

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

Writ Appeal No.1225 of 2017 and Writ Petition No.39140 of 2016

COMMON JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri J.Kanakaiah, learned counsel for the appellant-writ petitioners, Sri Sampath Prabhakar Reddy, learned Standing Counsel for the GHMC, and Sri M.Karuna Sagar, learned counsel appearing on behalf of the 3rd respondent. This Appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in WVMP.No.4866 of 2016 in WPMP.No.48228 of 2016 in W.P.No.39140 of 2016 whereby the earlier interim order, passed in WPMP.No.48228 of 2016 dated 11.11.2016, was vacated recording the averment in the counter affidavit that the official respondents had followed the due procedure while passing the order of demolition.

As Sri J.Kanakaiah, learned counsel for the appellant-writ petitioners, had contended that the inspection caused, to determine the structural stability of the building by the GHMC, was behind the appellant-writ petitioners' back, we had, by our order dated 07.09.2017, requested the Civil Engineering Department of the JNTU to determine the structural stability of the building, and to submit a report to this Court.

Sri Sampath Prabhakar Reddy, learned Standing Counsel for the GHMC, has placed before us a copy of the report of the JNTU dated 21.09.2017 which concludes that the building has to be thoroughly repaired and rehabilitated before any occupancy is allowed, and its stability is certified; and after strengthening the walls, fresh RCC slab has to be properly designed and constructed using standard procedures and provisions as per the Bureau of Indian Standards.

As the JNTU has now found the building structurally unsafe for habitation, we direct the GHMC to lock the premises and ensure that no person continues to reside in the said building.

Sri J.Kanakaiah, learned counsel for the appellant-writ petitioners, would submit that the appellant-writ petitioners would undertake necessary repairs within two weeks from today. He seeks a direction from this Court to the GHMC to ascertain the structural stability of the building thereafter, and on being published about the structural stability of the building, to then permit the appellants to occupy the building.

Sri M.Karuna Sagar, learned counsel for the 3rd respondent, would submit that the 1st appellant is merely a watchman of the subject building; the land, in which it is located, belongs to the 3rd respondent; though he was engaged as a Watchman, the 1st appellant is now seeking to deprive the 3rd respondent of his title over the subject land; and the appellants cannot be permitted to repair the subject building, as both the land and the building are owned by the 3rd respondent.

The fact that the appellants are residing in the subject building till date is not in dispute. Questions whether the 3rd respondent is the owner, and whether he is entitled to seek eviction of the appellants from the subject building, are all matters which would, ordinarily, not be examined in proceedings under Article 226 of the Constitution of India.

The remedy available to the 3rd respondent, to seek eviction of the appellants from the subject land, is by filing a Civil Suit before the Civil Court of competent jurisdiction. Suffice it to make it clear that we have not expressed any opinion on the title of the 3rd respondent over the subject land, and the directions we have now issued are based only on the fact that the appellants are residing in the subject building as on date.

Sri J.Kanakaiah, learned counsel for the appellants, states that the appellants would reconstruct the building at their own risk, and without claiming any equities in case the competent Civil Court were to later hold that the land does not belong to them.

In the light of the said submission of Sri J.Kanakaiah, learned counsel for the appellant-writ petitioners, we consider it appropriate to

permit them, without prejudice to the 3rd respondent's right to claim declaration of his title over the subject land, to repair the building within two weeks from today. On intimation from the appellants of having completed the repairs, the GHMC shall cause a fresh inspection and determine the structural stability of the building. If the building is found to be structurally sound, they shall hand over possession thereof to the appellants. In case the appellants do not repair the said structure within the aforesaid period of two weeks, it is open to the GHMC to proceed and take action thereafter, to demolish the subject structure, in accordance with law.

The Writ Appeal is, accordingly, disposed of.

Sri J.Kanakaiah, learned counsel for the appellant-writ petitioners, states that, in the light of the order now passed in the writ appeal, the cause in the writ petition does not survive and the writ petition has become infructuous. The Writ Petition is, accordingly, dismissed as infructuous.

Miscellaneous petitions pending, if any, shall stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(M.GANGA RAO, J)

09th October, 2017

Note: Issue C.C tomorrow.

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Date: 09.10.2017

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