

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION Nos.862 of 2014 & 863 of 2014

COMMON ORDER:

The W.P.No.862 of 2014, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that the Hon’ble Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of *Writ of Mandamus* declaring the proceedings of the 2nd respondent in Roc.No.G5-149090/2012/BO-VI, dated nil as illegal, null, void and arbitrary and without jurisdiction and to pass such other appropriate orders as are deemed fit and proper in the interests of justice.”

2. The W.P.No.863 of 2014, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that the Hon’ble Court may be pleased to issue an appropriate Writ, order or direction more particularly one in the nature of *Writ of Mandamus* declaring the proceedings of the 2nd respondent in Roc.No.306/FPW/VMC/2013, dated 09.01.2014 as illegal, null, void and arbitrary and without jurisdiction and to pass such other appropriate orders as are deemed fit and proper in the interests of justice.”

3. I have heard the submissions of Sri *K.Durga Prasad*, learned counsel appearing for the petitioner, of the learned Government Pleader for Municipal Administration (A.P.), appearing for the respondents 1 & 3, and of Sri *T.S.Venkata Ramana*, learned Standing Counsel for Vijayawada Municipal Corporation, appearing for the 2nd respondent. I have perused the material record.

4. By the proceedings, which are impugned in the first writ petition afore-stated, the 2nd respondent directed the writ petitioner to remove the structure of the theatre within three (03) days, which according to the petitioner was constructed 40 years prior to the said notice/proceedings. In the second writ petition, the writ petitioner questioned the action of the 2nd respondent in directing closure of the theatre *vide* proceedings, dated 09.01.2014.

5. The petitioner submits that the 2nd respondent closed the theatre pursuant to the notice under Section 462(c) of the Hyderabad Municipal Corporation Act, 1955, on the ground that the theatre is in a ruinous and dangerous condition and that the running of the theatre endangers lives of audience and visitors to the cinema theatre and that the cinema theatre is being run without obtaining 'No Objection Certificate' from the Fire Prevention Wing, Vijayawada Municipal Corporation, and that the main challenge in the writ petitions is with regard to jurisdiction of the 2nd respondent to take action under the provisions of the Hyderabad Municipal Corporation Act, 1955.

6. Learned counsel for the writ petitioner further submits that the Joint Collector is only the competent authority to pass any order, but not the 2nd respondent and brings to the notice of the Court the fact that on the instructions of the Joint Collector, the Executive Engineer (R & B), R & B Division, Vijayawada, made an inspection of the subject cinema theatre, on 08.01.2014, and found that it is structurally sound and its longevity may be taken for a further period of two (02) years, from 01.01.2014 to 31.12.2015, and that in his report, he further stated that the said observation is

subject to the condition that during annual inspections, defects, if any, pointed out by the inspecting officer shall be rectified within 15 days and that failing such compliance of rectifications, the matter may be reported to the licence issuing authority for necessary action and that in that view of the matter, it is indisputable that the building is structurally sound and has got sufficient longevity and, therefore, the observations of the 2nd respondent in the impugned notice and proceedings are incorrect. He would further submit that subsequent to the filing of the writ petition in W.P.No.862 of 2014 and the interim order granted by this Court, periodical annual inspections are being held and that the building is being found structurally sound in such inspections.

7. However, learned Standing Counsel appearing for the 2nd respondent Municipal Corporation would submit that in the Vacate Petition, it is *inter alia* stated that in the cinema theatre premises, the petitioner is running a canteen without obtaining a trade licence. But, as per further submissions made by him, on instructions received, the Municipality is not presently collecting any trade licence fee from cinema theatres.

8. In view of the inspection report of the Executive Engineer (R & B), R & B Division, Vijayawada, submitted as per the instructions of the Joint Collector, Vijayawada, Krishna District, and in view of the fair concession that the Joint Collector alone is the competent authority, this Court finds that the writ petitions deserve to be allowed, as prayed for.

9. Accordingly, the Writ Petitions are allowed, as prayed for. There shall be no order as to costs.

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

M.SEETHARAMA MURTI, J

Date: 11th June, 2018

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