

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.6390 OF 2017

O R D E R:

The order made under Section 456 of the Hyderabad Municipal Corporation Act, 1955 (for short, "the Act"), as applicable to the Visakhapatnam Municipal Corporation, is challenged before this Court.

One of the principal grounds on which the challenge is made pursuant to the orders of this Court, the Civil Engineer attached to the Andhra University Engineering Department, Visakhapatnam, had inspected the subject premises after issuance of the notice to both the parties and thereafter submitted his report on 14.06.2016 wherein he opined that the building is not safe and the same is required to be demolished. However, the copy of the said report is not made available to the petitioner and further the petitioner was also not given notice before passing the impugned order as required under Section 459 of the Act.

Learned standing counsel for the respondent corporation, on instructions, submits that it is a fact that the petitioner was not put on notice before passing the impugned order. However, he submits that as held by this Court in **P. Lakshmi vs. Grater Hyderabad Municipal Corporation, Hyderabad**¹, the expert's opinion is final and the Corporation is not entitled to substitute its opinion.

Having considered the respective submissions, it is not necessary for this Court to enter into the various contentions raised by the petitioner or by the respondents. It is settled law that except in exceptional circumstances notice is required to be issued to the owner or the occupier in terms of the provisions mandated under Section 459 of the Act. In the present case, considering the fact that the notice as required under Section 459 of the Act admittedly not given to the

¹ 2013(2) ALD 434

petitioner, the impugned order is set aside. However, considering the fact that the impugned order made under Section 456 of the Act, is being set aside, the petitioner shall be given the opportunity to appear before the 1st respondent-Commissioner on 06.03.2017 at 2.30 p.m. In the meanwhile, the petitioner is also at liberty to submit his explanation to the impugned order. The learned standing counsel shall instruct the 1st respondent-Commissioner's office to make available the copy of the report of the Professor, Engineering Department, Andhra University, Visakhapatnam, to the petitioner on or before 6.3.2017. It is made clear that in the interregnum period any untoward incident is taken place, it is solely at the risk and costs of the petitioner and he is solely responsible for any civil and criminal consequences.

With the above observations, the writ petition is disposed of. No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

CHALLA KODANDA RAM,J

DATE:23.02.2017

Note:

C.C. forthwith.

B/O

Gk.

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