

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

C.R.P. No.4498 of 2015

ORDER:

The Civil Revision Petition is filed by the unsuccessful appellant, aggrieved by the order dated 13.10.2015 passed in C.M.A. No.10 of 2015 by the II Additional Senior Civil Judge, Vijayawada confirming the order dated 02.04.2015 (singed on 23.03.2015) passed by the Commissioner, Vijayawada Municipal Corporation under Section 456 of the Hyderabad Municipal Corporation Act, 1955, directing the owner of the building i.e., Sri K.Sarath, Kancherla Sudheer Choudary— revision petitioner, occupant of one portion and Sri Katari Venkata Ranga Rajesh, occupant of another portion of the building bearing D.No.27-20-9, Musuem Road, Vijayawada to demolish the ground and first floors of the building within 24 hours from the date of receipt of the said notice otherwise action would be initiated as per the provisions under Section 456 of HMC Act for removal of the ground and first floors of the said building in the interest of general public and neighbouring residents saying that the building is in dilapidated condition likely to cause danger to occupants and neighbouring public, properties as well as general public and a portion of the building became crumbled down.

2) Against the said notice, the revision petitioner, advocate-cum-notary, filed an appeal in C.M.A. No.10 of 2015

before the II Additional Senior Civil Judge, Vijayawada, by showing the Commissioner, Vijayawada Municipal Corporation as respondent, without impleading the owner of the building as co-respondent, leave about the other co-occupant of another portion of the building as co-respondent. But the same was dismissed on 13.10.2015 on the point that even though the version of the appellant is a tenant of the premises in question, the landlord having failed in the legal battle to evict him managed to cause issued notice for demolition alleging as if the building is under dilapidated condition though not otherwise and basing on the report of the Executive Engineer, and the Engineering Department of Siddhartha Engineering College disputed the building is too old, which is constructed more than 100 years back and it is not possible to strengthen the structure and the structure is likely to fall.

3) As per the expression of this Court in ***Aswani Desai (smt.) vs Visakhapatnam Municipal Corporation and another¹*** the very purpose of the HMC Act or any Municipal Act is the welfare of the people and not for the welfare of a tenant who is trying to protect only his tenancy and his right to carry on some business. Right to life by the passers-by should be given precedence over the right of the tenant to carry on the business. In a given situation even when an application under Section 12 of the Rent Act is

¹ 2000 (2) ALT 2

pending, still Commissioner can take an action under Section 456 of the HMC Act.

4) Thereby, basing on the said reports and from the above proposition, there is nothing to interfere with the impugned order passed by the Commissioner, Vijayawada Municipal Corporation, in directing to demolish the building, which is in dilapidated condition.

5) It is the submission of the learned counsel for the revision petitioner that in the grounds of revision vis-à-vis oral submission, the lower appellate Court has not properly considered the material placed before it, thereby the impugned order is unsustainable, baseless and perverse and prayed to set-aside the same by allowing the appeal.

6) Whereas it is the submission of the learned Standing Counsel for the respondent that the impugned order no way requires interference as the revision is within the limited scope, in concurrent finding that the Commissioner's notice for demolition invoking Section 456 of the Act and also in the light of the expression of this Court in Aswani (supra), thereby the revision is liable to be dismissed since the order of the lower appellate Court is a reasoned one and the conclusions arrived by the Commissioner, Municipal Corporation in respect of issuing notice for demolition is as per the provisions of the Act.

7) Heard both the counsel and perused the material on record.

8) Pending appeal, I.A. No.608 of 2015 is filed by the appellant, by serving notice to the learned Standing Counsel for the Municipality, to direct the Head of the Department of Civil Engineering, K.L. University, Vaddeswaram, Tadepalli Mandalam, Guntur District to conduct Non Destructive Test, which discloses the condition of the building, in saying on the report of the Civil Engineering Department, V.R.Sidhartha Engineering College and the report of the Engineering Wing of the Municipal Corporation were obtained at the behest of the owner that the building is in danger to be demolished much less to crumble down.

9) Even the petition is pending, no orders were passed by the learned Senior Civil Judge, while disposing CMA without considering the petition. In fact, the lower appellate Court has discussed the report of the Civil Engineering Department, V.R.Sidhartha Engineering College, in C.M.A and the application filed impugning these reports, and there is nothing even to answer with regard to application filed in I.A. No.608 of 2015 to call for the report from the Head of the Department, Engineering Wing of the K.L University. Hence, the order of the lower appellate Court is unsustainable, thereby, liable to be set-aside.

10) Accordingly and in the result, the revision is disposed of setting aside the order dated 13.10.2015 passed in C.M.A. No.10 of 2015 while remanding the appeal back to the lower appellate Court directing to dispose of I.A. No.608 of 2015 before deciding the appeal, and also by virtue of this order, implead the owner of the building as co-respondent vis-à-vis the co-tenant as co-respondent, before considering the said application. In the meantime, both parties shall maintain the existing status-quo. This will not prevent the Municipal Corporation, if at all, there is any imminent danger to the building, to seek for appointing advocate commissioner to inspect at their expenses and to pass necessary orders in the CMA.

11) Consequently, miscellaneous petitions, if any pending in this revision shall stand closed. There shall be no order as to costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 22.12.2017

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