

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.27368 of 2017

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner, challenging the action of the respondents 1 and 2 in trying to demolish the building bearing no.11-3-357/16/3 situated at Bapuji Nagar, Parsigutta, Hyderabad, pursuant to the impugned notices, dated 11.08.2017, issued by the respondents 1 and 2, as illegal, arbitrary, unconstitutional and violative of principles of natural justice & Articles 19 & 21 of the Constitution of India. A request is also made in the writ petition to set aside the said notices.

2. I have heard the submissions of *Sri Rama Rao Immaneni*, learned counsel appearing for the petitioner, of *Sri Chatla Madhu*, learned standing counsel for GHMC, representing the respondents 1 & 2; and of *Sri J.Kanakaiah*, learned counsel for the 3rd respondent.

3. I have perused the material record.

4. The case of the petitioner, in brief, is this:

The petitioner and the 3rd respondent are brothers. They are also having another brother. The aforesaid building with tin sheet roof and supporting cement and brick walls was constructed by their father. After the death of their father in the year 1990, the three brothers having partitioned the family properties/houses in the presence of elders are enjoying the properties that fell to their respective shares in the said partition. There are strained relationships between the families of the

petitioner and the 3rd respondent. The petitioner and his family are living in the subject building since several years. While so, the Deputy Commissioner, Circle No.18, GHMC, that is, the 2nd respondent issued a notice, dated 11.08.2017, to the 3rd respondent *inter alia* stating that the subject building is in a dangerous and dilapidated condition and that it is likely to collapse at any moment causing danger to the inmates of the building, surrounding buildings and the public passing through the road in front and/on the sides of the building and that the 3rd respondent being the owner/inmate/occupier of the said building is requested to vacate/remove the building immediately and repair the dilapidated structure and that on his failure to do so, he will be held responsible for the consequences. Further, the Commissioner, GHMC, that is, the 1st respondent, also issued the notice, dated 11.08.2017, under Section 456 of the HMC Act, 1955, to the 3rd respondent *inter alia* stating to the following effect: "The subject building is in dangerous and serious condition and is likely to fall causing danger to any person occupying the premises and the public passing through the road in front of the premises and that the 3rd respondent is therefore, informed to vacate and remove the said dilapidated house to avoid any sort of danger and that the Engineering Section of the Secunderabad Division had also declared that the said house is in dangerous and dilapidated condition and hence, the 3rd respondent is required to vacate and remove the dilapidated house within 24 hours to prevent the danger that may ensue on account of the falling of the dilapidated building and that on the failure of the 3rd respondent to comply with the said requirement, the subject building will be pulled down or demolished by the Department of the GHMC and

the expenses for the said work shall be paid by the owner/occupier of the subject building.' The notices which were addressed to the 3rd respondent, who is not residing in the subject building, were pasted, on 14.08.2017, on the subject building, which has fallen to the share of this petitioner. The petitioner who was shocked and surprised tried immediately to offer an explanation; but, the respondents 1 & 2 refused to receive the same as 15.08.2017 happened to be a National holiday. The 3rd respondent is a close associate and staunch follower of the local Corporator and he prevailed upon the said Corporator to cause loss to this petitioner. The respondents 1 and 2 yielded to the pressure that was exerted upon them by the 3rd respondent. Though the petitioner and his family are residing in the property, he was not put on notice and the notices impugned were issued without even causing an inspection and without giving sufficient time or opportunity to strengthen the building, which was built only about 30 years back, that too, with tin sheet roof. The 2nd respondent in his notice directed for conduct of repairs to the building; but, astonishingly the 1st respondent issued another notice even without quoting the date of report of the structural Engineer and without causing inspection of the property. The respondents are trying to demolish the building even without receiving the explanation sought to be offered by this petitioner. The respondents 1 and 2, having succumbed to the pressure being brought upon them by the 3rd respondent through the Corporator and others, are trying to throw the petitioner and his family onto the street in a highly illegal and arbitrary manner. Hence, the present writ petition is filed.

5. Before proceeding further, it is apt to note that, on 16.08.2017, while ordering notice before admission, this Court passed the following interim order:

“... ..

Meanwhile, there shall be no coercive action pursuant to the notice bearing no.357/TPS/C-18/NZ/GHMC/2017, dated 11.08.2017.”

Afterwards, the 3rd respondent filed WVMP 3552 of 2017 requesting to vacate the aforesaid interim order.

6. However, at the hearing, a request was made to dispose of the writ petition on merits instead of the vacate stay petition.

