

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**
+ WRIT PETITION Nos. 20108 and 34551 of 2016

% **24th October, 2016**

W.P.No.20108 of 2016

K. Lalith Manohar

... Petitioner...

AND

\$ Vijayawada Municipal Corporation

... Respondent...

! Counsel for the Petitioner

: Sri Vedula Srinivas

^ Counsel for the respondent

: Sri R. Sudheer
Standing Counsel for
Respondent-Vijayawada
Municipal Corporation.

W.P.No.34551 of 2016

Bharath Khadi Bhandar and 20 others

... Petitioners...

AND

\$ The Municipal Corporation of Vijayawada
and another

... Respondents...

! Counsel for the Petitioners

: M/s. Bhardwaj Associates

^ Counsel for the 1st respondent

: Sri R. Sudheer
Standing Counsel for
1st Respondent-Vijayawada
Municipal Corporation.

^ Counsel for the 2nd respondent

: Sri Vedula Srinivas

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> Head Note:

? Cases referred:
2013 (3) ALT 11

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos. 20108 and 34551 of 2016

COMMON ORDER:

W.P.No.20108 of 2016 is filed by the petitioner-Owner of Kowtha Complex complaining in action of the Vijayawada Municipal Corporation, in demolishing the buildings in premises bearing Door Nos.28-5-10 at Besant Road and D.No.28-1-1, Eluru Road, Governorpet, Vijayawada, based on the report of structural stability report of the JNTU, Kakinada, dated 23.04.2016.

W.P.No.34551 of 2016 was filed by 21 entities, who are tenants of the owner, questioning the notice of the respondent-corporation, dated 03.10.2016 directing them to vacate the Kowtha Complex.

As both the Writ Petitions are interconnected and as the learned counsel appearing for the parties had requested for disposal of the main cases itself, both the matters were heard together and being disposed of by a common order.

For the sake of convenience, petitioner in W.P.No.20108 is referred to as 'owner' and the petitioners in W.P.No.34551 of 2016 are referred to as 'tenants' and the Vijayawada Municipal Corporation is referred to as 'Corporation'.

The facts for the purpose of these cases, in brief, are as follows:

The petitioner is the owner of the four structures, popularly known as 'Kowtha Complex'. Out of four structures three buildings were constructed sometime in 1920's and as of date about 95 years age, and 4th one is the independent structure of

asbestos sheets constructed sometime later. Petitioners 1 to 21 in W.P.No.35441 of 2016 are the tenants and conducting business in various merchandises. In July, 2013, the owner addressed a letter to the Corporation informing that the buildings in Kowtha Complex are old and dilapidated and they are unsafe for human habitation and occupation and in spite of their request tenants are not vacating the premises. The building may collapse at any time and may result in damage to life and limb of the occupants apart from causing damage to the people, who visit the shopping complex. In response to the request of the owner, the respondent Corporation, on the advice of the Director, Town and Country Planning, obtained a report from the Executive authority and based on the report dated 28.10.2013 directed the petitioner to obtain NDT test of the structures from the V.R. Siddhartha Engineering College, Vijayawada (in short "VRSEC"), who is authorised third party quality control agency to the Corporation, so as to take a decision in the matter. In compliance with the directions of the Corporation, owner approached the VRSEC, who provided a report dated 05.01.2015. In its report (VRSEC) opined that the building structures existing in Kowtha complex are unsafe, particularly on account of the structures being located in seismic Zone-III and also opined as the structures cannot be strengthened it is desirable to dismantle the structures immediately.

Basing on the report of the VRSEC, Notices under Section 456 of Hyderabad Municipal Corporation were issued by the Corporation to take steps to demolish the Kowtha Complex and for removal / for strengthening the building of the structures of the building in the interest of general public and neighbouring

