

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

WP.No.26350 of 2016

ORDER :

The petitioner has filed this Writ Petition challenging the high-handed and illegal demolition of petitioner's shop, viz., M/s.Vijayawada Books & Stationery, situate at Door No.29-36-4, Museum Road Cross, Eluru Road, Vijayawada, by respondent nos.2 and 3.

2. The subject premises belonged to the mother of one Viricherla Lakshmikantha Rao, and is an extent of 1,246 Square Feet, consisting of two floors. The petitioner herein is tenant of a shop, which is in the first floor with plinth area of 100 Square Yards, under a lease agreement entered into with the mother of Viricherla Lakshmikantha Rao in the month of September, 2008 for a period of three years on a monthly rent of Rs.6,500/- per month. According to petitioner, this was modified to Rs.10,350/- per month under another lease deed dt.06.03.2010, and an advance of Rs.50,000/- was paid to the landlord. The petitioner contends that the landlord died and her son inherited the property, and the petitioner continued in possession thereof as a tenant.

3. The petitioner contends that since the landlord was harassing petitioner for higher rents and was attempting to dispossess petitioner

from the subject shop, the petitioner filed O.S.No.11 of 2013 before the VI Additional Senior Civil Judge, Vijayawada for a permanent injunction and obtained an interim injunction on 27.02.2013 against him.

4. The petitioner contends that the 4th respondent purchased the premises from the said Viricherla Lakshmikantha Rao, and got issued a notice under Section 456 and 459 of the Greater Hyderabad Municipal Corporation Act, 1955 [for short, 'the Act'] on 15.07.2016, which was served on petitioner on 16.07.2016. The said notice disclosed that a Non-Destructive Test was conducted by the staff of the Civil Engineering Department, Siddhartha Engineering College, Vijayawada on 26.09.2015, and allegedly after inspecting the premises, a report had been submitted by the said college to 1st respondent that the building in question is in a dilapidated condition and requires to be demolished. The said final notice dt.15.07.2016 directed the petitioner to vacate the subject premises within three (03) days, and in default, stated that 2nd respondent would demolish it.

5. The petitioner contends that the notice dt.15.07.2016 was served on the petitioner on 16.07.2016 which was a Friday and the demolition took place on 18.07.2016, the following Monday, and no opportunity was given to petitioner to either question the said order or to shift his business elsewhere, and this resulted in huge loss to petitioner.

6. The petitioner contends that there was no prior notice as mandated by Section 459 of the Act, and straight away final notice has been issued. It is further contended that even sub-Section (3) of Section 456 of the Act directs the 2nd respondent to issue a notice to petitioner, but without following the due procedure and without getting an joint inspection done under Section 460 of the Act, on 18.07.20916, the staff of 2nd respondent demolished the building in which petitioner's leased shop is located. The petitioner contended that the said act of 2nd respondent is arbitrary and illegal, and cannot be countenanced.

7. Counter-affidavit was filed by 2nd respondent denying that any statutory rule has been violated. The 2nd respondent contended that during weekly interaction with general public he received complaints regarding the safety of the subject building; that subsequently, building inspectors inspected the building and found it to be in a dilapidated condition; that notices under Section 456 and 459 were got issued to the owner of building and to two tenants (other than the petitioner) on 22.06.2015 directing them to take measures to either vacate the subject premises or to take steps to strengthen the structure under supervision of a empanelled structure engineer; that petitioner's shop was closed on 26.06.2015 and also on 27.06.2015, and a notice dt.22.06.2015 was affixed on the shutter of petitioner's shop; a report dt.26.09.2015 was obtained from the staff of the Civil Engineering Department, Siddhartha Engineering College, Vijayawada; and on the

basis of the said report, a decision was taken to demolish the structure in question. It is contended that the owner of tenants including the petitioner did not take any steps to strengthen the structure of the building, that petitioner was aware of the bad condition of the building, and that after issuing the notice dt.15.07.2016, the premises was demolished. It is stated that the petitioner was given an opportunity to remove his books and other articles on 19.07.2016 and only thereafter the demolition took place.

8. Reply-affidavit was filed by petitioner refuting the above stand of 2nd respondent. The petitioner reiterated that there is no reference to complaints made by general public in the final notice dt.15.07.2016 served on the petitioner on 16.07.2015, and there was no prior notice or intimation with regard to the inspection of the building. He denied that the building is in a dilapidated condition and reiterated that the demolition was done only at the instance of 4th respondent. He contended that the notice dt.22.06.2015 was not given to petitioner and there was no affixture of the said notice dt.22.06.2015 on the shutter of shop of petitioner. According to him, no notice was given to him at the time of the alleged inspection by the staff of the Civil Engineering Department, Siddhartha Engineering College, Vijayawada and the report dt.29.09.2015 was also not furnished to petitioner. Petitioner alleged that the petitioner was not present at the time of demolition of the premises, and by the time he reached the premises 75% of the demolition had been completed and that when

this action was questioned by petitioner, the 2nd respondent left the spot on account of heavy rain and completed the demolition on the next day. He alleged that the stock of petitioner, which had been loaded by respondents in their vehicle, was damaged due to heavy rain and therefore, prayed that compensation be awarded to petitioner.

