

THE HON'BLE SRI JUSTICE M.LAXMAN

C.M.S.A. Nos. 41 of 2017 AND 31 OF 2018

COMMON JUDGMENT:

1. Since the issues raised in both the appeals are one and the same, they are being disposed of by way of a common judgment.

2. CMSA.No.41 of 2017 has been filed challenging the judgment in M.A.No.57 of 2014, on the file of the learned Chief Judge, City Small Causes Court, Hyderabad, whereunder, the appeal filed by the appellant herein to set aside the notice dated 19.11.2013, issued by the respondents under Section 459 of the GHMC Act, for vacating the premises for demolition of suit schedule property as the structure was in dilapidated condition and endanger to the public, was dismissed.

3. CMSA.No.31 of 2018 has been filed challenging the common order in I.A.Nos.300 and 301 of 2014 in M.A.No.57 of 2014, on the file of the learned Chief Judge, City Small Causes Court, Hyderabad, whereunder, applications filed by the appellant herein to punish the contemnor, for demolishing the structure, during the pendency of the suit in M.A.No.57 of 2014, were dismissed.

4. For the sake of convenience, the parties hereinafter are referred to as they are arrayed in M.A.No.57 of 2014.

5. The sum and substance of the case of the appellant is that he is the tenant of the premises bearing No.3-1-4, SD Road, Secunderabad. The said premises is owned by third respondent. The landlord/respondent No.3 had been creating nuisance to throw out the tenant by seeking enhancement in rent or to vacate the premises. The landlord has also filed a rent control case to evict the appellant from the premises, on the ground of bonafide requirement and also for enhancement of the rent. The eviction petition was dismissed and enhancement petition was partly allowed by enhancing the monthly rent and the tenant has complied the enhancement of rent.

6. The landlord colluding with the GHMC people was trying to demolish the structure, so that the tenant can be thrown out. In pursuance of such understanding, a notice was issued to the appellant under Section 456 of GHMC Act, for vacating the premises. Previously, a report was obtained from the experts committee of JNTU and such report was challenged before this Court and this Court has directed the Commissioner, GHMC, to consider the objection of the appellant. Further, the appellant has filed the report of architect, whereunder, they have stated that the building was in a good condition. Without looking at the objections and report furnished by the appellant, the Commissioner, GHMC

has decided to demolish the structures, by resorting to the powers under Section 456 of the GHMC Act. Aggrieved by the same, the appellant has filed the present appeal.

7. During the pendency of the appeal, the standing counsel took time to file counter and before counter is filed, the structures have been demolished. According to the appellant, such act of the respondents amounts to dis-obedience of the order passed by the Court below, so as to invite the punishment under Contempt's of Court Act. The appellant claimed that, in this regard, an application in I.A.No.300 of 2017 was filed and the Court below without looking into the correct legal possession, has dismissed the said application. Under the said circumstances, present Civil Miscellaneous Second Appeal has been filed.

8. The case of the respondent Nos.1 and 2 is that demolition has been taken in the light of the report furnished by the expert committee of JNTU, wherein, it is opined that the building is of 75 years old and unfit to stay and requires immediate demolition. On the basis of such report, a letter was also addressed to the appellant and the appellant has also given his representation along with a report of architect, wherein, it was stated that the building was in good condition. However, by considering the expert committee report given by JNTU, Commissioner, GHMC has

taken decision to demolish the structures, since the condition of the building was ruinous condition, unfit to stay and endanger to public. According to the respondent Nos.1 and 2, the report of the architecture is not a scientific report. It is also their case that there was no contempt since there is no order or direction or undertaking given by the respondents. Therefore, no contempt is made out.

9. The Court below has dismissed M.A.No.57 of 2014 holding that the subject matter has already dismissed and the relief sought in the appeal has become infructuous. The Court below also held that there is no contempt since there was no direction from it. Aggrieved by the same, the present two appeals are filed.

10. Heard the learned counsel for the appellant and the respondent Nos.1 and 2 and perused the materials placed on record. Respondent No.3 is not contesting the case.

11. The questions of law involved in the present case are as follows.

(i) Whether the destruction of subject matter during the pendency of the appeal without there being any positive order or undertaking from the respondent Nos.1 and 2, amounts to civil disobedience, so as to punish the contemnor.

(ii) Whether the findings of the Commissioner, GHMC as well as Court below in not interfering with the decision of the Commissioner, GHMC, suffers from any perversity.

