

(2025) 03 TEL CK 0757

In the Telangana High Court

Case No : Appeal Suit Nos.610 And 635 Of 2007

Alla Devamma

APPELLANT

Vs

Municipal Council

RESPONDENT

Date of Decision : 06-03-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Legal Services Authorities Act, 1987 — Section 18, 19(5), 20

Citation : (2025) 03 TEL CK 0757

Hon'ble Judges : Moushumi Battacharya, J;Gadi Praveen Kumar, J

Bench : Single Bench

Advocate : K.Ramakotaiah, A.Jagan, S.Ramesh, P.Shashi Kiran, Y.V.L.N. Prasad Sharma, Maturi Aravind

Final Decision : Dismissed

Judgement

N.Tukaramji, J

1. I have heard Mr.M.Jagannatha Sarma, learned counsel for the appellants in A.S.No.635 of 2007 and respondents in A.S.No.610 of 2007; Mr.Krishna Reddy Putta, learned Standing Counsel for the Municipalities, representing the respondents in A.S.No.635 of 2007 and appellants in A.S.No.610 of 2007.

2. Appeal Suit No. 610 of 2007 was filed by Defendant Nos. 1 and 4, whereas Appeal Suit No. 635 of 2007 was filed by the plaintiff. Both appeals arise out of the common judgment and decree dated 07.02.2003 passed in Original Suit No. 69 of 1993 on the file of the learned Senior Civil Judge, Jagtial.

3. Given that the subject matter of both appeals is intrinsically connected and arises from the same set of facts and legal findings, they were heard together and are being disposed of by this common judgment for the sake of judicial economy and consistency.

4. For the purpose of clarity and convenience, the parties in these appeals are referred to in this judgment as per their original designations before the trial

Court, unless otherwise indicated.

5.(i) The 1st plaintiff's case in brief is as follows: she is the title holder of the suit schedule property-land measuring Ac.0-04 guntas, in Sy.No.430 and the old house bearing No.1-1-126-through succession. Upon obtaining requisite permissions dated 22.01.1974, constructed RCC shops and a residential building on the ground and first floors by May, 1986.

(ii) The defendants (Jagtial Municipality) allegedly marked these structures for demolition in connection with the widening of the Outer Ring Road (ORR). In response, the plaintiff filed O.S.No.256 of 1986 before the District Munsiff, Jagtial, seeking a perpetual injunction. A temporary injunction was granted during pendency, and the suit was eventually decreed in her favour on 31.08.1988 and it became final. In 1992, the Mandal Revenue Officer (MRO), Jagtial, initiated proceedings under the Land Encroachment Act, treating part of the plaintiff's property as Government land.

(iii) The plaintiff challenged this action by filing W.P.No.1516 of 1993, during which the MRO submitted that the encroachment proceedings had been withdrawn and issued closing orders dated 21.12.1992. Nevertheless, on 11.02.1993, the Municipal Commissioner, Jagtial, affixed a notice directing removal of the construction by 15.02.1993. The plaintiff, through a detailed Telegram, responded by referencing the decree in O.S.No.256 of 1986 and the order dated 15.02.1993 in the Writ Petition. Despite this, the defendants allegedly demolished 41-50 square meters of the ground floor and 8-16 square meters of first-floor constructions and removed building materials, fixtures, and doors without further notice.

(iv). As a result, the plaintiff filed the suit seeking a mandatory injunction for restoration of a demolished building or, in the alternative, compensation of Rs.95,000/- for reconstruction. Additionally, sought for perpetual injunction restraining the defendants from further interference, compensation for loss of rental income from shops at Rs.2,000/- per month, future loss of rent at an enhanced rate, and special and general damages amounting to Rs.1,25,000/- for loss of reputation and defamation. Additionally, she claimed 24% interest on the amounts due from 15.02.1993.

