

IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

WEDNESDAY, THE TWENTY THIRD DAY OF OCTOBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO

WRIT APPEAL Nos.: 1161 AND 1174 OF 2024

WRIT APPEAL NO: 1161 OF 2024:

Writ Appeal under clause 15 of the Letters Patent Preferred Against Order Dated 20/07/2024 in WP.No. 25677 of 2024 on the file of the High Court.

Between:

Bharat Rashtra Samithi (BRS) Nalgonda, Rep by Ramavath Ravinder Kumar s/o Shri Kanilal aged about 52 years Flat No. 201, Dhani Pride Residency, H. No. 17-1-388/B and C, Sri Laxmi Nagar Colony, Saidabad, Hyderabad.

...APPELLANT

AND

1. The State of Telangana, Rep its Principal Secretary, Municipal Administration and Urban Development Secretariate Hyderabad.
2. The District Collector, Nalgonda District At Nalgonda.
3. The Municipal Commissioner, Nalgonda Municipality At Nalgonda.
4. The Site Inspector Officer, Nalgonda Municipality Nalgonda.

...RESPONDENTS

IA NO: 2 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings including the demolition of the building i.e., land admeasuring Ac. 1-00 Gts., in Sy. Nos. 1498 and 1506 situated at Nalgonda Village and Mandal, Nalgonda District and to direct the authorities to not take any coercive steps pending disposal of the above Writ Appeal.

**Counsel for the Appellant: SRI P. SRI RAGHU RAM, SR. COUNSEL REP. FOR
SRI V. MALLI BABU**

Counsel for the Respondent No.1 AND 2 : SRI A. SUDARSHAN REDDY,

Counsel for the Respondent No.3 & 4: SRI B. JAGAN MADHAVA RAO

WRIT APPEAL NO: 1174 OF 2024:

Writ Appeal under clause 15 of the Letters Patent filed against the order Dated 14/08/2024 in writ petition No 22042 of 2024 on the file of the High Court.

Between:

Bharat Rashtra Samithi (BRS) Nalgonda, Rep by Ramavath Ravinder Kumar s/o Shri Kanilal aged about 52 years Flat No. 201, Dhani Pride Residency, H. No. 17-1-388/B & C, Sri Laxmi Nagar Colony, Saidabad, Hyderabad.

...APPELLANT

AND

1. The State of Telangana, Rep its Principal Secretary, Municipal Administration and Urban Development Secretariate Hyderabad.
2. The District Collector, Nalgonda District At Nalgonda.
3. The Municipal Commissioner, Nalgonda Municipality At Nalgonda.
4. The Site Inspector Officer, Nalgonda Municipality Nalgonda

...RESPONDENTS

IA NO: 1 OF 2024

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings including the demolition of the building i.e., land admeasuring Ac. 1-00 Gts., in Sy. Nos. 1498 & 1506 situated at Nalgonda Village & Mandal, Nalgonda District and to direct the authorities to not take any coercive steps pending disposal of the above Writ Appeal.

Counsel for the Appellant: SRI P. SRI RAGHU RAM, SR. COUNSEL REP. FOR SRI V. MALLI BABU

**Counsel for the Respondent No.1: SRI A. SUDARSHAN REDDY,
ADVOCATE GENERAL /
GP FOR MUNICIPAL ADMINISTRATION &
URBAN DEVELOPMENT**

Counsel for the Respondent No.2: GP FOR REVENUE

Counsel for the Respondent No.3 & 4: SRI B. JAGAN MADHAVA RAO

The Court delivered the following: COMMON JUDGMENT

THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J.SREENIVAS RAO

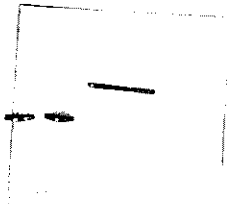
WRIT APPEAL Nos.1161 AND 1174 OF 2024

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. P.Sri Raghu Ram, learned Senior Counsel appears for
Mr. V.Malli Babu, learned counsel for the appellant.

Mr. A.Sudarshan Reddy, learned Advocate General for the
State.

2. Heard on the question of admission.
3. W.A.No.1161 of 2024 has been filed against the order dated 18.09.2024 passed by a learned Single Judge W.P.No.25677 of 2024, whereas W.A.No.1174 of 2024 has been filed against the order dated 14.08.2024 passed in W.P.No.22042 of 2024. On account of similarity of issues involved in both the appeals, they were heard analogously.
4. Facts giving rise to filing of these appeals briefly stated are that the appellant in both the appeals is a Registered Political Party which has its headquarters at Hyderabad and office at District Headquarters, Nalgonda. The erstwhile Government of



Telangana vide G.O.Ms.No.167, Revenue (Assn-I) Department, dated 16.08.2018 and G.O.Ms.No.66, Revenue (Assn-I) Department dated 21.06.2019 allotted land measuring Ac.1.00 in survey Nos.1498 and 1506 situated at Nalgonda Village (subject plot) in favour of the appellant for construction of party office for a consideration of Rs.4,84,000/-.

