

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

C.M.S.A.No.16 of 2016

J U D G M E N T:

This Civil Miscellaneous Second Appeal, under Section 287 of the Hyderabad (Greater Hyderabad) Municipal Corporation Act, 1955, (hereinafter, 'the Act'), is filed assailing the judgment and decree, dated 12.09.2016, of the learned Chief Judge, City Small Causes Court, Hyderabad, passed in M.A.No.155 of 2014, which was filed by the occupants/tenants of the premises bearing Municipal No.7-1-560 to 564 situated at Station Road, Secunderabad, having been aggrieved of the notice, dated 14.07.2014, under Section 456 of the Act, issued by the Commissioner, Greater Hyderabad Municipal Corporation.

2. I have heard the submissions of *Sri Damodar Mundra*, learned counsel for the appellant and of *Sri Chatla Madhu*, learned Standing Counsel for the 1st respondent/ Greater Hyderabad Municipal Corporation ('GHMC').

3. The case of the appellant, in brief, is as follows:

The appellant along with the 2nd respondent herein was and is carrying on business in the subject premises since several decades and they are paying the monthly rents regularly to the landlord. The premises in respect of which the impugned notice under Section 456 of the Act was issued was not inspected personally at any point of time by the Technical staff of the GHMC. The said notice was issued at the instance of the landlord for eviction of the tenants from the demised premises, through unlawful means. The notice issued by the Commissioner is bad in law as the same was issued in contravention of the principles of natural justice. The Commissioner ought to have taken into consideration the facts explained in the reply, dated 11.07.2013, given in response to the notice dated 18.06.2013 issued under Section 459 of the Act to the landlord. After issuance of notice under Section 459 of the Act on their landlord and upon payment of requisite fee of Rs.28,090/-, the appellant,

along with other tenants in the entire property, made an application to J.N.T.U., Hyderabad for issuance of 'structural stability certificate'. The report given by J.N.T.U., Hyderabad, clearly establishes the fact that there is no imminent danger to the ground and first floor of the building. However, the building needs some repairs and rehabilitation to enhance its life and safety. The appellant and the 2nd respondent got repaired the ground floor of the building with their own funds. Though the Commissioner is expected to get the premises inspected through the Technical Engineer in the presence of the occupants of the premises before initiating steps for destruction of the building; he has not initiated any such steps. The appellant and the 2nd respondent themselves got the premises inspected through the technical engineer of J.N.T.U., Hyderabad, and secured its 'structural stability certificate' and the same sufficiently establishes the fact that there is no imminent threat of falling down of the premises and that it only needs some repairs to enhance its life. Even after making such observations by the Civil Engineer deputed by J.N.T.U., Hyderabad, which is a reputed institution, issuance of impugned notice under Section 456 of the Act without any basis, is wholly unwarranted and uncalled for. Hence, for the reasons aforesaid, the impugned notice deserves to be set aside holding the same as illegal.

4. Before the Court below, the Commissioner, GHMC, filed material papers and contended *inter alia* as follows:

Prior to the issuance of the impugned notice under Section 456 of the Act, a notice as contemplated under Section 459 of the Act was issued giving opportunity to the landlord and to the occupants to state their objections. The appellant and the 2nd respondent submitted their objections having secured the report of the Civil Engineer of J.N.T.U., Hyderabad, Kukatpally. In the said report dated 06.09.2013, the technical experts, Dr.N.V.Ramana Rao and Dr. P.Srinivasa Rao, Professors in Civil Engineering, J.N.T.U., Hyderabad, clearly recommended for demolition of back side portion of the balcony having noticed