12. The facts which are not in dispute are that the respondent No.3 is the owner of the premises and the appellant is the tenant. The impugned order shows that the building is of 75 years old. It is also not in dispute that there was a report from the JNTU to the effect that the building stability was not good and requires demolition. It is also not in dispute that the appellant herein filed a report of architect, whereunder the stability of building was shown to be in good condition.

13. According to the appellant, during the pendency of proceedings before the Commissioner, GHMC, he has filed a report, which shows that the structure of the building was in good condition. Hence, the Commissioner, GHMC should not have accepted the expert committee report of JNTU to over weigh the opinion given by the architect in their report. The impugned order shows that the Commissioner, GHMC has taken note of the expert committee report, which was given by the engineers of JNTU and they categorically stated that the building is of 75 years old and endanger to the public and requires demolition.

14. The learned counsel for the respondent states that the architect, who gave report, is a licensed architect. The report of the architect shows the valuation of the building alone, but does not show about the stability of the building. When such architect does not possess expertise on structural stability of the building, any opinion given by him that the building is in good condition has no significance. When there is a categorical opinion from the JNTU experts committee that the stability of the building is of ruinous condition and requires immediate demolition, the Commissioner, GHMC has taken note of the same and rightly came to a conclusion that the building immediately needs to be demolished. In pursuance of the order of Commissioner, GHMC under Section 456 of GHMC Act, the appellant was given a week's time. After such time, the appellant filed First Appeal and failed to get *ex parte* ad interim injunction, restraining the respondents from taking action based on the order impugned in the said first appeal. However, before filing of counter, the building structures were removed. Hence, the contempt application was filed.

15. As seen from the definition of civil contempt defined under Section 2(B) of Contempt of Courts Act, which reads as follows:

“civil contempt” means wilful disobedience to any judgment, decree, direction, order, writ or other process of a Court or wilful breach of an undertaking given to a Court;

16. A reading of the above definition would clearly indicate that for civil disobedience, there must be a judgment or decree, direction, order, writ or other process of Court or there is a willful breach of an undertaking given to the Court, then only civil disobedience would arise.

17. In the present case, there was no direction to the respondents not to act upon the order passed by the Commissioner, GHMC, under Section 456 of the GHMC Act, which was impugned in the First Appeal. In the said facts and circumstances, resorting to their powers cannot be said to be any civil disobedience so as to amounts to contempt.

18. The First Appellate Court ought to have decided the issue whether the order impugned suffers from any illegality, merely because building is demolished, that does not mean that the cause of action in the appeal has become infructuous. The Court ought to have decided the issue whether the order of the Commissioner, GHMC under Section 456 of GHMC Act suffers from any illegality. Without deciding that issue, simply the First Appellate Court has dismissed the appeal as infructuous. It is not a correct approach.

19. A close scrutiny of the impugned order of the Commissioner, GHMC clearly shows that he has no material from the appellant,

contrary to the opinion rendered by the JNTU experts committee to take architect view. Following the JNTU experts report, the Commissioner, GHMC has set aside the request of the tenant. Further, the landlord is not challenging the decision of the authorities with regard to the condition of the building. In the said circumstances, the tenant cannot canvass more than what the landlord can do. Therefore, I find that the order of the Commissioner, GHMC does not suffer from any illegality so as to interfere by the Courts in the appeal.

20. Learned Counsel for the appellant contended that the liberty may be given to the appellant to take steps under the Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960, against the landlord. It is needless to observe that if the said Act permits, it is always upon to exhaust his remedies under the said Act.

21. With the above observations, both the Civil Miscellaneous Second Appeals are dismissed.

22. In the result,

(i).CMSA.No.41 of 2017 is dismissed and the judgment in M.A.No.57 of 2014, on the file of the learned Chief Judge, City Small Causes Court, Hyderabad, is hereby confirmed.

(ii).CMSA.No.31 of 2018 is dismissed and the common order in I.A.Nos.300 and 301 of 2014 in M.A.No.57 of 2014, on the file of the learned Chief Judge, City Small Causes Court, Hyderabad, is hereby confirmed.

There shall be no order as to costs. As sequel, Miscellaneous applications, if any pending, shall stand closed.

M. LAXMAN, J

DATE:11.11.2022
DUA/GMS

THE HON'BLE SRI JUSTICE M.LAXMAN

CIVIL MISCELLENOUS SECOND APPEAL No. 41 of 2017
and CMSA No. 31 of 2018

11.11.2022

DUA/GMS