5. The appellant made payment of the aforesaid amount and possession of the subject plot was handed over to the appellant on 24.06.2019. Admittedly, the appellant raised construction of a permanent structure, namely a two-storeyed building and a huge wall which is temporary in nature, without obtaining any building permission from the Municipal Corporation, Nalgonda. After the building was constructed, the appellant submitted an application to the District Collector, Nalgonda and the Municipal Commissioner, Nalgonda Municipality requesting for regularisation of the structure .

6. The Site Inspector, Nalgonda Municipality inspected the premises of the appellant and found that the structure on western and northern side does not have the required setbacks and recommended the rejection of the application. The Municipal Commissioner, Nalgonda Municipality by an order



dated 20.07.2024 rejected the application seeking regularisation of the construction. Thereafter, a notice dated 20.07.2024 was issued under Sections 178(6) and 174(4) of the Telangana Municipalities Act, 2019 (hereinafter referred to as 'the 2019 Act'), to the appellant to remove unauthorised construction within a period of fifteen days, failing which it was directed that the same shall be removed by the Nalgonda Municipality.

7. The appellant thereupon filed a writ petition, namely W.P.No.22042 of 2024 in which validity of the order dated 20.07.2024 passed by the Municipal Commissioner, Nalgonda Municipality, was questioned. The appellant further sought a direction in the writ petition that the Municipal Commissioner, Nalgonda Municipality be directed to consider the application for regularisation of construction.

8. The appellant filed another writ petition, namely W.P. No. 25677 of 2024, in which the validity of notice issued under Section 178(6) and 174(4) of the Telangana Municipalities Act, 2019 dated 20.07.2024 by which the appellant was asked to remove the unauthorised construction, was assailed.



9. The learned Single Judge by an order dated 14.08.2024 in W.P.No.22042 of 2024 *inter alia* held that the appellant did not seek any building permission before raising construction of the building. It was further held that the construction was made without obtaining any building permission, in complete disregard of the Building Bye-laws. It was further held that the Municipal Commissioner, Nalgonda Municipality has rightly rejected the application submitted online for grant of building permission in respect of an already existing building. However, liberty was reserved to the appellant to take recourse to such remedy as may be available to it in law. Accordingly, the writ petition was disposed of.

10. The learned Single Judge by an order dated 18.09.2024 in W.P.No.25677 of 2024 *inter alia* held that the appellant instead of resorting to the remedy prescribed to it under the statute, had filed the writ petition and it was not open for it to question the consequential action of issuing notice in pursuance of rejection of application for building permission. It was further held that the appellant is guilty of abuse of process of law. The learned Single Judge, therefore, dismissed the writ petition by imposing



costs of Rs.1 lakh which was made payable to the District Legal Services Authority, Nalgonda.

11. In the aforesaid factual background, these appeals have been filed.

12. Learned Senior Counsel for the appellant, at the outset, fairly submitted that the 2019 Act does not contain any provision permitting the Municipality to regularise any unauthorised construction. It is further submitted by him that the construction of the building was made by the appellant without seeking any building permission. Our attention has been invited to Rule 5 of the Telangana Building Rules, 2012 (hereinafter referred to as 'the 2012 Rules') and it has been contended that the deviation in the setback is permissible under the Rules. It is also submitted that the application seeking regularisation of the construction submitted by the appellant has been rejected on the touchstone of the criteria laid down in the 2012 Rules. It is submitted that the deviation is miniscule and the same can be compounded by the Authority by imposing suitable terms and conditions. It is contended that the impugned order dated 20.07.2024 passed by the Municipal

Commissioner, Nalgonda Municipality be set aside and the matter be remitted to the Municipal Commissioner, Nalgonda Municipality to decide the application afresh in the light of the mandate contained in Rule 5 of the 2012 Rules. It is stated that in case, this Court remits the matter to the Municipal Commissioner, Nalgonda Municipality, the appellant is willing to deposit the amount of costs directed to be deposited by the learned Single Judge.

13. On the other hand, the learned Advocate General has submitted that the 2012 Rules have no application to the fact situation of the case as the 2012 Rules apply to the person who obtains a building permission under the Rules and raises the construction in deviation of the Rules. It is further submitted that the appellant has raised the construction of the building without obtaining any building permission. Therefore, the application seeking regularisation of the construction has rightly been rejected. In support of the submission, learned Advocate General has placed reliance on the Full Bench decision of the

Andhra Pradesh High Court in **3 ACES, Hyderabad vs. Municipal Corporation of Hyderabad**¹.

