

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.25138 OF 2015

ORDER

The prayer of the petitioner concern in this case was as under:

“For the reasons stated accompanying affidavit it is therefore prays the Hon'ble Court may be pleased issued to Writ Mandamus or any other appropriate order or orders by declaring action of the Respondents' more particularly Respondent No.2 in issuing notice vide No.21/2015 dated 24.07.2015 U/S 456 of HMC act 1955 has illegal arbitrary and Violate principle of natural justice in consequently direct the Respondent not interfere with the position of the property situated in D.No.31-1-59 Subash Road, Kakinada pass such order or orders as this Hon'ble court deem fit and proper in the circumstances of the case.”

Taking note of the complaint of the petitioner concern that it was not put on notice though it was in occupation of the building, this Court passed the following interim order on 11.08.2015.

“Notice before admission returnable in three (3) weeks.

The petitioner, claiming to be a tenant of the subject premises, challenges the notice issued under Section 456 of the Greater Hyderabad Municipal Corporation Act, 1955 (for short, 'the Act'), dated 24.07.2015. According to the petitioner, though he is a tenant and he is presently in occupation, no notice was served on the petitioner, but served on the owner of the property. The notice mandates vacation of the premises and removal of the house on the ground that it is in dilapidated condition and not useful for occupation and it is also dangerous for the neighbours and people passing through.

Learned counsel for the petitioner submits that no prior notice was given. In terms of the provisions contained in Section 459 of the Act, it is mandatory to issue notice to the occupants of the premises, but no such notice was issued.

According to the learned counsel for petitioner, the building is not in dilapidated condition. He is running a retail outlet in the said building. So far, no damage is caused to the building.

Prima facie, there is merit in the contention of petitioner.

Thus, petitioner shall not be displaced from the subject premises for a period of four (4) weeks. However, having regard to the apprehension expressed by the Municipal Corporation, I deem it proper to direct the petitioner to obtain a Structural Report on the stability of the building from Jawaharlal Nehru Technical University, Kakinada, and file it before this Court within a period of three (3) weeks from today.

Post after three (3) weeks for filing report.

In the meantime, the petitioner shall ensure that the subject property is maintained properly and that no harm is caused to the neighbours and the public passing through the premises. The petitioner shall be held personally responsible, if any such harm or damage is caused to the neighbours and the passers by.”

Pursuant to the afore-stated order, the Department of Civil Engineering, University College of Engineer, JNT University, Kakinada, furnished a report on 26.09.2015, wherein, after referring to various technical aspects of the matter, the following recommendations were made:

“Under the circumstances stated above and from the above detailed visual inspection of the building the following recommendations are suggested.

1. The ground floor of the Building is poorly maintained being very old construction it is suggested not to take up any modification or dismantling portion of the building which may lead to deterioration leading to failure of the building.

2. As the building served the purpose beyond its capacity no rehabilitation can be suggested as the modifications may lead to deterioration of the building.

3. Under circumstances stated above the committee opinions that the building served its age and It is not safe to take up any structural modifications and hence recommended to dismantle the building as it is in dilapidated stage.”

In the light of the afore-stated report of the technical experts, it is clear that the building occupied by the petitioner is not fit for habitation. As the experts put it beyond doubt that the building is beyond repair,

continued occupation of the same would pose a grave risk to the lives of not only those who occupy it but also passers by. As the only complaint of the petitioner concern was that it had not been put on notice and the steps that were initiated after the filing of this writ petition constitute sufficient notice to it of the seriousness of the issue and as the report of the technical experts was also procured through the process of the petitioner concern, this Court finds no reason to restrain the municipal authorities from taking appropriate action in the matter in the light of the afore-stated report. The Kakinada Municipal Corporation is therefore directed to take appropriate action in the matter in accordance with law based upon the technical report submitted by the University College of Engineering, JNT University, Kakinada.

The writ petition is disposed of with the above directions. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

29th FEBRUARY, 2016
PGS