

**THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

**WRIT PETITION No. 25692 OF 2016**

**O R D E R:**

Heard learned counsel for the petitioners, learned Standing Counsel for the Corporation and learned counsel for the 3<sup>rd</sup> respondent.

In this Writ Petition, the petitioners challenge the notice dated 30.07.2016 issued by the 2<sup>nd</sup> respondent - Deputy Commissioner, Greater Hyderabad Municipal Corporation, invoking Section 456 of the Greater Hyderabad Municipal Corporation Act, 1955. The petitioners are tenants of the 3<sup>rd</sup> respondent in premises bearing Municipal No. 15-8-353 and 354, Feelkhana, Hyderabad. Pursuant to the earlier notice dated 08.07.2015, the petitioners submitted explanation / objections on 16.07.2015 stating that the notice was issued *mala fide* at the instance of the land lord - 3<sup>rd</sup> respondent, who had failed in his attempt to evict them by filing the civil suits before the civil Court. It is their further case that the subject building is strong enough to sustain for another 50 years at least. It is also further asserted that the structural stability of the building may be ascertained from the Institute of Engineers / PWD Department by issuing a notice to the petitioners. After keeping quiet for one year, yet another notice dated 30.07.2016 impugned in the Writ Petition was issued, alleges the petitioners.

In the counter-affidavit filed on behalf of the 3<sup>rd</sup> respondent, it has been stated that the subject building is 100-year-old and the same is in a dilapidated condition; that a social worker had given a complaint to the Municipal

Corporation that the building is likely to collapse at any time and cause damage to the men and property, hence, requested to take appropriate action.

In the counter-affidavit filed on behalf of the Corporation, it is asserted that on a complaint having been received by the Corporation, the Engineering wing had caused inspection of the subject premises on 21.06.2016 and submitted a report stating that the construction was a load-bearing structure in cement mortar and the first floor is already in dismantled condition and the entire debris is on the roof top leaving the front side wall to the ground floor and the entire structure appears to be old; but however, it is not possible to decide the strength of the building by naked eye. Taking into consideration the said report, yet another inspection was conducted by the Executive Engineer, Zone-III, Engineering Section on 05.07.2016 and submitted the report dated 22.07.2016, as per which, the building is in dilapidated condition and there is every possibility that it may collapse at any time and it is recommended to be dismantled. It is further stated that in the light of the Engineering Section's report, the building is required to be pulled down so as to avoid any casualties to the life and limb of the people.

Learned counsel for the 3<sup>rd</sup> respondent, while denying the allegations of *mala fides*, reiterates that he himself had not given any complaint and the action taken by the Municipal Corporation is only at the instance of a social worker. It is further asserted that the building may collapse at any time.

This Court cannot substitute the opinion of the Engineering Department, which stated that the structure is old

and load-bearing structure constructed with cement mortar and part of the building is already collapsed and there is every possibility of the building collapsing any time. Further, this Court cannot lose sight of the specific assertion of the 3<sup>rd</sup> respondent that as a matter of fact, part of the building had collapsed resulting in registration of FIR No. 173 of 2018 against the 3<sup>rd</sup> respondent on account of the injuries suffered by the complainant therein on 24.07.2018. These aspects *prima facie* support the case of the authorities that the issuance of notice is justified. However, in terms of Section 456 of the Act, the Commissioner is mandated to issue notice to the owner / occupier before taking any action.

This Writ Petition is filed in 2016 and three years have elapsed. Notwithstanding the fact that there being no calamity as of now, the matter does not brook any further delay. As it is the duty of the Commissioner to take appropriate decision, after giving an opportunity to the owner / occupier and as it is the petitioners / occupiers who are objecting to the notice issued, the objections filed by them shall be considered by the Commissioner and appropriate order be passed based on the material available, duly taking into consideration the opinion of the Engineering Department. Now, the learned Standing Counsel for the Corporation submits that the powers under Section 456 have been delegated under Section 462 of the Act. However, it is not for this Court, at this stage, to state whether delegation of power is permissible or not and the said aspect is left open to the respondent authorities to take appropriate action by giving notice and opportunity of hearing, if any to the

petitioners. Such exercise shall be completed in four weeks from the date of receipt of a copy of this order.

It is needless to mention that the petitioners also shall be entitled to place any fresh material to support their case which shall be considered by the Commissioner.

With the above-said order, the Writ Petition stands disposed of. No costs.

The miscellaneous Applications, if any pending shall stand closed.

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**CHALLA KODANDA RAM, J**

18<sup>th</sup> March 2019

Issue CC in a week.  
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