residents, failing which the Corporation would undertake the same at risk and cost of the parties. Challenging the same, the tenants filed W.P.No.15012 of 2015 before this Court. The same came to be disposed of by giving four weeks time to the tenants to approach the JNTU, Kakinada, seeking structural stability report and submit their objections / explanation along with which shall be considered by the Corporation. It was further ordered that until final orders are passed by the respondent Corporation, no coercive steps shall be taken against the tenants. In compliance with the order in W.P.No.15012 of 2015, tenants approached the JNTU Kakinada. JNTU, Kakinada after inspection made a report dated 10.08.2015 with recommendations that buildings 1 to 3 are in critical state and they collapse leading to loss of life, and as the 4th structure is not connected with the main building, the same is structurally safe. The tenants also obtained two reports from one private engineering college in Ongole and one more from Dr. D. Ramaseshu, Professor, Structures Division Department of Civil Engineering, National Institute of Technology, Warangal, who opined that the structures are safe. After receipt of the JNTU, Kakinada report dated 10.08.2015 and in compliance with the orders of the Court in W.P.No.15012 of 2015, the Corporation issued final Notice under Section 456 of the Act to the owner and the tenants. After considering the explanation submitted on behalf of the tenants and after providing personal hearing, final orders were passed on 12.09.2015.

Questioning the said order dated 12.09.2015, appeals were filed before the learned III Additional Senior Civil Judge, Vijayawada, invoking Section 654 of the Act. Learned III

Addl.Senior Civil Judge, by orders dated 16.02.2016 passed judgment and decree directing the tenants once again to approach the JNTU, Kakinada with a request to conduct NDT test scientifically in the presence of tenants with sophisticated instruments and also conduct test to know whether there are methods for strengthening of the structures. After considering the test reports, the respondent-Corporation to pass reasoned orders and in the interregnum period if any untoward incident happens, the tenants shall be responsible. After taking into consideration of the report, the present impugned order dated 03.10.2016 is passed. Questioning the same W.P.No.34551 of 2016 is filed.

Sri Vedula Venkata Ramana, learned Senior counsel appearing for the tenants in a fair and candid manner submits that the entire issue revolves around the Corporation's compliance / non-compliance with the orders passed in appeal of the tenants under Section 654 of the Act, particularly, the objection with regard to the report of the JNTU Kakinada. It is the specific contention of the learned Senior Counsel that the JNTU, Kakinada had failed to conduct NDT test in spite of the specific direction by the learned Senior Civil Judge and thereby the report dated 23.04.2016 is nothing but the same old report of the JNTU, Kakinada dated 10.08.2015, which was found fault by the learned III Addl.Senior Civil Judge, in its order dated 16.02.2016. By drawing attention to the report of the JNTU, Kakinada, learned Senior Counsel contends that the report is based only on the visual inspection and not based on the NDT Test as directed, and as such the same cannot be the basis for the Corporation to come

to a definite conclusion under Section 456 of the Act that the premises is unsafe for occupation.

On the other hand, Sri Vedula Srinivas, learned counsel appearing on behalf of the owner contends that the reasons why NDT test is not a safe method in relation to the structures of the nature, which are in issue are elaborately set out in the report itself; that the report submitted by the JNTU, Kakinada is the report of the experts and the same requires to be given due weight and consideration; that the technical experts had categorically opined the structures in issue are not safe and the same may collapse at any time and as such order made based on the same is unassailable.

Sri R. Sudheer, learned Standing Counsel appearing on behalf of the Corporation submits that the sole and primary concern of the Corporation is the safety of the people, who visit the complex and also the neighbourhood. The Corporation was fair in all respects and the Corporation had to give utmost importance to the experts opinion, which in fact was obtained by the tenants themselves as ordered by this Court on earlier occasion. The experts had opined why the NDT Test is not reliable, especially with respect to the brick masonry structures. The said aspect was categorically stated by the expert committee of the JNTU, Kakinada in their report. In the absence of allegations of any *mala fides* the order of the Corporation, which is made under Section 456 cannot be found fault and being a public body a duty is cast on the Corporation to ensure the well being of the occupants, visitors and other public. Therefore, he prayed for dismissal of the Writ Petition.

Both the learned counsel Sri Vedula Srinivas and Sri R. Sudheer, placed reliance on the judgment of this court in **P.L. Lakshmi Vs. Greater Hyderabad Municipal Corporation and Others**¹ to support their contentions.