7. The case of the 3rd respondent, in brief, is this:

The writ petitioner does not have any right to challenge the notices issued by the respondents 1 and 2. In fact, in the family partition, the subject building was allotted to the 3rd respondent & his other brother, A.Santoshkumar, and to that effect, the writ petitioner executed a registered release deed, on 15.10.2008. At that time, the petitioner requested this respondent and his said other brother to continue in the premises for a short while. Thereafter, the petitioner did not pay any attention to the condition of the building and is continuing illegally. Out of courtesy, this respondent and his said other brother never disturbed the possession of the writ petitioner. The strength of the building deteriorated day by day. As such, this respondent made an application to the respondents 1 and 2 to call for a report with regard to the strength of the building and to take appropriate steps thereafter. The allegation that this respondent influenced the authorities with the help of

the Corporator is not true. Mere continuation of the petitioner in the subject building does not give any right to the petitioner to claim a right. He, himself, admitted that the construction of the tin shed is 30 years old; but, it is more than 50 years old. The subject building was constructed during the life time of the father, who died in the year 1982. The tin sheets of the shed are spoiled and the walls of the subject building are in dilapidated condition. As such, if anything goes wrong, this respondent and his other brother may be held responsible and as such, this respondent rightly approached the respondents 1 and 2 and made a request to verify the strength of the building and to take further action. The respondents 1 and 2 having received the technical report from the competent authority issued the caution notice as well as the notice under Section 456 of the HMC Act, 1955. The writ petitioner is contending that he wanted to submit explanation and that the same was refused to be received. The same is a misrepresentation. The respondents have chosen to serve the notice on the petitioner. But, he refused to receive the same. As such, the said notice was pasted on the subject house of this respondent. The claim of the petitioner that he was not issued any notice is a self contradictory statement. In fact, the writ petitioner filed his application, on 16.08.2017, requesting the authorities to grant one week time to shift his family as well as his small business. Suppressing the same, he has filed the writ petition on the same day before this Court. Hence, the writ petitioner is not entitled to any relief much less the reliefs sought for in this writ petition. The respondents 1 and 2 followed the procedure strictly and took further steps as there is a threat of collapse of the dilapidated structure. As

such, there is no truth in the contentions of the petitioner. There are no valid grounds for seeking the relief. The contention of the petitioner that the respondents 1 and 2 have not followed the principles of natural justice is totally false and baseless. The notices were served on the petitioner; and, he offered the explanation by giving an undertaking that he will vacate the subject premises within one week. The photographs showing the condition of the structure of subject building are placed on record by this respondent. If the interim order, dated 16.08.2017, is continued, the 3rd respondent will be put to irreparable loss and hardship. Hence, the interim order, dated 16.08.2017, may be vacated and the writ petition be dismissed.

8. The case of the respondents 1 and 2 as stated in the counter affidavit of the Deputy Commissioner, in brief, is this: 'The writ petition is devoid of merits and is not maintainable under law. The allegations made in the affidavit of the petitioner against these respondents are false, baseless, mischievous and misconceived. The writ petitioner is put to strict proof of his ownership and possession of the subject building as well as the partition pleaded by him. The officials of the respondents 1 and 2 have identified some of the old dilapidated structures in the GHMC area in view of public safety. Such identified structures included the subject building. These respondents have issued notice under Section 459 of the HMC Act, dated 09.06.2016, in the name of the 3rd respondent basing on the local enquiry, as the subject property, which is in dilapidated and dangerous condition may cause danger to the lives of the occupiers and the pedestrians. After issuance of notice under

Section 459 of the HMC Act, 1955, the Corporation has requested the Engineering Wing to give their opinion about the structural stability of the subject building so as to take further necessary action in the matter. The Engineering Wing of the GHMC after inspection of the subject property has given a report/opinion, on 02.08.2017, as follows:

“The site has been inspected. The half of building is being utilized for commercial purpose. Another half is residential. The residential part is covered with shops. Each shop has been inspected. Cracks observed in the walls. There is also leakage from top. The building is an old building. It may be demolished.”

In view of the report/opinion of the Engineering Wing of the GHMC that the building is in dilapidated and dangerous condition, these respondents recommended to demolish the subject building as it is likely to collapse in the heavy rains. Moreover, the petitioner has not given any reply to the 1st notice under Section 459 of the HMC Act, 1955. Further, he has not made any repairs to the building. Therefore, the Corporation is left with no other option except issuing the final notice. Hence, the notice, dated 11.08.2017, was issued by following the due process of law, fixing the date of demolition as 16.08.2017, by addressing the Deputy Commissioner of Police, North Zone, Hyderabad, for providing necessary assistance for dismantling the dilapidated structure. In the meanwhile, the petitioner submitted a reply, dated 16.08.2017, stating that the notice, dated 11.08.2017, has been issued under the influence of the 3rd respondent and that he has not received any notice and that the same was pasted on the door and requested to withdraw the notice, dated 11.08.2017, and approached this Court by filing the present

writ petition. The allegation of the petitioner that no inspection was made by the Engineering Wing of the GHMC is not true and correct. The respondents/Corporation is not concerned with the internal disputes between the petitioner and the 3rd respondent, who are said to be own brothers. The Corporation has initiated action as per law as the premises is in dilapidated and dangerous condition. No illegality or *mala fides* can be attributed to the action of these respondents. The writ petition is devoid of merit and is not maintainable, as the statute prescribes a remedy of appeal under Section 654(6) of the HMC Act against the notice issued under Section 456 of the said Act. Without availing the said remedy, the petitioner has directly approached this Court. Hence, the writ petition is liable to be dismissed on that ground alone. Hence, the writ petition may be dismissed.

