

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.36542 OF 2017

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief:

“... to issue a Writ, order or direction more particularly in the nature of Writ of Mandamus declaring the notice issued by the respondent No.2 dated 07-10-2017 bearing No.14/1/5/LS/C-30/NZ/GHMC/2017 as illegal, null and void and in violation of Article 19 of the Constitution of India and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. This Writ Petition is filed assailing the notice, dated 07.10.2017, whereby in view of the proposed action of demolition of the subject building, pursuant to a notice issued under Section 459 of the Hyderabad Municipal Corporation Act, 1955 ('the Act', for brevity), the Trade License sanctioned in respect of the trade of the petitioner is cancelled with immediate effect.

3. Learned counsel for the petitioner would submit that the subject building is in habitable condition; that the petitioner is carrying on business in electrical goods; that no notice, under Section 459 of the Act, was served upon the petitioner; that a notice in that regard appears to have been served on the landlord of the petitioner and that until the action initiated for demolition of the subject building reaches a logical conclusion, the petitioner is entitled to carry on his trade in the subject building and therefore, the simultaneous action cancelling the trade license of the

petitioner by the impugned notice is unsustainable, arbitrary, illegal and unconstitutional.

4. Learned Standing Counsel appearing for respondent Nos.1 and 2 would submit that the subject building is in a perilous condition and in view of the notice issued under Section 459 of the Act for demolition of the subject building, which is in dangerous and dilapidated condition, the impugned action is sustainable.

5. I have given earnest consideration to the facts and submissions. As rightly pointed out by the learned counsel for petitioner, till a final decision is taken on the issue of requirement of demolition of the subject building on the ground that it is dangerous, the petitioner is entitled to carry on his trade in the subject building. In that view of the matter, this Court is of the considered view that the request of the petitioner merits consideration subject, however, to certain conditions.

6. In the result, the Writ Petition is disposed of setting aside the impugned notice, dated 07.10.2017, however, subject to the observation that continuation of the business of the petitioner in the subject building shall be at his own peril and the petitioner alone shall be liable for any consequences, in the event of any untoward incident and damage to person and property of any third party due to the dangerous condition of the subject building and shall be liable for appropriate civil and criminal actions, as envisaged under law. This order will not preclude respondent Nos.1 and 2 from further proceeding in the matter, pursuant to the notice issued under Section 459 of the Act.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

November 01, 2017
MD

