

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

—
CIVIL REVISION PETITION No.805 OF 2015

ORDER:

Heard the learned counsel for petitioner and the learned counsel for respondents 2 and 3.

2. The plaintiff in O.S.No.1532 of 2014 on the file of the Court of the Principal Senior Civil Judge, Vijayawada (for short, trial Court) is the petitioner herein. He filed the said suit seeking permanent injunction restraining the defendants (respondents herein) from interfering in any manner with the demolition under the guise of a notice dated 18.07.2013 issued by the first respondent herein in Roc.No.Nil under Section 456 of the Hyderabad Municipal Corporation Act, 1955. In the said suit, the petitioner filed I.A.No.52 of 2015 seeking appointment of an Advocate Commissioner in order to note down the physical features of the suit schedule property, the structures and the strength of the structures with the assistance of a qualified Civil Engineer.

3. It appears that after issuance of the said notice dated 18.07.2013, the petitioner filed W.P.No.22072 of 2013 and obtained an order of stay dated 07.08.2013 with a direction to get the opinion of Industrial Consultancy Services, University College of Engineering, JNTU, Kakinada, who submitted a report dated 27.08.2013. But, the said report was disputed by the fourth respondent, and at his request, a re-inspection was ordered by the Industrial Consultancy Services, University College of Engineering, JNTU, Kakinada and to submit its report to the Court in a sealed cover. A report on structural stability was submitted on 19.12.2013 and subsequently the petitioner withdrew the said Writ Petition on 21.10.2014. Thereafter, another notice was issued by the first respondent.

4. A counter-affidavit was filed in I.A.No.52 of 2015 by the first defendant stating that no application was filed by the plaintiff seeking

permission to avail appropriate remedy and also disputed the strength of the structure. Respondents 2 and 3 also filed separate counter-affidavits opposing the application. The trial Court dismissed the said application, by order dated 24.02.2015, observing as follows:

“6. It is argued by the counsel for the plaintiff that there are two conflicting reports before this Court, so to know which report is correct one and to note down the physical features of the Plaint Schedule Property, there is nothing wrong in appointing an Advocate Commissioner to note down the physical features of the suit property. I have gone through the second report which is dated 19.12.2013 and on that day when the engineering people of the J.N.T.U Kakinada inspected the premises all the parties were present and they took the photographs and analyzed the structures and those photos were also enclosed to their report. Even if the Advocate Commissioner is appointed at best he can take the photographs and he can just imagine or assess the age of the building and whether there is any necessary for demolition or not? He may also take the assistance of any other civil engineer but no purpose could be served because already the expert committee i.e., Industrial Consultancy Services department of civil engineering, university college of engineering J.N.T.U. Kakinada has inspected the premises thoroughly and they made their clean observations as to structural stability of the said building so I feel that there is no need to appoint any other advocate Commissioner to note down the physical features of the property. Hence petition is dismissed.”

5. It is clear from the above facts that two reports were submitted by the Industrial Consultancy Services, University College of Engineering, JNTU, Kakinada and an Advocate Commissioner cannot be appointed for obtaining another report, as he can only inspect the suit premises and note down the physical features.

6. In the circumstances, the order of the trial Court dated 24.02.2015 is correct and it does not warrant any interference. Accordingly, the Civil Revision Petition is dismissed. Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 04.01.2016
TJMR