

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN**  
**AND**  
**THE HON'BLE Mr. JUSTICE ABHINAND KUMAR SHAVILI**

**Writ Appeal No. 1619 of 2017**

**Judgment:** (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 33836 of 2014 dated 19.9.2017. The appellant herein filed the said Writ Petition seeking a mandamus to declare the notice dated 21.8.2014 issued by the 1<sup>st</sup> respondent, as well as the orders passed in C.M.A. No. 13 of 2014 dated 8.10.2014 on the file of the Court of the I Additional District Judge, Rajahmundry, as illegal, arbitrary, null and void.

The present case has had a chequered history. The appellant herein along with others, including respondent Nos. 2 and 3 herein, filed W.P. No. 36060 of 2013 wherein they questioned the earlier notice issued by the Municipal Corporation dated 29.11.2013 as ultra vires Sections 456 and 459 of the Greater Hyderabad Municipal Corporation Act, 1955 (hereinafter referred to as "the Act"), and as being arbitrary and illegal. The petitioners in W.P. No. 36060 of 2013 were directed, by the notice dated 29.11.2013, to vacate the ruinous building immediately, and pull it down within seven days, failing which the Corporation would take up the exercise of removal of the said building from the public safety point of view, and the expenditure incurred for such removal would be recovered from the petitioners.

On the petitioners invoking the jurisdiction of this Court, an order was initially passed on 10.12.2013 permitting them to apply to the Jawaharlal Nehru Technological University (JNTU), Kakinada for an inspection to be undertaken of the premises to ascertain its structural stability and safety. The petitioners were directed, till further orders were passed based on such a report, not to occupy the premises as the local municipality felt that it was in a dangerous and ruinous condition, and

there was a risk to human life. The JNTU submitted its report dated 17.2.2014 wherein it recorded its finding that the building was very old, partially dismantled and partially in a dilapidated condition; it had served the purpose beyond its capacity; being a 82 year old building, without proper periodical maintenance, no rehabilitation could be suggested as the building was beyond a repairable state; it was not safe to utilize Block-I of the building (front portion) for any purpose as a few parts of the building, like Shop No. 5 and the front and rear corridors, may collapse due to weak walls; and it was risky to enter Block-II of the building (rear portion) as it was in a dilapidated state, and it may collapse without any warning. Sri M.V. Suresh, learned counsel for the appellant, would submit that Block-II (rear portion) has since been demolished, and the dispute in this appeal relates only to Block-I ie, the front portion of the building.

In its order in W.P. No. 36060 of 2013 dated 23.7.2014, this Court took note of the submission, urged on behalf of the petitioners therein, that the findings recorded in the report of the JNTU were erroneous. This Court held that it would be inappropriate for it to sit in judgment over the report of the JNTU in proceedings under Article 226 of the Constitution of India. The Municipal Corporation was directed to forthwith have the premises sealed; retain possession of the said building; and not to permit the petitioner to enter the said building till a final decision was taken by the Corporation. The notice, impugned in the said writ petition, was directed to be treated as a notice under Section 459 of the Act; and it was left open to the petitioners therein to reply to the notice as also their objections to the JNTU report. The Municipal Corporation was directed to pass a reasoned order thereupon in accordance with law, and communicate the same to the petitioners, and it was left open to them, thereafter, to take necessary action in accordance with law and, if need be, to demolish the subject structure.

The petitioners submitted their representations on 31.7.2014 and 16.8.2014, and the impugned order came to be passed by the Commissioner on 21.8.2014. In his order dated 21.8.2014, the Commissioner observed that four of the petitioners in W.P. No. 36060 of 2013 had represented to the Commissioner that they were not interested in continuing to stay in the premises which was in a dilapidated condition, and had declared that they had no objection for the Municipal Corporation to demolish their shops after they took away their goods lying in the said premises. The Commissioner, thereafter, noted the contents of the report of the JNTU and, based thereupon, expressed his opinion that, as the building was very weak and was in a dangerous condition, it could be harmful to the lives of the inmates of the building, passers by, and the general public; and it may collapse without any warning. The Commissioner directed the appellant to vacate the shops, and take away the goods immediately, failing which the Corporation would take steps for removal of the shops in order to protect human lives.