the condition of the building and the growth of vegetation in the building. They also recommended for repairs and re-plastering of walls which are having cracks. The premises is having roof of 'Jack arch'. The 1st floor of the building is being used for residential purpose. As per the recommendations of the technical experts, there shall not be overloading or change of the usage of the 1st floor. Thus, the appellant and the 2nd respondent herein are having knowledge of the notice issued under Section 459 of the Act and they also know that the premises needs to be demolished immediately, in view of its dangerous condition. No suitable steps are taken to repair the premises even though the technical experts opined that repairs need to be effected to enhance its life. The landlord also requested for issuance of 'structure stability certificate'. Pursuant to the request of the landlord, the Technical expert, Sri B.Svakonda Reddy, Assistant Professor of Civil Engineering, J.N.T.U., Hyderabad, inspected the premises and has given a detailed report stating that the condition of the building is not good and its continuation in the said condition endangers the lives of the residents. The building is in ruinous condition and needs to be demolished. The condition of the building is evident from the photographs of the building. The notice under challenge was issued in continuation of the earlier notice, dated 18.06.2013, issued under Section 459 of the Act. The notice under challenge was issued on the basis of the 'structural stability report' given by the Engineering Section of the GHMC. The notice was issued to the occupants and the landlord to vacate and remove the dilapidated structures of the building and to prevent any sorts of danger, if the GHMC would be required to pull down the same. The GHMC also stated that the occupants and owner are required to bear the expenses that may be incurred by the GHMC for pulling down the dilapidated structure. The notice issued by following the due procedure is legally valid and the contentions that no opportunity was afforded is not correct. Hence, the appeal is liable to be dismissed.

5. Learned counsel for the appellant would further submit as follows: 'The Court below appreciated the documents on record in a perverse manner and passed an erroneous judgment and as such, the same is liable to be set aside. The notice issued by the GHMC is bad in law and contrary to the principles of natural justice and as such, the same is liable to be set aside. The GHMC ought to have made inspection in the presence of the appellants. The notice that was issued without any inspection and without verifying the stability of the building is totally bad in law and shall not be considered at all. The GHMC ought to have considered the reply given by the 1st appellant to the notice bearing No.33/ TPS/ DB/ W7/ C18/ NZ/ GHMC/ 2013, dated 18.06.2013, which was issued under Section 459 of the Act to the landlord of the appellant herein. In the reply, the 1st appellant before the Court below, that is the appellant herein, categorically stated that the building is in a good and sound condition and as such, the notice that was issued mechanically by the GHMC is liable to be set aside.'

6. The learned Standing Counsel representing the 1st respondent, Commissioner, GHMC, would contend as under: 'Prior to the issuance of the impugned notice under Section 456 of the Act, a notice as contemplated under Section 459 of the Act was issued giving opportunity to the landlord and the occupants of the building to submit their objections. The appellant and the 2nd respondent themselves submitted their objections to the notice issued under Section 459 of the Act and secured a report from the Civil Engineer of JNTU, Hyderabad. In the report, dated 06.09.2013, it was clearly recommended by the technical experts, Dr. N.V.Pamana Rao, Dr. P.Srinivasa Rao, who are Professors in Civil Engineering, JNTU, Hyderabad, for demolition of back side portion of the balcony. They noticed growth of vegetation in the building and recommended for removal of the same and for repairs or re-plastering of the walls, which were having cracks. The premises is having 'roof of jack arch'.

The first floor of the building is being used for residential purpose. And as per the recommendations of the technical experts, there shall not be any overloading or change of usage of the first floor. Thus, it is crystal clear that the appellant and the 2nd respondent are having knowledge about the issuance of the notice under Section 459 of the Act and they also know that the subject premises needs to be demolished immediately. No suitable steps are taken by them or the landlord to effect repairs to the premises even though it is recommended clearly by the technical experts that repairs need to be effected to the building to enhance its life. The landlord of the demised premises also made the request for issuance of 'structural stability certificate' through his letter. Pursuant to the request made by him, the technical expert, Sri B.Svakonda Reddy, Assistant Professor, Civil Engineering, inspected the premises and has given his detailed report stating that the condition of the building is not good, and it may endanger the lives of the residents. The photos clearly indicate that the building is in ruinous condition and needs to be demolished. The notice issued by the Commissioner under Section 456 of the Act is served on the 'occupants' of the premises also. There is no illegality in issuing the impugned notice under Section 456 of the Act. Since a prior notice as contemplated under Section 459 of the Act was issued and the objections of the appellant and the 2nd respondent are filed, it cannot be said that no opportunity was afforded to them to make their submissions before the issuance of the notice under challenge. The impugned notice is issued strictly adhering to the procedure laid down under the Act. The premises has become more worse, due to recent rains, and the structural stability of the premises is deteriorating day by day and it is not in a position to withstand the heavy rains; and it may collapse at any moment in case of continuous rains. To avoid extensive damage to the occupants and the passers by, the premises needs to be demolished or pulled down immediately.