Having considered the respective submissions, at the outset it is not in dispute that the Corporation has power either to pull down the structure or directing the Owner / Occupants to pull down the structure which in its opinion is in ruins or likely to fall. In making an order under Section 456 of the Act, the Commissioner is required to form an opinion that a particular structure is in ruinous condition or likely to fall or is in any way dangerous to any person occupying, resorting to or passing by, such structure or any other structure or place in the neighbourhood. In the present case, the opinion formed by the Commissioner is based on the expert report of the JNTU, Kakinada. The principle contention of the learned Senior counsel is that this court in W.P.No.15012 of 2015 as well as the learned III Addl.Senior Civil Judge, Vijayawada in C.M.A.No.41 of 2015 categorically directed the NDT test to be conducted and there being no NDT test conducted as directed, the Corporation cannot rely on the JNTU Report for coming to the conclusion of a particular structure as is to be demolished or not, cannot be accepted for the reason the experts had categorically opined that the NDT test is more relevant with respect to the assessment of the concrete structures. Technical experts also categorically opined that NDT Test cannot be conducted with respect to brick masonry structures. It may be borne in mind that the objective of the

¹ 2013 (3) ALT 11

learned Senior Civil Judge was only to ensure obtaining a fair opinion with respect to the stability of the structures. The learned Senior Civil Judge's direction cannot be read as a mandatory direction, especially when the same is contrary to the settled engineering practices.

It is not in dispute that in the present case on hand the structures consist of brick masonry walls and the said brick masonry walls are load bearing walls, which have become weak over the time both on account of passage of time and also on account of non-maintenance. The experts had categorically opined that while setting out the nature of the non-destructive evaluation techniques had categorically opined that the rebound hammer test and the portable ultrasonic non-destructive testing are useful only for assessing the strength of concrete, but not brick masonry structures. On account of that the rebound hammer test method is not suitable method for ascertaining the strength in the structures in issue. From the practical perspective also the experts have categorically given their justification on taking up the visual inspection, which is also one of the methods of ascertaining the stability or otherwise of a particular structure. The reasons and justification why visual inspection is adopted cannot be found fault. In the present case, the reasons have been elaborately stated, wherein the experts have opined that *"No Non Destructive Evaluation can assess and ensure safety of the ancient Madras Terrace Construction with Moisture and Termite effected rafters, Repaired beams propped temporarily at several places in first floor. The ground floor is critical because of the in the event of collapse of*

first floor the transfer of the load is taking place through age old Masonry walls.”

It may be noted that it is not the objection of the tenants that from the technical experts point of view that the expert committee had not considered any relevant consideration and had taken into consideration of the irrelevant considerations. In those circumstances, the opinion expressed by the learned single Judge of this Court in **P.L. Lakshmi case (1 supra)** has to be given due weight and based on the same if an order is made under Section 456 of the Act, the same cannot be found fault. However, the contention of the learned Senior Counsel that the experts did not opine that the building No.4 is unsafe, deserves acceptance and in those circumstances, the order passed by the Corporation to the extent of building No.4 calls for interference.

In the context of exercise of powers by the Commissioner in terms of Section 456 of the Act, an absolute primacy is to be given to the opinion of the Commissioner except in exceptional circumstances where the power itself is being exercised *malafidely* or for extraneous consideration. In a given case, the physical condition of the state of the structures etc., as otherwise warrant immediate dismantling and removing the mere factor the action is initiated under Section 456 of the Act, at the instance of the land lord or any other person is not a relevant factor. It also cannot be said that a detailed investigation and technical evaluation is required to be carried out in every case before a structure is directed to be pulled down, the very purpose of entrusting the emergent powers in Section 456 of the Act would get defeated.

Section 456 of the Act provides for different modes of exercising the power depending on the facts arising in a particular case.

In the circumstances, writ petitions are disposed of, leaving it open to the Corporation to carry out the task of demolition of building Nos.1 to 3 either by itself or by the owner/tenants ensuring necessary precautions that are required to be taken in terms of Section 456 (2) of the Act. However, considering the fact that the tenants are in occupation, reasonable time of two weeks may be allowed for vacating the premises making it clear that if any untoward incidents happen in the interregnum period, tenants shall be solely responsible in all respects, both civil and criminal consequences.

Subject to the above, Writ Petition No.20108 of 2016 and Writ Petition No.34551 of 2016 are partly allowed to the extent indicated. There shall be no order as to costs.

Consequently, the miscellaneous Petitions, if any pending, shall stand closed.



CHALLA KODANDA RAM, J

Date:24.10.2016

Note: L.R. Copy to be marked.

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