Aggrieved thereby, the appellant-writ petitioner filed the present writ petition raising the following grounds (1) the impugned order of the Municipal Commissioner was vitiated by *mala fides* in as much as it was issued at the behest of the local MLA, who intends to purchase the subject property; (2) respondents 2 and 3 had purchased a part of the subject property despite being aware that the subject property was under threat of demolition; (3) the impugned order is vitiated as a personal hearing was not afforded to the appellant to adduce evidence; and (4) even if the building were to be demolished, the appellant's rights over the subject property could not be set at naught. Sri M.V. Suresh, learned counsel for the appellant, would submit that the fourth issue, regarding the appellant's right over the subject property continuing to remain in force even after the building is demolished, has been addressed by the learned Single Judge, and need not be examined in the present appeal.

The submission of the Learned Counsel is confined in this appeal, to the contentions raised regarding the failure of the Commissioner to give a personal hearing, that the order is vitiated by *mala fides* of the MLA, and the *malice* of respondent Nos. 2 and 3 in purchasing a dilapidated building. Sri M.V.Suresh, Learned counsel for the appellant, would rely on **Farid Ahmed vs. Ahmedabad Municipality**<sup>1</sup>, **Shri Mandir Sita Ramji vs. Governor of Delhi**<sup>2</sup>, **West Bengal Electricity Regulatory Commission vs. CESC Limited**<sup>3</sup>, **M/s. Travancore Rayons vs. Union of India**<sup>4</sup> and **State of Assam vs. Gauhati Municipality**<sup>5</sup>. He would contend that the learned Single Judge had not dealt with the appellant-writ petitioner's contention regarding *mala fides*, and the failure of the Commissioner to provide the appellant an opportunity of a personal hearing.

In the order under appeal, the learned Single Judge, after taking note of the contents of the report of the JNTU, observed that, from the material on record, he was satisfied that no exception to the order/notice was made out by the appellant; the appellant had alternatively contended that, even if the premises were to be demolished on the ground of being unsafe for occupation, still a few rights of the appellant were protected, and they may be left open for consideration at an appropriate stage in appropriate proceedings; and he was satisfied that, in the present writ petition, the rights, to which the appellant was entitled to in law, should not be considered; hence the question of limiting such right, while deciding the grievance of the appellant, did not arise; and the appellant was always entitled to work out his rights in view of the principles laid down in the decision referred to in the order.

On the plea of *mala fides* of the local MLA, and the Commissioner acting at his behest for extraneous reasons, it is necessary to note that

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<sup>1</sup> AIR 1976 SC 2095

<sup>2</sup> AIR 1974 SC 1868

<sup>3</sup> (2002) 8 SCC 715

<sup>4</sup> AIR 1971 SC 862

<sup>5</sup> AIR 1967 SC 1398

the MLA is not even arrayed as a respondent in the writ petition. The Commissioner has also not been arrayed as a respondent *eo nomine*. As held by the Supreme Court, in **State of Bihar vs. P.P. Sharma**<sup>6</sup>, a plea of malice can only be examined when the person, against whom *malice* is alleged, is arrayed as a respondent *eo nomine* in the writ petition and, in his absence, it would be wholly inappropriate for the Court to record any finding as to whether or not the order, impugned in the writ petition, was vitiated by malafides. This contention, regarding the order passed by the Commissioner being vitiated by malafides, is only to be noted to be rejected.

The fact that respondent Nos. 2 and 3 herein were also the petitioners in W.P. No. 36060 of 2013 is not in dispute. The mere fact that they had later stated that the building was in a dilapidated condition and should be demolished, and had purchased it from the vendors, has no bearing on the order passed by the Commissioner, that too an order which was passed relying on the expert opinion of the JNTU. It is not even contended before us by Sri M.V. Suresh, Learned Counsel for the appellant, that the report of the JNTU is vitiated by *malice*. All that is stated is that the report is erroneous. Consequently, the fact that respondents 2 and 3 had purchased the property, during the pendency of the writ petition, would not vitiate the earlier order passed by the Commissioner.

The only other contention which necessitates examination is regarding the failure of the Commissioner, Rajahmundry Municipal Corporation to afford the appellant an opportunity of a personal hearing. Section 459 of the Greater Hyderabad Municipal Corporation Act, 1955 which has been extended to the Rajahmundry Municipal Corporation by the A.P. Municipal Corporation Act, relates to an opportunity for stating the objections. Section 459(1) requires the Commissioner to issue a notice under Sections 456(1) and (2) and after giving the owner or

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<sup>6</sup> AIR 1991 SC 1260

occupier, as the case may be, a reasonable opportunity of stating his objections, adducing evidence, if any, and after being satisfied that the objection, which are raised, are invalid or insufficient, to take action in accordance with law.