7. In reply, the learned counsel for the appellant would submit that the GHMC failed to produce any documentary evidence, more particularly the documents prior to the issuance of the impugned notice, dated 14.07.2014, to establish that it has got substantial material justifying the issuance of 'notice of demolition' by invoking Section 456 of the Act. The documents filed by the GHMC clearly demonstrate the fact that the authorities of the GHMC have issued the notice under challenge at the instance of the landlord of the premises. In the impugned notice, dated 14.07.2014, there is no reference to the report issued by the JNTU College of Engineering, Hyderabad. The notice only refers to the report, dated 13.05.2014, said to have been submitted by the Engineering Section, which is admittedly not filed or produced before the Court. Though it is a crucial document for the 1st respondent/ GHMC to establish their case, they have purposely evaded producing it. Since the report of engineering section, which is the basis for issuance of the impugned notice is not produced, it can safely and without any hesitation be said that the notice under challenge is issued without any basis. The first floor is being used as residential accommodation and business was and is being carried on in a mulgi situated in the ground floor of the building. The documents filed by the 1st respondent/ GHMC demonstrate the fact that it has not followed the procedure contemplated under Sections 456 and 459 of the Act and that the impugned notice was issued at the instance of the landlord without giving a reasonable opportunity to the occupants to raise their objections.

8. Having regard to the aforestated elaborate submissions made on behalf of both the parties, it is apt to note now that the Court below framed the following point for consideration.

Whether the structures of the building bearing No.7-1-560, situated at Station Road, Secunderabad, are in such a precarious condition warranting issuance of impugned notice under Section 456 of the Act dated 14.07.2014?

After taking into consideration the rival contentions and on perusal of the various documents and reports, the Court below dismissed the appeal and directed the authorities of the 1st respondent/GHMC to pull down the structure/ the building after giving sufficient time, not exceeding one week, to the occupants to vacate the property. The operative portion of the impugned judgment reads as under:

“In the result, the appeal is dismissed. The Municipal Corporation is hereby directed to pull down the structures of the building after giving sufficient time not exceeding one week to the appellants to vacate it so that they can collect all the valuables and their belongings. But, there shall be no order as to costs.”

9. Before proceeding further, it is necessary to refer to the following relevant provisions of the Act.

459. Opportunity for stating objections:-

The Commissioner shall issue a notice under sub-Sections (1) and (2) of Section 456, Sub-Section (1) of Section 457 or Sub-Section (1) of Section 458, after giving the owner or occupier, as the case may be, a reasonable opportunity of stating any objection and adducing evidence, if any, and after being satisfied that the objection which is raised is invalid or insufficient.”

456. Removal of structures, trees etc., which are in ruins or likely to fall:-

(1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall, parapet, payment, floor, steps, railings, door or window frames or shutters or roof, or other structure and anything affixed to or projection from or resting on, any building, wall, parapet or other 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 neighborhood thereof, the Commissioner may, by written notice, require the owner or occupier of such structure to do one or more of the following things, namely:

- (i) to pull down,
- (ii) to secure,
- (iii) to remove, or

(iv) to repair such structure or thing, and to prevent all cause of danger therefrom.

