

HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

WRIT PETITION No.21729 of 2013

ORDER:

This writ petition is filed to declare the action of respondents 1 and 2 in issuing notice bearing No.1030/ACP/TPS/C9/C2/GHMC/ 2013 dated 15.7.2013 under Section 456 of the Hyderabad Municipal Corporation Act as illegal and arbitrary.

The case of the petitioner is that the subject property was acquired by the ancestors of the petitioner; the petitioner along with her brothers, mother, sister and other persons are co-owners of the property; the petitioner filed suit for partition of the subject property and the same was dismissed; the petitioner along with her sister preferred appeal and the same was allowed holding that the petitioner is entitled to 1/5 share in the property; though the building was constructed in the year 1984-85, the structure is till strong; the petitioner's brothers oppose to give share in the said house and they gave a representation to the respondents stating that the building is in a dilapidated condition; acting upon such representation, notice was issued in the name of the brother of the petitioner who is no more; the said notice was served on the petitioner; the petitioner gave reply on 12.7.2013 to the said notice; without assigning any reasons, the respondent No.1 has issued notice of demolition and hence, the writ petition.

When the matter came up for hearing on 23.7.2013, an interim order was passed directing the respondents not to make any demolitions for a period of 15 days. However, the petitioner was directed to get the building examined by any qualified Structural Engineer or by entrusting the task of assessment of the structural safety of the building to the Department of Civil Engineering, Jawaharlal Nehru Technological University, Kukatpally, and to make available the report relating to the structural stability and safety by the next date of hearing. On 7.8.2013, the interim direction granted on 23.7.2013 was directed to be continued.

Learned counsel for the petitioner submits that the building is not in a dilapidated condition and that because of the disputes between the petitioner and her brothers, her brothers gave a representation to the respondents stating that the building is in a dilapidated condition, pursuant to which, the impugned notice has been issued.

Learned Standing Counsel for the respondents submits that the petitioner has alternative remedy to challenge the said impugned notice under Section 654 (6) of the Greater Hyderabad Municipal Corporation Act, by filing an appeal and that the petitioner has filed this writ petition without exhausting the alternative remedy. He further submits that the petitioner has not complied with the interim direction and, hence, the writ petition is liable to be dismissed.

Admittedly, direction given on 23.7.2013 is to the effect that the petitioner shall get the building examined by any qualified Structural Engineer or by entrusting the task of assessment of the structural safety of the building to the Department of Civil Engineering, Jawaharlal Nehru

Technological University, Kukatpally, and to make available the report relating to the structural stability and safety. However, the petitioner has not complied with the said direction. The allegation in the writ petition is that acting on the representation of her brothers, the 1st respondent issued the impugned notice dated 15.7.2013 and that the brothers of the petitioner are not made parties to the writ petition.

In view of the facts and circumstance of the case, the Writ Petition is disposed of giving liberty to the petitioner to avail the alternative remedy of appeal under Section 654(6) of the Greater Hyderabad Municipal Corporation Act. However, as there is a direction not to demolish the building of the petitioner, pending writ petition, the building of the petitioner shall not be demolished for a period of three weeks from the date of receipt of a copy of this order. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

KONGARA VIJAYA LAKSHMI, J

Date: 20/12/2018

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