Section 459 requires a notice under Sections 456(1) to be given if it appears to the Commissioner that any structure (including any building, wall etc.) is in a ruinous condition or is 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 neighbourhood thereof. The Commissioner has been conferred the power, by way of a written notice, to 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 to repair such structure or thing, and to prevent all cause of danger therefrom.

Section 456(2) confers power on the Commissioner, if he thinks fit, to require the 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, to serve as a footway for passengers outside of such hoard or fence. Section 456 (3) confers power on the Commissioner, if it appears to him that the danger from a structure which is ruinous or its fall is imminent, to take down the building even before giving notice under Sections 456 to ensure protection not only of the inhabitants of the building, but also of the neighbours and passers by, who may suffer injuries if the building were to suddenly collapse.

After the appellant-writ petitioner invoked the jurisdiction of this Court in W.P. No. 36060 of 2013 and, at his request, he was permitted,

along with the other petitioners therein, to make an application to the JNTU along with the prescribed fee to ascertain whether or not the subject building was structurally sound. The building was inspected by the Principal of the University College of Engineering, two Professors and one Assistant Professor of the Civil Engineering Department of JNTU, who opined that the building was very old, partially dismantled and partially in a dilapidated condition, and had served the purpose beyond its capacity; being a 82 year old building, without proper periodical maintenance, no rehabilitation could be suggested as the building was beyond repairable state; and it was not safe to utilize Block-I of the building (front portion) for any purpose as a few parts of the building, like shop No.5 front and rear corridors, may collapse due to weak walls.

Except stating that the report is erroneous, no material was placed by the appellant, either before the Commissioner, Rajahmundry Municipal Corporation or before the learned Single Judge, to justify his claim that the report of the JNTU, holding the subject structure is dilapidated, should not be accepted. All that is contended is that, if the appellant had been afforded an opportunity of personal hearing, he would have produced evidence to show that the report of the JNTU should not be accepted. Section 459 merely requires a reasonable opportunity to be afforded to the occupier of the building to state his objections, and adduce evidence if any. The fact that the appellant was put on notice, and was given an opportunity to state his objections, is not in dispute. In fact the Commissioner, Rajahmundry Municipal Corporation was directed by this Court, by its order in W.P. No. 36060 of 2013 dated 23.7.2014, to afford him such an opportunity. The appellant availed this opportunity by way of a legal notice, and a subsequent representation.

The question which necessitates examination is whether the impugned order of the Commissioner is vitiated because the appellant

was not afforded a personal hearing, and was thereby denied the opportunity to adduce evidence.

Both the judgments of the Supreme Court in **Shri Mandir Sita Ramji**<sup>2</sup> and **Farid Ahmed**<sup>1</sup> relate to the failure to give an opportunity of being heard to land owners under Section 5-A of the Land Acquisition Act, 1894. The law declared in the aforesaid judgments, which relate to the constitutional right of a land owner, under Article 300-A of the Constitution of India, not to be deprived of his property except in accordance with law, cannot be equated to proceedings under Section 459 of the Act which has been enacted to ensure protection not only of the inhabitants of a dilapidated building, but also of those living in the vicinity, and even passers by. While a tenant may undoubtedly occupy the building, his right to such occupation is subject to the fetters imposed by Sections 456 and 459 of the Act which obligate the Commissioner of the Municipal Corporation to pull down dilapidated structures, and thereby ensure that no physical injury is caused either to the inhabitants or to the neighbours or to those passing by.

Reliance placed by Sri M.V.Suresh, Learned Counsel for the appellant, on **West Bengal Electricity Regulatory Commission**<sup>3</sup>, is also misplaced. While it is no doubt true that a statutory right cannot be encroached upon by the Court, and Section 459 of the GHMC Act does give the occupier of the building the right to adduce evidence, we asked Sri M.V. Suresh, learned counsel for the appellant, whether the appellant had any documentary evidence even now (though more than three years had elapsed since the impugned proceedings were passed by the Commissioner) to show that the subject building is structurally sound. While fairly stating that there was no such documentary evidence presently available with the appellant, Sri M.V.Suresh, learned counsel for the appellant, would contend that if the appellant had been afforded an opportunity to adduce evidence, he would have endeavoured to secure such evidence and would have produced it before the Commissioner. As

noted hereinabove, the report submitted by the JNTU is a report of experts in the field who have opined that the building is structurally unsafe, is dilapidated and is in a ruinous condition. In the absence of any evidence being placed on record to the contrary, we have no reason to doubt the opinion of experts that the subject structure is structurally unsound and is in a dilapidated and ruinous condition.

