

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR
THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH
CRIMINAL PETITION No.7469 of 2013**

Between:

Mr.Jacob Kurian S/o late P.C.Kurian.

..Petitioner

and

1. State of Andhra Pradesh
Rep.by its Public Prosecutor.
2. District Fire Officer,
Karimnagar, Karimnagar Dist.

..Respondents

JUDGMENT PRONOUNCED ON: 13th December, 2018

SMT JUSTICE T. RAJANI

1. Whether Reporters of local
Newspapers may be allowed : Yes/No
to see the Judgments?

2. Whether the copies of
judgment may be marked to : Yes/No
Law Reporters/Journals?

3. Whether their Ladyship/Lordship
wish to see fair copy of the : Yes/No
Judgment?

T. RAJANI, J

***SMT JUSTICE T. RAJANI**

+CRIMINAL PETITION No.7469 of 2013

% 13.12.2018

Mr.Jacob Kurian S/o late P.C.Kurian.

..Petitioner

Vs.

\$ 1. State of Andhra Pradesh
Rep.by its Public Prosecutor.
2. District Fire Officer,
Karimnagar, Karimnagar Dist.

..Respondents

! Counsel for the petitioner: Sri M.V.S. Suresh Kumar

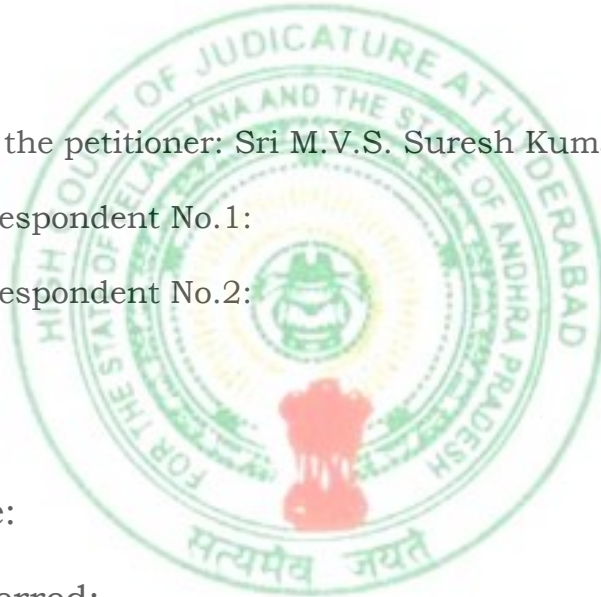
Counsel for respondent No.1:

Counsel for respondent No.2:

<Gist :

>Head Note:

? Cases referred:



SMT JUSTICE T.RAJANI
CRIMINAL PETITION No.7469 OF 2013

ORDER:

This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioner/accused No.1 seeking to quash the proceedings in S.T.C. No.5 of 2012, pending on the file of Court of XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad (for short, 'the trial Court'), registered for the offences punishable under Sections 13, 19 and 22 of the Andhra Pradesh Fire Service Act, 1999 (for short, 'the Act') and Rules 15 and 27 of the Andhra Pradesh Fire and Emergency Operations and Levy of Fee Rules, 2006 (for short, 'the Rules').

2. Heard learned counsel for the petitioner/A.1 and learned Public Prosecutor, appearing for the 1st respondent – State.

3. The complaint is filed stating that the petitioner has violated Sections 13, 19 and 22 of the Act.

4. Section 13 of the Act applies only to the builders and it does not apply to the owners or occupiers. But, the petitioner herein is not the builder. So far as section 19 the Act is concerned it makes both the owners and the occupiers of the building liable for not providing safety measures. Section 19 of the Act is reproduced hereunder for better appreciation of facts:

“19. Owner’s or occupier’s liability to provide for fire prevention and fire safety measures:- (1) The owner or occupier or both, of a building or part thereof shall provide fire safety measures in it and maintain them in good repair and efficient condition at all times, in accordance with the building bye-laws :

Provided that, the owner, or occupier of the building or part thereof, the construction of which was completed on or before the date on which this Act comes into force or which was under construction on such date shall undertake and carry out such additional fire prevention and fire safety measures, required under the building bye-laws in force, as are specified in the notice served on him, under Section 21.

(2) No person shall tamper with, alter, remove or cause any injury or damage to any fire prevention and fire safety equipment installed in any building or part thereof or instigate any other person to do so.”

5. The complaint is filed stating that on 05.05.2011, the Inspecting Officer inspected the premises after issuing Form-9 notice as per the Rules, to the owner/occupier and builder of *high-rise* building at M/s. Shibas Glen Apartment, Somajiguda, Hyderabad. From the said *allegation*, it can be understood that the violation alleged is in respect of a *high-rise* building, which as per the definition in Section 2 (h) of the Act, means a building the height of which is 18 meters or more from the surface level of the land contiguous to such building.