(2) The Commissioner may also, if he thinks fit, require the said owner or occupier by the said notice, either forthwith or before proceedings to pull down, secure, remove or repair the structure or things, to set up a proper and sufficient hoard or fence for the protection of passers-by and other persons, with a convenient platform and hand-rail, if there be room enough for the same the Commissioner shall think the same desirable, to serve as footway for passengers outside of such hoard or fence.

(3) If it appears to the Commissioner that the danger from a structure which is ruinous or about to fall is imminent, he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause work to be executed as may be required to arrest the danger.

(4) Any expenses incurred by the Commissioner under Sub-section (3) shall be paid by the owner or occupier of the structure.

(5) (a) where the Commissioner is of the opinion whether on receipt of an application or otherwise that the only or the most convenient means by which the owner or occupier of structure such as is referred to in Sub-section (1) can pull down, secure, remove or repair such structure, is by entering any of the adjoining premises belonging to some other person the Commissioner after giving such person a reasonable opportunity of stating any objection may, if no such objection is raised or if any objection which is raised appears to him invalid or insufficient, by an order in writing, authorize the said owner or occupier to enter such adjoining premises.

(b) Every such order bearing the signature of the Commissioner shall be sufficient authority to the person in whose favour it is made, or to any agent or person employed by him for this purpose, after giving to the owner of the premises reasonable written notice of his intention so to do, to enter upon the said premises with assistants and workmen, at any time between sunrise and sunset, and to execute the necessary work.

(c) In executing, any work under this section as little damage as possible shall be done to the adjoining owner's property, and the owner or occupier for the benefit of which the work is done, shall-

- (i) cause the work to be executed with the least practicable delay;
- (ii) pay compensation to any person who sustains damage by the execution of the said work.

10. The impugned notice, dated 14.07.2014, issued by the Commissioner, GHMC, vide proceedings No.33/ DIL/ C-18/ NZ/ GHMC/ 2013, under Section 456 of the Act, which the appellant seeks to assail in this appeal, reads as under:

“Whereas, it is observed that the entire premises bearing GHMC No. 7-1-560 situated at Station Road, Secunderabad is in dangerous and serious condition and likely to fall causing danger to any person occupying the premises and the surrounding neighbours and the public passing through the roads in front of the premises under reference for which this office has issued the notices u/S 459 of the HMC Act, 1955 vide reference 1st cited.

In this regard, it is to submit that the Engineering Section, Circle No.18, Secunderabad vide reference 3rd cited has reported that the structure is in dilapidated condition and must be dismantled immediately to save human lives.

In the reference 3rd cited, notice u/S 456 of the HMC Act, 1955 is issued upon you to vacate and remove the said dilapidated house within (3) days to prevent all cause of danger but so far you have not removed the dilapidated structure.

Therefore, you are directed to remit an amount of Rs.1,12,500/- (Rupees One Lakh twelve thousand five hundred only) towards demolition charges through Demand Draft in favour of “Commissioner, GHMC” so as to take further necessary action as per the provisions of the HMC Act, failing which you will be held responsible for any sort of danger/incident and any problem created due to the said dilapidated structure to the neighbours & pedestrians.”

(Reproduced verbatim)

A perusal of the above mentioned notice and material record makes it clear that it was issued in continuation of the notice, dated 03.06.2014, which was issued under Section 456 of the Act. From the facts and contentions, it emerges that it is not in dispute that such a notice was issued and that the 1st appellant and the 2nd respondent herein, who had knowledge of the same, together submitted objections to the said notice.