6.(i). In their written statement, the defendants contended that the plaintiff had extended construction beyond the permitted boundary, encroaching upon road margins. Following a joint inspection, a notice was issued requesting title and permission documents, warning of adverse conclusions in the absence thereof. They further contended that the permission dated 22.10.1974 for building construction was only valid until 21.10.1975, after which fresh permission was required. A provisional stop-work order was issued on 26.04.1976 and confirmed shortly thereafter, directing the plaintiff to dismantle encroaching portions within four days (notice issued on 27.04.1976).

(ii). In line with the municipality's sanctioned master plan, another order dated

11.02.1993 directed the plaintiff to show cause by 15.02.1993 regarding construction within the 60-foot width of Yewar Road. The order was confirmed, after affixture of show cause notice to the affected portion. The demolition was executed on 15.02.1993, under the sanctioned scheme. The defendants argued that the High Court's stay order dated 15.02.1993 was received only on 16.02.1993. Accordingly, they prayed for dismissal of the suit.

7. The trial Court framed the following issues:

- (i) Whether the Civil Court lacks jurisdiction to entertain the suit?
- (ii) Whether the plaintiff's claim for damages is arbitrary and imaginary?
- (iii) Whether the plaintiff is entitled to a mandatory injunction and to special and general damages as prayed?
- (iv) Whether the plaintiff is entitled to a permanent injunction, as prayed?
- (v) To what relief, if any, is the plaintiff entitled?

8. During trial, the plaintiff examined PWs 1 to 4 and marked Exs.A-1 to A-28 and the proceedings of the District Commission, notice and Commissioner's report were marked as Exs.C-1 to C-3. The defendants did not choose to present any evidence.

9. Upon evaluation of the pleadings and evidence, the trial Court held that the Civil Court had jurisdiction as the suit is for damages and decreed in part; the trial Court awarded Rs.95,000/- towards the value of the demolished portion of the building along with future interest at 6% per annum until realization. Additionally, the trial Court directed the defendants to pay Rs.2,000/- per month from 15.02.1993 until the date of the decree.

10. Learned counsel for the plaintiff in A.S. No. 635 of 2007 contended that, having upheld the plaintiff's claim regarding unlawful actions of the defendants (Municipal Corporation), the trial Court erred in rejecting the claim for damages arising from loss of reputation, mental anguish, humiliation, and irreparable harm. The observation made by the trial Court—that the 1st plaintiff's right to sue for such damages did not survive following her demise—was improper and contrary to settled legal principles. It was further submitted that the trial Court failed to duly consider the terms of the compromise accepted by the defendants, which clearly acknowledged their liability, particularly in the context of awarding damages for mental suffering. In addition, it was argued that the Court ought to have awarded special damages with interest at the rate of 24% per annum until full satisfaction of the claim amount. The learned counsel also emphasized that the trial Court should have granted a mandatory injunction directing reconstruction of the demolished structure, given that the demolition was carried out in willful disobedience of a subsisting Court decree. Accordingly, a plea was made for reconsideration and for the plaintiff's entire claim to be allowed in full.

11. Conversely, the defendants/Municipal Corporation, in their appeal, argued

that the demolition of the property was carried out in accordance with due process, following lawful proceedings and after

serving notice upon the 1st plaintiff. They further contended that, as the Court's direction had not been formally communicated prior to the act of demolition, no malice or bad faith could be imputed to their actions. Therefore, they asserted that the award of damages was unwarranted.

The defendants also submitted that although there were efforts towards an amicable resolution, the plaintiff's demands—particularly the aspect of damages for mental agony with the high interest rate claimed—were unreasonable, leading to a breakdown in settlement efforts. Despite this, the trial Court proceeded to accept the plaintiff's position based on the compromise framework, which, according to the defendants, was untenable and unsupported by evidence. Additionally, they contended that the award of compensation for reconstruction costs and rental value by the trial Court was improper, excessive, and unsustainable in law. Consequently, they sought to have the impugned judgment set aside in its entirety.

