

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.33836 of 2014

ORDER:

Sri M.V.Suresh for petitioner, Sri A.Panduranga Rao for 1st respondent and Sri T.V.S.Prabhakar Rao for respondents 2 and 3.

The petitioner challenges the order/notice in U.C.Roc.No.10361/2013-BO-VI, dated 21.08.2014 of 1st respondent and the order dated 08.10.2014 in C.M.A.No.13 of 2014 on the file of I Additional District Judge, Rajahmundry, as illegal, null and void and opposed to the principles of natural justice.

The petitioner herein along with six other tenants in the premises bearing Door No.32-1-114, K.V.R.Swamy Road, Rajahmundry filed W.P.No.36060 of 2013 questioning notice Roc.No.5547/2013-G1, dated 29.11.2013 issued by the 1st respondent herein, as illegal, arbitrary and null and void.

The notice impugned in W.P.No.36060 of 2013 reads thus:-

MUNICIPAL CORPORATION :: RAJAHMUNDRY

TOWN PLANNING SECTION

Notice under Section 456 of HMC Act 1955

Roc.No.5547/ 2013-G1

Dt: 29.11.2013

Circle-VI

Whereas it is brought to the notice of the undersigned, that the existing building bearing D.No.32-1-114, K.V.R.Swamy Road, Rajahmundry is in dangerous condition and likely to fall/collapse at any time due to the age of the building and weakened structural condition. Further the said building is partly damaged/ collapsed due to its over age. The public (or) private properties as well as lives of the inmates of the building (or)

surrounding people may pose to damage, if the building is collapsed suddenly.

In view of the above reasons, you are hereby directed to vacate the ruinous building immediately and pull down the said building within 7 days from the date of receipt of this notice to avoid any damage to the human lives of the inmates of the building and passers nearby. If you fail to do so, the Rajahmundry Municipal Corporation will take up the removal of the said building in public safety point of view as per the provisions of the HMC Act, 1955 and the expenditure incurred for such removal shall be recovered from you as per rules in force. Further, you are hereby informed that you will be held responsible for any damage caused to any public (or) private properties or human lives due to negligence in demolition of ruined structure.”

During pendency of W.P.No.36060 of 2013, at the instance of petitioners therein, the report on structural soundness of premises bearing No.32-1-114 was called for from the JNTU, Kakinada. The report dated 17.02.2014 has been received and the writ petition vide order dated 23.07.2014 was disposed and the operative portion reads thus:-

“Sri T. Balaswamy, Learned Counsel for the petitioner, would submit that the building is structurally sound; and the findings recorded, in the JNTU report to the contrary, are erroneous. It would be wholly inappropriate for this Court to sit in judgment, or examine the correctness or otherwise of the JNTU report dated 17.02.2014 in proceedings under Article 226 of the Constitution of India. As the said report discloses that the building is uninhabitable, I consider it appropriate to direct the 2nd respondent to forthwith have the premises sealed, and retain possession of the said building. The petitioners shall not be permitted to enter the said building till a final decision is taken by the 2nd respondent. The

impugned notice under Section 456 of the GHMC Act shall be treated as a notice under Section 459 of the Act. It is open to the petitioners to submit their reply to the said notice, as also their objections to the JNTU report, to the 2nd respondent within ten days from today. The 2nd respondent shall, within two weeks from the date of receipt of the petitioners reply, pass a reasoned order thereupon in accordance with law; and communicate the same to the petitioners. It is open to the 2nd respondent, thereafter, to take necessary action in accordance with law and, if need be, to demolish the subject structure. It is made clear that, in case the petitioners do not submit their reply within the aforesaid period of ten days, it is open to the 2nd respondent to proceed, pursuant to the Section 456 notice, and take action in accordance with law.”

The issue arises under Section 456 of the HMC Act, 1955 and the 1st respondent on being satisfied that the structures covered by Door No. 32-1-114 are likely to be collapsed at any moment has directed the occupants to vacate the premises and further directed dismantling the premises to ensure safety and security to the inhabitants of premises bearing No.32-1-114.

Sri Pandu Ranga Rao read out the report dated 17.02.2014 in detail and the report is taken note. The observations of the report dated 17.02.2014 are excerpted for immediate reference.

“Field Inspection of the Building

Observations

1. The building under preview was bearing door numbers 32-1-114 having two blocks. The construction block 1 is of the load bearing nature with Brick Masonry having 1’6” thick walls and Steel Meshed concrete roofing with supported on wooden rafters. The building is about 10.4 m in length and about 27m in width having 8 longitudinal bays and one bay to provide

approach to block 2. The ground floor houses a Jeweler show rooms and Garland Making shops with a spiral staircase provided at the end to access the first floor of the building. The first floor of the building is being utilized as residential building (Fig.1).