11. In this CMSA, the following questions are raised stating that they are the substantial questions of law involved.

- (a) Whether the notice issued by the Corporation under Section 456 of the HMC Act without there being any documentary evidence is valid?
- (b) Whether the action of the Corporation in not considering the reply issued under Section 459 of the HMC Act to the notice under Section 456 of the HMC Act is proper?
- (c) Whether the Court below was in error in not providing an opportunity to the appellant and in considering the documents after issuance of notice under Section 456 of the HMC Act, contrary to the provisions of the HMC Act?
- (d) Whether the Corporation is competent to issue notice under Section 456 and 459 of the HMC Act without any inspection and without any basis?
- (e) Whether the Court below is in error in dismissing the appeal in the absence of non-filing of the records by the Corporation prior to the issuance of notice under Section 456 of the HMC Act?
- (f) Whether the Corporation is justified in proceeding with the demolition contrary to the ratio laid down by this Court in Gemini Printers v. Municipal Corporation of Hyderabad?

Having regard to the facts and contentions, it is to be now examined as to whether such questions raised are substantial questions and whether or not any substantial questions of law are involved in the appeal and whether or not the appellant had made out valid and sufficient grounds calling for interference with the judgment of the learned Chief Judge, which is impugned in this appeal.

12. Since facts and contentions are stated supra, in detail, it is apposite to first note that two experts, Dr. N.V.Ramana Rao and Dr.P.Srinivasa Rao, both Professors of Civil Engineering, JNTU, Hyderabad, who were deputed by the University at the request of the occupants/tenants for inspecting the building/ subject property and giving a 'structural stability certificate', visited the subject premises on 30.08.2013 and furnished a report dated 06.09.2013. During their personal inspection, it appears that they could not inspect the first floor of the building. They noted that building is having 14" thick walls and 'jack arch roof' and the same are in good condition. They also noted that the

balcony portion of the structure has shown signs of spalling and cracking and, hence, suggested for urgent repairs within a period of not later than 15 days. They had further suggested for demolition of back portion of the balcony. They had also noted growth of vegetation in the building and suggested for removal of the same. They having noted cracks in the walls at some places, further suggested for repairing of cracks and re-plastering of part of the building, within fifteen days. According to their opinion, there is no immediate danger to the ground floor and the first floor. However, they opined that the building needs some repairs and re-habilitation to enhance its life and safety. They also suggested that regular maintenance and periodical inspection of the building every year is necessary. They further suggested avoiding overloading and change of usage of the first floor of the building. This report was given without seeing the entire building including the first floor. It remains unexplained as to why they opined that periodical yearly inspection is necessary, when the building is in good condition. It also remains unexplained as to why they had suggested in respect of the first floor, which is being used for residence, that there should be no overloading and change of user of the first floor. Such suggestion ought not to have been given when the first floor and the ground floor are in good condition. No reasons are stated in the report in support of the said observations and opinion. It also remains unexplained as to how such opinion was furnished without inspecting the first floor. When according to the opinion of the experts, the first floor of the building, which was not inspected, and the ground floor are in good condition, it remains unexplained as to why the experts opined in the report that that there should be no over loading and change of use of the first floor being used as a residence. Such an observation suggests that the ground floor and the walls of the ground floor are weak and are not in a position of withstanding over loading and change of user from residential to commercial or non residential.

The tenants/ occupants could not explain the said incongruities in the opinion of these experts. Be that as it may.

13. The owners of the building/ subject property approached JNTU, Hyderabad, with a request to issue 'structural stability report' in respect of their premises, viz., property bearing H.No.7-1-560, mentioned above, situated at Station Road, Secunderabad. Accordingly, Mr. B.Sivakonda Reddy, Assistant Professor in Civil Engineering, JNTUH, inspected the site on 21.01.2016 and furnished a report. The relevant portion of his report is as follows:

a) Physical observations:

1. The building is a Jack Arch roof structure of Ground + 1st floor with brick masonry walls in lime mortar
2. The lime mortar plaster has peeled off at several places.
3. Distress signs like cracks, falling of mortar, seepage of water are seen at several places.
4. Growth of vegetation is observed on both the side walls of the building and the roots of vegetation has generated cracks in the walls.
5. Iron beam of the ground floor roof exposed and corroded at some places.
6. Extensive damage to stair case is observed with iron beams exposed and corroded, also cracks are observed in walls and slab surrounding the staircase.
7. Roof top has undulating profile with large deformations at some locations.

b) Conclusions & Recommendations: With reference to 2 cited above JNTUH has recommended repairs and rehabilitation to the building, which will enhance the life and safety of the building. But till now the tenant has not carried out any repairs to the building as recommended by JNTUH which is endangering the safety of the building. The building has lot of distress signs and extensive damage in sidewalls and staircase. The lime mortar has deteriorated losing bonding property and is falling apart loosely.

