

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.17524 of 2019

ORDER:

The petitioner challenges the notice issued under Section 459 of the HMC Act, 1955, dated 08.08.2019. It is the case of the petitioner that the building in issue in the impugned notice is structurally safe and stable and there is no danger of its falling down and that the structure is not in dilapidated condition as alleged in the impugned notice.

Learned counsel for the petitioner placed reliance on Section 456(iii) of the HMC Act, and submits that the Commissioner is empowered to consider the explanation of the petitioner and pass orders, however, no orders were passed on the explanation submitted by the petitioner. He further submits that the petitioner apprehends that the respondents may demolish the structure without even considering the explanation of the petitioner and affording an opportunity of hearing to him. He further submits that there is a civil dispute pending in CCCA No.40 of 2002 in respect of the subject building.

On the other hand, learned Standing Counsel for GHMC submits that there is no reason for apprehension of the petitioner inasmuch as the impugned notice is only a notice calling for explanation, the explanation submitted by the petitioner would be considered and hence the impugned notice does not call for interference of this Court.

Inasmuch as the scheme and scope of Section 456 to 459 of the HMC Act was the subject matter before this Court on a number of occasions earlier, this Court had held that in a given case where there is an imminent danger of collapse of building due to structural instability, there is no requirement even to issue a notice to the occupant of the building. However, in the instant case, as the respondent has chosen to issue notice to the petitioner to submit explanation and the petitioner states to have submitted his explanation on 09.08.2019, the respondents shall consider the explanation and pass appropriate orders in accordance with law. As it is the contention of the petitioner that the building is structurally stable, in the interest of justice and also in the interest of parties, the assessment of strength and stability of

the building in issue shall also be got done by the Engineering Department concerned, subject to the petitioner incurring necessary statutory expenses for such assessment.

Subject to the above, the writ petition is disposed of. It is made clear that the respondent authorities shall not resort to demolition, without considering the explanation of the petitioner and passing final orders in the matter.

It is also made clear that as the very stability of the structure is seriously disputed, and the collapse of building any moment owing to its structural instability would cause serious threat to life and property of people in and around the building, the petitioner shall solely be responsible for the risk and costs of any such mishap, should it occur in the interregnum of considering his explanation and passing final orders by the respondent authorities.

No costs. Miscellaneous petitions, if any pending, shall stand closed.

16th August, 2019

Note: Issue C.C. in one week.
B/o KSM

CHALLA KODANDA RAM, J

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KSM