9. I have given earnest consideration to the pleadings made in line with the submissions of the parties.

10. At the hearing it is fairly conceded that a registered document viz., release deed was duly executed on 15.10.2008. The copy of the said release deed is placed on record along with the vacate petition. The property is mutated in the names of the 3rd respondent and his other brother in the municipal records. The copy of the proceedings, dated 18.05.2016, of the GHMC, whereby mutation was affected is also placed on record. The copy of the notice, dated 09.06.2016, issued under section 459 of the GHMC Act, 1955, by the 1st respondent is also placed on record.

10.1 Before proceeding further, it is necessary to refer to the following provisions of the Act.

459. Opportunity for stating objections:-

The Commissioner shall issue a notice under sub-Sections (1) and (2) of Section 456, Sub-Section (1) of Section 457 or Sub-Section (1) of Section 458, after giving the owner or occupier, as the case may be, a reasonable opportunity of stating any objection and adducing evidence, if any, and after being satisfied that the objection which is raised is invalid or insufficient.”

456. Removal of structures, trees etc., which are in ruins or likely to fall:-

(1) If it shall at any time appear to the Commissioner that any structure (including under this expression any building, wall, parapet, pavement, floor, steps, railings, door or window frames or shutters or roof, or other structure and anything affixed to or projection from or resting on, any building, wall, parapet or other structure) is in ruinous condition or 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 neighborhood thereof, the Commissioner may, by written notice, 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
- (iv) to repair such structure or thing, and to prevent all cause of danger therefrom.

(2) The Commissioner may also, if he thinks fit, require the said 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 the Commissioner shall think the same desirable, to serve as footway for passengers outside of such hoard or fence.

(3) If it appears to the Commissioner that the danger from a structure which is ruinous or about to fall is imminent, he may, before giving notice as aforesaid or before the period of notice expires, fence off, take down, secure or repair the said structure or take such steps or cause work to be executed as may be required to arrest the danger.

(4) Any expenses incurred by the Commissioner under Sub-section (3) shall be paid by the owner or occupier of the structure.”

It is admitted that the petitioner by making a reference to the notice of the GHMC bearing No.357/Dil/TPS/CIS/N2/GHMC/17, addressed a letter, dated 16.08.2017, to the 2nd respondent and marked copies of the same to the Minister for Excise and the SHO, Chilkalguda Police Station. A copy of the said letter is also placed on record. In the said letter while denying the allegation that the building is in a dilapidated condition and that the said allegation is invented by his brothers, he further stated that he is a poor person and that he is living in the building with his family and that he is having a small shop for maintaining his family. In the said letter, he further sought a week's time to shift his family and his business from the subject building. The said fact is suppressed by the petitioner. The petitioner having executed a release deed afore-stated falsely claimed that he is the owner of the property and

eventually admitted that he executed the registered release deed and it was sought to be contended that since his brother is squatting on the property that fell to his share, he is continuing in occupation of the subject building. Having filed the writ petition and obtained the interim order, the petitioner is continuing in possession of the property without vacating the property as undertaken by him in his letter. The property was under disrepair since decades despite its dilapidated condition; and, its condition further deteriorated. It's repair and/or reconstruction after its demolition is not possible unless the petitioner vacates the property. The photographs of the subject building lay bare that the property is in a dilapidated condition and that tin sheets of its roof, which are damaged, are covered with polythene covers and stones are placed on them to make the covers stay on the tin sheets. In the above said facts & circumstances of the case and the legal position obtaining, it is obvious that the contentions of the petitioner are devoid of merit and that no valid grounds are made out for granting the reliefs sought for in the writ petition.

11. On the above analysis this Court finds that there is no merit in the writ petition and the same is liable to be dismissed.

12. In the result, the Writ Petition is dismissed. The petitioner is granted a time of one month from the date of receipt of a copy of this order for vacating the subject building. On his failure to do so, the respondents 1 and 2 are at liberty to proceed further in the matter as per the procedure established by law for eviction of the petitioner and his family from the subject building and for removal of the structure, which

is in a dilapidated condition. However, it is made clear that if any untoward incident happens in the interregnum period, the petitioner alone shall be solely responsible in all respects including civil and criminal consequences.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

30.07.2018
RAR