12. I have perused the materials on record and carefully considered the submissions of the learned counsel.

13. It is an admitted fact that, on 15.02.1993, the In-charge Municipal Commissioner (Defendant No. 3) caused the demolition of a portion of the building comprising approximately 41–50 square meters on the ground floor and 8–16 square meters on the first floor, located at Door Nos. 1-2-37 to 1-2-41, a property owned by the 1st plaintiff. Notably, a notice dated 11.02.1993 was issued by the defendants and was affixed to the plaintiff's premises on 12.02.1993, providing three days for the plaintiff to respond or remove the alleged unauthorized construction.

14. It is pertinent to highlight that 13th and 14th February were holidays, and by 15.02.1993, this Court had passed an order staying the demolition. Despite the subsistence of the stay order, the Municipal authorities proceeded with the demolition. As a consequence, a contempt petition, vide C.C. No. 104 of 1994, was filed. Upon evaluating the relevant material, a Coordinate Bench of this Court, by its order in C.C. No. 104 of 1994 (Ex.A-12), held that the demolition purportedly executed under Section 19 of the Town Planning Act was unjustifiable.

15. The defendants' claim that the demolition was based on provisional orders issued in 1974 and executed in 1993 with a short notice period was found to be in contravention of the principles of natural justice. Hence, the act of demolition was declared illegal, and the finding that the defendants are liable to compensate the 1st plaintiff for the resultant loss is well-founded and legally sustainable.

16. Damages for Loss of Reputation and Mental Distress: With respect to damages for loss of reputation and mental agony, the plaintiff claimed a sum of

Rs.1,25,000/- with interest under this head. It was further pleaded that, in the initial compromise memorandum, the defendants had agreed to pay the aforementioned amount. However, they later retracted from the compromise, stating their unwillingness to honour the agreed sum. During the pendency of the proceedings, the 1st plaintiff passed away, and her daughter-in-law, as the legal representative, continued to prosecute the claim. The trial Court held that the damages claimed under this head were in the nature of personal suffering, which do not survive the death of the original claimant. Accordingly, the claim made by the legal representative for damages relating to mental agony and loss of reputation was found to be non-maintainable and the cause of action in respect of this claim has extinguished upon the death of the individual concerned. Moreover, the Court observed that although the defendants acted with undue haste in executing the demolition, there was no sufficient basis to infer any mala fide intention or personal animus. Consequently, the trial Court's decision to reject the claim for damages under this head is legally justified.

17. Pecuniary Damages and Interest: Regarding pecuniary damages, the plaintiff sought Rs.95,000/- towards the cost of reconstruction of the demolished structure. This estimation was corroborated by the testimony of a private consulting engineer (PW-2) and the Advocate Commissioner (PW-4), who assessed the damages at Rs.96,375/-. Exhibits A-9 to A-11 (cost estimates) and Ex.C-3 (Commissioner's report) substantiate this claim. Accordingly, the award of Rs.95,000/- towards the cost of the demolished portion of the property, as claimed in the suit, is found appropriate.

18. In view of the monetary compensation for the demolished structure, the prayer for a mandatory injunction directing the reconstruction of the building was rendered redundant and stood resolved.

19. The 1st plaintiff also claimed rental compensation at Rs.2,000/-per month. Statements from the then tenants confirmed that this amount was reasonable. Hence, awarding rental compensation at the rate of Rs.2,000/- per month until the date of the decree, is proven to be just and proper.

20. The trial Court, however, awarded post-decretal interest only on the amount of Rs.95,000/- at 6% per annum until realization, excluding the rental compensation from the purview of interest. This exclusion was found to be unjustified. The plaintiff would reasonably have earned interest on the rental value as well, had it been paid on the date of decree. Therefore, awarding interest at 6% per annum on the rental amount from the date of decree until the date of realization would be proper and warranted.

21. Conclusion: In light of the foregoing, the plaintiff's appeal is allowed to the limited extent of awarding post-decretal interest at 6% per annum on the accrued rental value from the date of decree until realization. The remaining reliefs sought in the plaintiff's appeal are dismissed as devoid of merit. Similarly, the contentions raised by the defendants in their appeal are also found to be

without merit and are accordingly dismissed.

22. Resultantly, A.S.No.635 of 2007 is partly allowed and A.S.No.610 of 2007 is dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.