14. We have considered the submissions made on both sides and have perused the record. In **Pratibha Cooperative Housing Society Limited vs. State of Maharashtra**², the Supreme Court took note of increasing tendency of raising unlawful constructions and encroachment in the entire country and held that such activities are required to be dealt with firm hands. It was further held that such unlawful constructions are against the public interest. A Full Bench of the Andhra Pradesh High Court in 3 ACES (supra) has laid down the following guidelines:

- “1) In cases where applications having been duly filed in accordance with law, after fulfilling all requirements, seeking permission to construct buildings and permission was also granted by the Corporation, the power of demolition should be exercised by the Corporation only if the deviations made during the construction are not in public interest or cause public nuisance or hazardous or dangerous to public safety including the residents therein. If the deviations or violations are minor, minimal or trivial which do not affect public at large, the Corporation will not resort to demolition.
- 2) Whatever is stated in guideline number (1) will also equally apply to the permissions deemed to have been granted under Section 437 of “The Act”.

¹ 1994 SCC OnLine AP 176 : 1995 (1) ALD 1

² AIR 1991 SC 1453

- 3) If no application has been filed seeking permission and the construction is made without any permission whatsoever, it is open to the Corporation to demolish and pull down or remove the said unauthorised structure in its discretion. Otherwise, having regard to the facts and circumstances of the case, it will be putting a premium on the unauthorised construction.

When the Corporation comes to the conclusion, keeping the above guidelines in view, that the construction in question is required to be demolished or pull down, it should follow the procedure indicated below:

(i) The demolition should not be resorted to during festival days declared by the State Government as public holidays excluding Sundays. If the festival day declared by the Government as a public holiday falls on a Sunday, on that Sunday also, the Corporation should not resort to demolition.

(ii) In any case, there should not be any demolition after sun set and before sun rise.

(iii) The Corporation should give notice of demolition as required by the statute fixing the date of demolition. Even on the said date, before actually resorting to the demolition, the Corporation should give reasonable time, depending upon the premises sought to be demolished, for the inmates to withdraw from the premises: If within the time given the inmates do not withdraw, the Corporation may proceed with actual demolition. These guidelines are laid down in view of the fact that the Corporation is a public authority and its action must be tested on the touchstone of fairness and reasonableness."

15. In the instant cases, the appellant admittedly had not obtained any building permission from the Municipal

Commissioner, Nalgonda Municipality. The construction of the building was made without obtaining any building permission. Thereafter, an application seeking regularisation of the construction raised by the appellant was made. It is not in dispute that there is no provision either under the 2019 Act or Rules made under the 2019 Act, which permit the Municipality to regularise the illegal construction already made. In the absence of any statutory provision, the appellant has no right to seek regularisation of the construction which has already been made. The Telangana Building Rules, 2012 permit regularisation of construction made in violation of the building permission. The aforesaid Rules have no application to a case where the building permission is not obtained at all. The action of the Municipal Commissioner, Nalgonda Municipality is in consonance with law, which does not call for any interference in these intra court appeals.

16. For the aforementioned reasons, we do not find any ground to differ with the conclusion arrived at by the learned Single Judge. However, in the facts and circumstances of the case, the direction with regard to imposition of costs of Rs.1 lakh on the appellant, which was made payable to the District Legal Services

Authority, Nalgonda, is set aside. To the aforesaid extent, the orders passed by the learned Single Judge in W.P.Nos.22042 of 2024 and 25677 of 2024 are modified.

17. In the result, the writ appeals are disposed of. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

SD/-K. SHYLESHI
DEPUTY REGISTRAR

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SECTION OFFICER

To,

1. The Principal Secretary, Municipal Administration and Urban Development, The State of Telangana, Secretariate Hyderabad.
2. The District Collector, Nalgonda District At Nalgonda.
3. The Municipal Commissioner, Nalgonda Municipality At Nalgonda.
4. The Site Inspector Officer, Nalgonda Municipality Nalgonda.
5. One CC to SRI V. MALLI BABU, Advocate [OPUC]
6. One CC to SRI B. JAGAN MADHAVA RAO, Advocate [OPUC]
7. Two CCs to GP FOR MUNICIPAL ADMINISTRATION AND URBAN DEVELOPMENT, High Court for the State of Telangana. [OUT]
8. Two CCs to GP FOR REVENUE, High Court for the State of Telangana. [OUT]
9. Two CCs to THE ADVOCATE GENERAL, High Court for the State of Telangana. [OUT]
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HIGH COURT

DATED:23/10/2024

COMMON JUDGMENT

WA.Nos.1161 & 1174 of 2024



**DISPOSING OF BOTH THE WRIT APPEALS
WITHOUT COSTS**

15 Copies

*Sms
25/10/24*