Reliance placed by Sri M.V.Suresh, Learned Counsel for the appellant, on the judgments of the Supreme Court in **M/s. Travancore Rayons<sup>4</sup>** and **State of Assam<sup>5</sup>** are also mis-placed. In **M/s. Travancore Rayons<sup>4</sup>**, the Supreme Court held that, even though the rules do not so require, where complicated issues arise for consideration, personal hearing should be afforded. The question whether the subject building is structurally sound or is a dilapidated structure has already been examined by a committee of experts from the JNTU. It is only if the appellant-writ petitioner had produced evidence to show that the said report was erroneous, and the building was structurally sound, would he have been justified in contending that the structural soundness of the building, in the light of two conflicting expert opinions, is a complicated issue necessitating a personal hearing to be afforded. In the present case, the appellant has produced no material whatsoever till date to contradict the findings in the JNTU report.

In **State of Assam<sup>5</sup>** the Supreme Court held that an opportunity of a personal hearing need not be given if the statute does not require and the person against whom action was proposed to be taken did not make any such request. Section 459 only requires an opportunity to adduce evidence to be afforded. As it is not in dispute that there is no evidence available, with the appellant-writ petitioner, to show that the report of the JNTU necessitates rejection, it cannot be said that the Commissioner's failure to give him an opportunity to adduce evidence would vitiate the order, when there is no evidence with the petitioner as

on date which he could have adduced to disprove the contents of the JNTU report.

The jurisdiction which this Court exercises, under Article 226 of the Constitution of India is discretionary and is not to be exercised merely because a legal flaw has been electronically detected. A writ of mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. (**C.R. Reddy Law College Employees' Association, Eluru, W.G. District v. Bar Council of India, New Delhi**<sup>7</sup>). As the extraordinary jurisdiction of the High Court, under Article 226 of the Constitution of India, is discretionary, it is not to be exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will, ordinarily, be exercised subject to certain self-imposed limitations, (**Thansingh Nathmal v. Supdt. of Taxes**<sup>8</sup>), and not as a matter of course. The discretionary jurisdiction, under Article 226 of the Constitution of India, must be exercised with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Larger public interest must be kept in mind in order to decide whether intervention of the Court is called for or not (**Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson Pvt Ltd**<sup>9</sup>; **Air India Ltd v. Cochin International Air Port Ltd**<sup>10</sup>; **Rashpal Malhotra v. Mrs. Saya Rajput**<sup>11</sup>; **Council of Scientific and Industrial Research v. K.G.S. Bhatt**<sup>12</sup>). Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved. (**Rashpal Malhotra**<sup>11</sup>; **K.G.S. Bhatt**<sup>12</sup>). It is only if this Court is satisfied that larger public interest would be adversely affected by its interference, should it exercise restraint. In the present case, larger public interest would only be served if the subject building, collapse of which may cause injuries to people

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<sup>7</sup> 2004(5) ALD 180 (DB)

<sup>8</sup> AIR 1964 SC 1419

<sup>9</sup> (2005) 6 SCC 138

<sup>10</sup> (2000) 2 SCC 617

<sup>11</sup> AIR 1987 SC 2235

<sup>12</sup> AIR 1989 SC 1972

living in the vicinity and those passing by, is demolished. In the absence of any contra material to show that the report of the JNTU is erroneous, interference with the impugned order passed by the Commissioner is wholly unwarranted. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the said order. Viewed from any angle, we see no reason to interfere with the order under appeal. The Writ Appeal fails and is, accordingly, dismissed.

After we had dictated the order, Sri M.V. Suresh, learned counsel for the appellant, requested us to direct the 1<sup>st</sup> respondent to permit the appellant to remove the goods lying within the subject premises. Suffice it, therefore, to make it clear that this order shall not disable the appellant-writ petitioner from making a representation in this regard to the 1<sup>st</sup> respondent and, on such a request being made, the 1<sup>st</sup> respondent shall consider according permission, subject to such conditions as he may deem fit to impose.

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

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**(RAMESH RANGANATHAN, ACJ)**

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**(ABHINAND KUMAR SHAVILI, J)**

2<sup>nd</sup> November, 2017

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Date: 2.11.2017

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