2. The construction block 2 is of load bearing nature with Brick Masonry having 1'6" thick walls and Madras terrace roofing with supported on wooden rafters. The building is about 12.5m in length and about 17.5m in width having rooms. The ground floor houses lodging rooms with a staircase provided at the end to access the first floor of the building. The first floor of the building was reported utilized as residential building. (Fig.9) The part of the building has collapsed and is in an abandoned state.

XXXXXXX

Visible signs of distress have been noticed inside as well as around the building as the building is in dilapidated stage.

XXXXXXX

Recommendations

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

1. The Building is very old partially dismantled and partially in dilapidated condition and served the purpose beyond its capacity. Being a 82 year old building without proper periodical maintenance, no rehabilitation can be suggested as the building is beyond the repairable state.

2. It is not safe to utilize Block 1 of the building (Front Portion) for any purposes as few parts of the building like shop 5 and front and rear corridors may collapse due to weak walls.

It is risky to enter Block 2 of the building (Rear Portion) as it is in a dilapidated state and may collapse without any warning."

In the present writ petition, the petitioner is concerned with

Shop No.7. The petitioner filed representation and the 1st

respondent communicated the notice/order impugned in the writ petition rejecting the objection.

The 1st respondent, after taking note of the report of JNTU and the representation of petitioner filed along with few other occupants, held as follows :-

“Keeping in view of the report submitted by the JNTU College of Engineering, Kakinada and orders of the Hon’ble High Court of A.P., Hyderabad, dt.23.07.2014, requisition letter from and other 4 petitioners to open the seal and take away the goods, I am in opinion that the building is very weak and is in dangerous condition and it may be harmful to the human lives of the inmates of the building, passers nearby and for the general public and it may collapse without any warning.

Hence, your requisition to withdraw the notice issued U/s.456 of HMC Act, 1955 is not considered and you are hereby instructed to vacate the shops and take away the goods immediately within 2 days from the date of receipt of this Notice, failing which the Rajahmundry Municipal Corporation shall take action for removal of the shop (dilapidated building) in view of the protection of human lives.”

The petitioner challenges the notice on several grounds including malafides in exercise of power by the 1st respondent.

Mr.M.V.Suresh challenges the findings recorded by 1st respondent in order/notice dated 21.08.2014 as unsustainable, but having regard to the report of JNTU, dated 17.02.2014 and the order passed by this Court in W.P.No.36060 of 2013 could not satisfactorily convince this Court to examine the objections raised

in the affidavit within the parameters of Article 226 of the Constitution of India for this Court at this stage ought not to sit as a Court of appeal on a technical aspect or jurisdiction of Corporation.

The 1st respondent filed counter affidavit stating that the petitioner along with others filed W.P.No.36060 of 2013 before this Court assailing the notice of demolition dated 29.11.2003 in respect of the building bearing D.No.32-1-114 situated in K.V.R.Swamy Street, Rajahmundry. The said writ petition was disposed of directing to treat the impugned notice therein as a notice under Section 459 of GHMC Act. This Court directed the 1st respondent to seal the premises so as to avoid loss of human life. Pursuant thereto, the building was put under lock and key and the petitioner is not carrying on business. This Court considered the report furnished by J.N.T.U. Kakinada about the structural stability of the building. No material is placed by the petitioner to assail the report given by JNTU, Kakinada. Except the petitioner, all other occupants have vacated the premises in their occupation and building to that effect was already demolished by the 1st respondent. The contention of the petitioner that the building is not in a dilapidated condition is incorrect.

From the material on record, I am satisfied that no exception to the order/notice is made out by the petitioner, except raising a few objections.

Sri M.V.Suresh by relying on the decision of the Apex Court in *SHAHA RATANSI KHIMJI AND SONS v. PROPOSED KUMBHAR SONS HOTEL (P) LTD AND OTHERS*¹ alternatively contends that even if the premises is to be demolished on the ground of being unsafe for occupation, still a few rights of the petitioner are protected and they may be left open for consideration at appropriate stage in appropriate proceeding by the Court.

I have perused the decision, referred to above, and noted the submission of the learned counsel for respondents 1 to 3, I am satisfied that this Court in the present writ petition is not considering the rights to which the petitioner herein is entitled to in law or under a precedent, hence there is no question of limiting such right while deciding the first grievance of petitioner. Therefore, the petitioner is always entitled to work out rights according to the principles laid down in the decision referred to above at appropriate stage in a duly instituted proceeding.

With the above observation, the writ petition is dismissed.

S. V. BHATT, J

Dt: 19.09.2017
Prv

¹ 2014 (5) ALD 181 (SC)

