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**(2019) 09 J&K CK 0036**

**In the Jammu And Kashmir High Court**

**Case No : Others Writ Petition (OWP) No. 494, 929 Of 2018**

Avtar Singh And Others

APPELLANT

Vs

State Of Jammu & Kashmir And Others

RESPONDENT

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**Date of Decision : 19-09-2019**

**Acts Referred:**

Jammu & Kashmir. Municipal Corporation Act, 2000 — Section 258

**Citation : (2019) 09 J&K CK 0036**

**Hon'ble Judges : Rajesh Bindal, J**

**Bench : Single Bench**

**Advocate : Parveen Kapahi, Rajnish Raina, Pranav Kohli**

**Final Decision : Dismissed**

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## **Judgement**

Rajesh Bindal, J

1. This order will dispose of two petitions bearing OWP Nos. 494 & 929 of 2018. The petitioners claim that they are tenants in occupation of the shops in the building, which has been ordered to be demolished by the Municipal Corporation, Jammu. The same having been declared unsafe.

2. Learned counsel for the petitioners submitted that the petitioners are tenants in various shops on the ground floor of the building, which has been ordered to be demolished by the Municipal Corporation, Jammu, as the same has been declared unsafe. It is a devise adopted by the owner of the building to evict the petitioners, as otherwise he has no other ground on which the petitioners can possibly be evicted. Before issuance of the public notice for demolition of the building, the petitioners were never afforded any opportunity of being heard during the course of the proceedings by the Corporation or any other authority, whereby the building was declared unsafe. Section 258 of the Jammu and Kashmir Municipal Corporation Act, 2000 (for short 'the Act') clearly provides that opportunity of being heard has to be afforded to the owner and the occupier. Indisputedly, the petitioners are the occupiers in the building. Disputing the

stand of the respondents that the building has become unsafe, reference has been made to the report (Annexure-E) of an Engineer stating that the building appears to be in a safe condition.

3. Referring to the modus operandi adopted by the owner of the building, it was submitted that the process to get the building declared unsafe was initiated by him way back in the year 2006 when representation was made by him to the Deputy Commissioner. Thereafter, the owner of the building kept quiet for a decade. Fresh representation was submitted on 25.07.2017. The mere fact that the building did not fall during this period shows that it had not become unsafe. Even the local Commissioner appointed by the Court had submitted the report without even issuing any notice to the petitioners. Such a report which otherwise is also not giving any details, cannot be relied upon. It was further submitted that in case the first floor or any part of the building has become unsafe, the petitioners are ready and willing to get the same demolished at their own cost.

4. On the other hand, learned counsel for the Corporation submitted that due process was followed before the building was declared unsafe. On 27.10.2017, the matter was dealt with after getting the report from the concerned Executive Engineer and the building was declared unsafe. The order was conveyed to the owner. Thereafter, on the request of the owner of the building, even estimate was prepared for demolition of the building as he pleaded inability to execute the project on account of non availability of the manpower with the technical expertise. The amount was deposited by him.

5. Mr. Pranav Kohli, learned counsel appearing for the owner of the building submitted that the petitioners have filed the present petition seeking quashing of the notices for demolition of the building being unsafe and also to declare the same to be safe. As far as demolition notices are concerned, there is no illegality therein. The building was constructed more than 100 years back. The photographs placed on record clearly show that the same is in a dilapidated condition. Some portion at the ground floor was repaired in the year 1974. That was also more than four decades back. He had filed application to the Municipal Corporation under the provisions of the Act so as to avoid any untoward incident as in case the building falls and any casualty happens, the owner may be held liable. The report produced by the petitioners is of Approved Valuer of the Corporation and not the Structure Engineer. It has been so mentioned in the report itself. As against that the department had got the building inspected through Engineers and the consistent opinion is that building has become unsafe and can fall at any time. Even report of the local Commissioner appointed by this Court also supports this fact. No prejudice as such has been caused to the petitioners as they have raised whatever grievances they wanted to raise, in the present petition. There is nothing beyond that.