9. From the facts narrated above, it is clear that petitioner is alleging that the demolition was done without conforming to the procedure prescribed in the Act and at the instance of 4th respondent only, while the 2nd respondent asserts that he has followed the procedure prescribed under the Act.

10. According to 2nd respondent, initially a notice dt.22.06.2015 was issued after noticing that the structure in question was in a dilapidated condition, but the same was not served on petitioner since his shop was closed on 26.06.2015 and 27.06.2015; and after obtaining a technical report from the Civil Engineering Department, Siddhartha Engineering College, Vijayawada on 26.09.2015 the building in question was demolished after serving notice dt.15.07.2016 on 16.07.2016 on the petitioner.

11. The learned Standing Counsel for 2nd respondent placed reliance on Section 630 of the Act, and contended that the respondents had complied with the manner of service of notice under Section 630 of the Act.

12. Section 630 of the Act states :

“630. Service how to be effected on owners of premises and other persons : -

When any notice, bill, schedule, summons or other such documents is required by this Act, or by any regulation or bye-law made under this Act, to be served upon or issued or presented or given to any person such service, issue or presentation shall except in the cases otherwise expressly provided for in Section 657 be effected –

(a) by giving or tendering to such person the said notice, bill, schedule, summons or other documents; or

(b) if such person is not found, by leaving the said notice, bill, schedule, summons or other documents at his last known place of abode in the city or by giving or tendering the same to some adult male member or servant of his family; or

(c) if such person does not reside in the City, and his address elsewhere is known to the Commissioner by forwarding the said notice, bill, schedule, summons or other documents to him by post under cover bearing the said addresses; or

(d) if none of the means as aforesaid be available by causing the said notice, bill, schedule, summons or other documents to be affixed on some conspicuous part of the building or land, if any, to which the same relates.” (emphasis supplied)

13. Section 630 of the Act, no doubt, mentions that service of notices under the Act could be made by affixture on conspicuous part of a building or land as one the modes of service of notices. But, as can be seen from the above provision, it can only be resorted to if the other means mentioned in Clauses (a), (b), & (c) of the said provision

were tried and notice could not be served on a person affected such as the petitioner.

14. Admittedly, there is an intervening gap of more than a year between issuance of notice dt.22.06.2015 by 2nd respondent and the final notice dt.15.07.2016 issued by 2nd respondent. Assuming for the sake of argument, without admitting that the shop of petitioner was closed on 26.06.2015 and 27.06.2015, it is not the case of 2nd respondent that for the entire intervening period between those dates and 15.07.2016 (when the final notice was issued) i.e., more than one year, the shop of petitioner was not open and there was no way for the 2nd respondent to communicate to petitioner about its intention to demolish the premises under Section 456 of the Act.

15. It is not the case of 2nd respondent that the 2nd respondent was unaware of the place of residence of petitioner or the business premises of petitioner, and it was disabled from serving the said notice dt.22.06.2015 on the petitioner by registered post or ordinary post or on a servant or employee of petitioner on any date subsequent to 27.06.2015 (and before 15.7.2016). There is no averment by 2nd respondent that the methods of service in clauses (b) and (c) of Sec.630 were tried and since they failed, they resorted to the mode in clause (d) of sec.630 which permitted service of notice by affixture on the shutter of petitioner's shop.

16. Also there is no material placed by 2nd respondent in the form of an affidavit on any employee of the 2nd respondent about affixing the notice dt.22.06.2015 on the shutter of petitioner.

17. Moreover, though the counter of 2nd respondent states that there were inspections done by its employees as well as the staff of the Civil Engineering Department, Siddhartha Engineering College, Vijayawada, no material is placed by 2nd respondent to show that any such inspection was preceded by a notice to petitioner about such inspection. It is also not stated by 2nd respondent that copy of the report of Civil Engineering Department, Siddhartha Engineering College, Vijayawada, dt.26.09.2015 was furnished to petitioner. Thus there is a clear violation of principles of natural justice.

18. Having secured such reports behind the back of petitioner and without furnishing the same to petitioner, the impugned notice dt.15.07.2016 has been served on petitioner on 16.7.2016 (a Friday), and the premises in question of the petitioner was demolished on 18.07.2016 (the following Monday). Thus the petitioner was denied even an opportunity to approach any forum for redress. The action of the 2nd respondent cannot be termed *bona fide*.

19. Having regard to the above conduct of 2nd respondent, I hold that that the 2nd respondent has not followed Sec.456 (1) or Section 630 of the Act and that it had demolished the premises leased to the

petitioner high-handedly, arbitrarily and in gross violation of the provisions of the Act and principles of natural justice.

20. Accordingly, the Writ Petition is allowed, and 2nd respondent is directed to pay compensation of Rs.50,000/- to petitioner and the said payment shall be made within a period of four (04) weeks from the date of receipt of a copy of this order. The petitioner is also granted liberty to approach the competent Civil Court seeking further compensation for the high-handed and illegal action of 2nd respondent in demolishing the premises leased to petitioner in gross violation of the provisions of the Act.

21. Miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-09-2016

Ndr/*