

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.37860 OF 2017

O R D E R

This writ petition is filed challenging the notice issued by the 5th respondent – Panchayat Secretary in R.O.C.No.213/2017 dated 26-10-2017, whereunder and whereby, the petitioners were directed to remove the subject building, as it has become old and is in a dilapidated condition.

The learned counsel for the petitioners submit that no prior notice was issued and that the building is in good condition and there is no danger to the general public.

On the other hand, Sri G.Seshadri, learned Standing Counsel appearing for 4th respondent – Gram Panchayat, by producing copy of the letter in Lr.No.Stability/SA/KKLR/2017 dated 8.6.2017, addressed by Deputy Executive Engineer (R & B), Spl., Sub-Division, Kaikaluru, to the Executive Engineer (R & B) Krishna District, Machilipatnam, submits that as per the report submitted by the Assistant Engineer (R and B), Regular Section, Kaikaluru, the subject building is old and during heavy incessant rains, there is likelihood of disturbing the safety and stability of the building. He further submits that based on the letter of the Deputy Executive Engineer, the impugned notice was issued, as there is danger to public safety and hence no interference is warranted.

Rule 32 of layout and building rules under The Andhra Pradesh Gram Panchayat Land Development (Layout and Building) Rules, 2002, defines '*unsafe buildings*'. The same is extracted as under for better appreciation:

Unsafe Buildings:-- All unsafe buildings shall be considered to constitute danger to public safety and hygiene and sanitation and shall be restored by repairs, demolition or dealt with as otherwise directed by the Collector / Executive Authority.

Unsafe buildings are those buildings, which are danger to public safety and hygiene and sanitation and they shall be restored by repairs, demolition or dealt with as otherwise directed by the Collector /Executive Authority.

Both the counsel submit that though 'unsafe buildings' is defined under the Rules, no procedure is prescribed for taking action against removal of same.

In the present case, the subject building is declared as unsafe, based on the letter dated 8.6.2017 addressed by the Deputy Executive Engineer to the Executive Engineer. The relevant portion of the said letter, reads thus:

"With reference to 1 and 2 and the report submitted by the Assistant Engineer (R & B) Regular Section, Kaikalur vide in reference 3 cited, I submit that the building bearing door No.8-59, 8-60 opposite DNR complex is of old manglore tiled roof with wooden rafters and its age is above 50 years old on physical observation and its stability of building at present is satisfactory however during heavy incessant rains in continuous monsoon period there is a likelihood of disturbing the safety and stability of the building in the above door numbers."

From the above letter dated 8.6.2017, the stability of the building at present is satisfactory, but however during incessant rains in monsoon season, there is likelihood of disturbing the safety and stability of the building.

The learned counsel for the petitioner submits that the above letter dated 8.6.2017 of the Deputy Executive Engineer has not been furnished to the petitioner.

In view of the letter dated 8.6.2017, as there is no immediate threat or danger to the building, the impugned notice is directed to be treated as show cause notice. The petitioners shall be supplied with the copy of the above letter dated 8.6.2017 of Deputy Executive Engineer and the report of the Assistant Engineer dated 8.6.2017, within a period of one weeks from today and within a period of two weeks thereafter, the petitioner can file his explanation. Thereafter, it is open for the competent authority to consider the said explanation and take appropriate action in accordance with law, as expeditiously as possible.

Till the above said exercise is completed, all further proceedings pursuant to impugned notice dated 26.10.2017, shall remain stayed.

It is made clear that if the petitioner fails to file his explanation as stated above, it is open for the competent authority to take action in accordance with law.

The writ petition is disposed of with the above direction. No costs.

Miscellaneous petitions pending if any, shall stand closed.

A.RAJASHEKER REDDY,J

DATE:28—11—2017

AVS

Note:

C.C. by tomorrow.

B/O