6. Heard learned counsels for the parties and perused the paper book.

7. Vide impugned public notice issued by the Municipal Corporation, general

public, owner/occupier of the building in question were informed that the building had been declared unsafe by various agencies and the Corporation has granted permission for demolishing the same vide impugned order dated 16.11.2017. The aforesaid date was clarified by the counsel for the Corporation to be 06.11.2017. Coming to the background thereof, it may be added that the claim of the owner of the building is that the building in question is more than 100 years old. This fact is not seriously disputed as the part of the building had fallen and apprehension of the owner of the building is that it may fall at any time. The request was made to the Corporation on 29.11.2006 for declaration of the building as unsafe. There is nothing on record to show that any action was taken thereon by the Corporation. Thereafter the owner of the building filed another application on 25.07.2017 reiterating his request referring to the earlier letter. Matter was referred by the Deputy Commissioner to the Chief Engineer, PWD (R&B) Construction Wing on 01.08.2017. Report was submitted by the Assistant Executive Engineer to the Executive Engineer on 08.08.2017, opining that the building is unsafe and it may fall at any time. The area around the building is densely built and populated. The report was finally sent to the Deputy Commissioner, Jammu vide letter dated 28.08.2017, who in turn forwarded the same to the Municipal Corporation for appropriate action vide letter dated 29.08.2017. It was on his report that on 06.11.2017, the Corporation had taken the action to undertake demolition of the building immediately. Thereafter communication dated 22.12.2017 was issued to the owner of the building to deposit the demolition charges to the tune of Rs. 5,41,000/-. The needful was done by the owner of the building on 26.12.2017.

8. Besides the report, as was sought by the Deputy Commissioner from Executive Engineer, PW (R&B) Department, Jammu, even this Court vide order dated 17.12.2018 had appointed Dinesh Kumar Rampal, Superintending Engineer as a Court Commissioner to inspect the building and submit his report regarding the status thereof. He also inspected the same on 24.12.2018 and submitted his report, along with photographs, in court dated 31.12.2018, opining that the building is unsafe. It has out-lived its life and is not fit for use. There is every apprehension that it may collapse any time especially during earthquake or heavy thunder shower. To this report, the petitioners had sought to raise objection stating that they were never informed about the date and time of inspection. The objections are misconceived. The building to be inspected was not located at a place, which is different from the place where the petitioners are carrying on their businesses and inspection of any building could possibly be carried out only during day-time. Hence, the claim that they were not knowing is an argument, which deserves to be rejected.

9. Similar is the position when the building was earlier inspected by the Assistant Executive Engineer. In fact, the petitioners very well knew that the building had been inspected. Local Commissioner was appointed by the Court in the presence of the petitioners. The petitioners have also tried to counter the earlier report of inspection by the Executive Engineer by placing on record report of the

registered valuer. The same is of no relevance as the report itself states that the same is the valuation report and the person who prepared the same is a registered designer, planner and valuer approved by the Municipal Corporation. He did not assess any value of the building in the report but merely stated that the ground floor of the building appears to be safe. However, opinion of civil (Structural) engineer needs to be obtained. The aforesaid report produced by the petitioners in fact goes against them. The building which is 100 years old and in which some repairs were carried out more than four decades back cannot be said to be safe at this stage once two different reports by the engineers after inspection clearly established this fact. Even the photographs available on record also corroborate the aforesaid factual position. Any repairs made in a building, which is more than 100 years old can increase its life to some extent. Even if repairs were carried out more than forty years back, the foundation, the walls and the structure above the ground floor is more than 100 years old.

10. No doubt, the petitioners are fighting because they are in occupation thereof since long as tenants but if their rights are pitched against the lives of the people around including the petitioners, the scale will tilt in favour of the lives, which are more valuable. Now, the petitioners say they are ready to take the risk by producing reports or arguing the case on technical grounds but if any day the building falls, everyone will find fault either with the owner or with the local authorities. In the case in hand where action has been taken by the authorities keeping in view the safety of the people living in the surroundings as the building is situated in a thickly populated area in the market, the action cannot be said to be illegal. We have seen many instances where old dilapidated buildings fall because of inaction by the persons concerned and then the authorities come forward for rescue operations. We should not wait for that disaster to happen.

11. The argument raised that the procedure adopted by the owner of the building is just to seek eviction of the petitioners is merely to be noticed and rejected. Nothing has been produced on record to show that the owner of the building ever initiated any other proceedings to seek their eviction.

12. The plea that the petitioners were not heard is merely to be noticed and rejected. May be that the petitioners were not afforded any opportunity of hearing during the process of declaration of building as unsafe, as they claim, but the fact remains that whatever they wanted to plead or produce, they had full opportunity in the present proceedings. The same was availed by producing the report from their expert. Any delay in taking appropriate steps in such matters may sometimes be disastrous. We should not wait for that to happen.

13. For the reasons mentioned above, I do not find any merit in the present petition. The same is accordingly dismissed.

14. It is expected that the Corporation would carry out some exercise to find out if there are any dilapidated buildings in the city, which pose danger to the lives of the people living therein or the neighbourhood and take appropriate steps to

prevent any untoward incident.