildings, and shall retain possession thereof, and take necessary action under Section 456 of the GHMC Act.

With regards building No.4, i.e. asbestos roofed single storeyed structure, Sri Vedula Srinivas, learned counsel for the landlord, would draw our attention to the order passed by the learned III Additional Senior Civil Judge in CMA.No.41 of 2015 dated 16.02.2016 whereby the tenants were directed to obtain structural stability reports either from the JNTU, Kakinada or from the Siddhartha Engineering College, Vijayawada. In the said order, the Learned III Additional Senior Civil Judge observed that, as per the revised Seismic Zonal Regulations of IS Code 1893, it was necessary to examine whether the building could sustain an earthquake. It is neither the case of the tenants nor that of the landlord, or for that matter of the Vijayawada Municipal Corporation, that, apart from this building, all other surrounding buildings, located in Governorpet, Vijayawada, are earthquake proof/resistant. The subject building is said to be located in a busy commercial area of Vijayawada, and vulnerability of buildings to earthquake is unlikely to vary from one building to another in the same area. The subject building cannot be singled out for demolition after conducting a test to determine whether or not it is earthquake resistant. When we asked Sri Vedula Srinivas, learned counsel for the landlord, as to when Vijayawada suffered an earthquake, learned counsel would fairly state that, to the best of his recollection, there has never been an earthquake in Vijayawada.

Even otherwise, any exercise being undertaken for demolition of buildings on the ground that they are earthquake prone, must be uniform, and cannot be building specific. Suffice it to leave it open to the Municipal Corporation, if it so chooses, to determine whether all or some of the buildings in Vijayawada are earthquake prone and, if so, to take uniform action for demolition of such structures in accordance with law.

We are satisfied that this asbestos roofed building cannot be singled out for seismic evaluation, and demolished on this ground. We see no reason, therefore, to interfere with the order of the learned Single Judge, setting aside the order passed by the Municipal Corporation with regards the asbestos roofed building. It is made clear that on a notice being issued by the Municipal Corporation, after receipt of the report from the JNTU as aforementioned, it is open to either of the parties to avail their legal remedies. Both the appeals are disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

17th November 2016

NOTE: Issue CC by Tuesday
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