In the above circumstances the building is not structurally safe and stable, if there are heavy rains or minor earth quake there may be a sudden collapse of the building. The building is not in good condition and may endanger the lives of the residents".

(Reproduced verbatim)

13.1 The building is a 'jack arch' roof structure of ground and first floors with brick and masonry walls in lime mortar is undisputed. The building is having lot of distress signs like cracking of the walls, falling of mortar and seepage of water at several places and suffered extensive damage to its sidewalls and staircase and that the lime mortar plaster has deteriorated and has peeled off at several places and is losing its bonding with property and is falling apart loosely and that the iron beams in the ground floor that are corroded are exposed is evident from the report and the material on record. This expert suggested for repairs and rehabilitation of the building for enhancing its life and safety and observed that as the repairs earlier suggested are not carried out, the safety of building is endangered. He also opined that the building is not structurally safe and stable and that in case of heavy rains and minor earthquake, the building is likely to collapse, suddenly, as it is not in good condition and that allowing the building to remain as such will endanger the lives of the residents.

14. In the facts and circumstances and in the light of the reports of the experts that are placed on record, the non filing of the inspection report of the technical officer of the GHMC is of no avail to the appellant. As observed by the Court below, though the tenant in occupation has stated that he affected repairs to the building, he did not produce any record to show the nature of repairs that were affected and the amount that was invested on such repairs, if any undertaken. Even those repairs were undertaken a few years back. Generally, the tenant is not expected to affect major repairs. Undertaking major repairs is not possible when the property is being inhabited. When the building requires extensive repairs, the option of the landlord to demolish and have a new building shall prevail and be given primacy and he cannot be compelled to waste his good money by spending huge amount on major repairs of an old, unsafe and unstable building.

15. On the above analysis, this Court finds that the opinion and view of the Court below that it is manifestly evident from the material on record that the building is not structurally safe and suitable for inhabitation and that the building may collapse in case of heavy rains, which are inevitable in the monsoon season, is justified in the facts and circumstances of the case. It is undisputed that the present appeal should be heard only on the ground enumerated in Section 100 of the Code of Civil Procedure, 1908. In other words, the constraints of Section 100 of the Code continue to be attached to this appeal and unless the substantial questions of law are involved, the appeal deserves to be dismissed as this Court while disposing of this appeal is not supposed to deal with pure questions of law and mixed questions of fact and law. On a careful examination of the facts, the documentary evidence brought on record and the judgment impugned in this appeal, this Court is satisfied that the Court below appreciated the facts correctly and the evidence and the legal position in proper perspective and that there are no grounds and reasons warranting interference with the well considered judgment of the Court below.

16. Viewed thus, this Court finds that there is no merit in the appeal and the same is liable to be dismissed.

17. In the result, the Civil Miscellaneous Second Appeal is dismissed accordingly leaving it open to the 1st respondent/GHMC to take appropriate steps for demolition of the subject property after ensuring that all necessary precautions as required under the provisions of the Act are taken. However, considering the fact that the appellant and the 2nd respondent are in possession of the subject property, reasonable time of three weeks may be allowed to them by the 1st respondent/GHMC to vacate the premises before taking the steps for demolition. However, it is made clear that if any untoward incident happens in the interregnum period, the appellant alone shall be solely responsible in all respects including civil and criminal consequences.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil miscellaneous second appeal, shall stand closed.

M. SEETHARAMA MURTI, J

17th February, 2017

Note:- Issue CC by 21-02-2017
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