6. The petitioner herein is prosecuted for he being Secretary of the residential welfare association. In the considered opinion of this Court, the Secretary of the residential welfare association cannot be placed on the same footing as that of a builder of *high-rise* building, which is constituted by individual flats, which are allotted to various and different persons. An individual, who is either owner or occupier of a building would be liable under Section 19 of the Act, if there is any violation of the provisions of

the Act. In this case, the violation is of Section 13 of the Act, which pertains to any person proposing to construct a building of more than 15 meters height for commercial/business purpose, 18 meters and above height for residential purpose, and buildings of public congregation like schools, cinema halls, function halls, religious places, which are more than 500 Sq. Meter in plot area or 6 meters and above in height. Such person shall apply to the Director General or any member of the service duly authorised by him in this behalf, before submission of such building plans to the authority or officer competent to approve the same under the relevant law, for the time being in force, for a no objection certificate along with such fee as may be prescribed.

7. There is absolutely no allegation against the petitioner herein that he is the person, who has applied for a building plan. In this case, the responsibility for applying building plan is absolutely on the builder. He is the person who has constructed the building, only a part of which is occupied by the petitioner herein. He acts as representative of the flat owners, only in order to look after the affairs pertaining to maintenance of the building which is handed over to them after complying with all the requirements pertaining to the construction of the building, one of which is to obtain No Objection Certificate under Section 13 of the Act.

8. Section 13 (2) of the Act requires a satisfaction on the part of the Director General, to whom an application is made under Section 13 (1) of the Act about the provision of fire prevention and safety measures. Hence, the Director General has to satisfy himself that the provision of fire prevention and safety measures are duly

complied with by the person making an application for construction of the building by submitting the building plans. The petitioner herein did not play any role in submission of the building plans or in obtaining No Objection Certificate under Section 13 (1) of the Act.

9. Building is defined under Section 2 (a) of the Act, which reads as follows:

“building includes a high-rise building, house, outhouse, stable, godown, shed, hut, wall (other than a boundary wall), fencing, platform and any other structure whether of masonry, bricks, wood, mud, metal or of any other material whatsoever,”

10. It is not the case of the complainant that the petitioner herein has constructed any building, which falls within the above definition of the building. Section 21 of the Act prescribes a notice be issued to the person, who violated the provisions of the Act and call upon him to undertake measures to comply with the provisions of the Act within the time prescribed in the said notice.

11. The notice given in this case shows that the direction was given to the petitioner and the builder to undertake the fire prevention and fire safety measures in Multistoried Building, of which as already observed, the petitioner is only the Secretary of the residential welfare association. The petitioner seems to have issued a reply notice, stating that they would make all sincere efforts to bring M/s. Landmark Builders to the negotiation table and together put in place the fire safety measures contained in the letter issued by the Department. Hence, even from the reply, it can

be understood that the petitioner took a stand that the responsibility of complying with the fire safety measures is on the builder.

12. Rule 15 of the Rules pertains to issuance of No Objection Certificate. Rule 27 of the Rules pertains to steps to be taken in the event of non-compliance of notice.

13. When no burden lies on the Secretary of the residential welfare association to take up the fire safety measures in a building which is constructed not by him, but by the builder, the above provisions would not apply to the petitioner.

14. From the complaint, it can be understood that the petitioner was sought to be prosecuted for violations of the fire safety measures in respect of the entire building.

15. From the language of the provisions, for which the petitioner was sought to be prosecuted, it can be understood that the responsibility of complying with the provisions of the Act in respect of a multistoried building, comprising of individual flats, is solely on the builder of the said flats and not on the owner/occupier.

16. Section 19 of the Act would apply to the owner or occupier of a building, which falls within the definition of building under Section 2 (a) of the Act. It is not the case of the complainant that the petitioner has constructed any of the building, which is of the nature as defined under Section 2 (a) of the Act and that he has violated the provisions of the Act.

17. The building in this case is stated to be *high-rise* building, which is constructed by the builder and not this petitioner. It appears that the prosecution is launched on an isolated understanding of Section 19 of the Act. The said provision needs to be read in combination with Section 13 and Section 2 (a) and (h). Owner of a 'building' as defined in Section 2 (a) of the Act if required to take a No Objection Certificate under Section 13 of the Act, would alone fall within the ambit of Section 19, unless the building by-laws provide for otherwise. The petitioner herein comes out of the purview of Section 19 of the Act due to the aforementioned reasons.

18. Hence, in view of the above, this Court opines that continuation of further proceedings against the petitioner/A.1 would result in sheer abuse of process of law and they cannot be sustained.

19. Accordingly, the Criminal Petition is allowed and all further proceedings against the petitioner / A-1 in S.T.C. No.5 of 2012, pending on the file of the Court of XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad, are hereby quashed.

As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

T. RAJANI, J

DECEMBER 13, 2108

Note:

L.R.copy to be marked.

(B/o)

DSH/YVL

SMT JUSTICE T.RAJANI



CRIMINAL PETITION No.7469 OF 2013

Date:13.12.2018

YVL/DSH