APHC010042522014

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

FRIDAY, THE 9th DAY OF OCTOBER 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUMATHI JAGADAM

ELECTION PETITION No.4 of 2014

Between:

1. U.S.RAYUDU, PUTTUR, S/o. U.Kamal, aged about 42 years, R/o.D.N0:11-26-2, NGO's Colony, Puttur, Chittoor District, State Andhra Pradesh

...Petitioner

AND

1. R K ROJA CHITTOOR DIST ANR, W/o. Sri. R.K. Salvamani, aged about 42 years R/o. H.no. 11-13, opp: to CSI Hospetal, Nagari, Chittoor District. State of Andhra Pradesh.

2. The Returning OfficercumSecretary of, Tirupati Urban Development Authority, Tirupati, 289 Nagari Assembly Constituency, Chittoor District, State of Andhra Pradesh

...Respondents

pleased to call for the records relating to the nomination and affidavit filed along with it by the 1st respondent on 17-4-2014 and the declaration of the 1st respondent as the returned candidate on 16-5-2014 from 289 Nagiri Assembly Constituency and declare the election

of the 1st respondent as void under Section-100 (1) (d) (i) (iv) of the Representation Peoples Act, 1951 and pass

IA NO: 1 OF 2016(APPL 221 OF 2016

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 set aside the order dated 30-12-2015 in treating the Petitioner/1st Respondents cross examination of P.W1 i.e., 1st Respondent/Election Petitioner as nil, enabling me to cross examine P.W.1 an defend the Election Petition, in the interrest of justice and pass

IA NO: 2 OF 2016(APPL 222 OF 2016

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 reject the election petition in E.P.No.4 of 2014 under Order VII Rule 11 of Civil Procedure Code, 1908, and pass

IA NO: 3 OF 2016(APPL 228 OF 2016

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 set aside the order dated 25-02-2016 whereby the petitioner/1st Respondent was set ex parte, in the interest of justice, enabling the petitioner/1st Respondent to participate and defend the Election Petition NO.4 of 2014.

IA NO: 4 OF 2016(APPL 929 OF 2016

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

IA NO: 6 OF 2016(APPL 7742 OF 2016

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

IA NO: 1 OF 2017(APPL 71 OF 2017

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 permit the release of Electronic Voting Machines (EVMs) not being subject matter in the Election Petition No.4 of 2014 from the Godown for conducting physical verification in accordance with the guidelines of the Election Commission and pass

IA NO: 2 OF 2017(APPL 582 OF 2017

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 recall PW1 for the purpose of further cross examination in the above Election Petition on behalf of the petitioner/1st respondent and pass

IA NO: 3 OF 2017(APPL 588 OF 2017

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 reopen the evidence of PW1 in the above Election Petition and pass

IA NO: 4 OF 2017(APPL 787 OF 2017

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 grant leave to the petitioner, enabling her to file (A) Memorandum recording oral partition dated 23-01-2012 (b) Memorandum recording oral partition dated 23-01-2012 (C)

Memorandum evidencing oral partition dated 12-07-2012 respectively and the same be received in evidence, in the interest of justice and pass

IA NO: 1 OF 2018

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 reopen the evidence of RW1 for cross examination of RfW1 in the above Election Petition and pass

IA NO: 2 OF 2018

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 recall the RW.1 for the purpose of further Cross Examination by the 1st respondent and to pass

IA NO: 3 OF 2018

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 reopen the Evidence of RW.1 for the purpose of further Cross Examination by the 1st respondent and to pass

IA NO: 4 OF 2018

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 set aside the order Dt 16.07.2018 and reopen the evidence of respondent no 1 in the above Election Petition for further evidence, in the interest of justice and pass

IA NO: 5 OF 2018

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 reopen the evidence of respondent No.1 in the above election petition and pass

IA NO: 6 OF 2018

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 reopen the evidence of respondent no 1 in the above election petition and recall RW2 and RW3 for the purpose of cross examination in the interest of justice and equity

IA NO: 7 OF 2018

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 set aside the order dated 12-12-2018 and reopen the evidence of respondent no 1 in the above election petition and pass

IA NO: 8 OF 2018

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 recall RW3 for the purpose of cross examination in the above election petition and pass

IA NO: 1 OF 2025

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 permit the release of EVMs and \/yPATs used for 289 - Nagari Assembly Constituency in 2024 Assembly Elections from the Godown/ Strong Room for their use in further elections

Counsel for the Petitioner: M P CHANDRAMOULI

Counsel for the Respondents: D NARSIMULU
Counsel for the Respondents:D S SIVADARSHAN
Counsel for the Respondents:GP FOR GENERAL ADMINISTRATION (AP)
Counsel for the Respondents:AVINASH DESAI

This Court made the following:

ORDER:

Sri V. Eshwaraiah Chowdhary, learned counsel, representing Sri M.P.Chandra Mouli, learned counsel for the petitioner, submits that the cause in the election petition does not survive for consideration and sought permission of this Court to withdraw the election petition.

2. On the other hand, learned counsel appearing for the respondents has placed reliance on the judgment of the Hon'ble Supreme Court in ***Dr.P.Nalla Thampy Thera Vs. B.L. Shanker and others***[1]. He further submits that, in similar circumstances, this Court dismissed Election Petition No.4 of 2019 for non-prosecution and prayed for similar relief.

3. Learned counsel for the petitioner on record filed a memo dated 28.07.2026 stating that "as per the instructions of the party, there is no need to seek any further orders in the above E.P. Hence, the election petition may be dismissed as not pressed." This Court had specifically pointed out that the said memo was filed by the Advocate on record and not by the petitioner. Therefore, without recording the said proceedings, the matter was adjourned at the request of the learned counsel for the petitioner. Thereafter, the matter has undergone nearly

[1] AIR 1984 SC 135

three adjournments. Today, when the matter was called, there was no representation on behalf of the petitioner.

4. The question that arises for consideration is whether, in the absence of any express provision in the governing enactment conferring power to dismiss an election petition for non-prosecution, this Court possesses the power to dismiss the present petition in default of appearance of the petitioner.

5. It is well settled that the trial of an election petition is to be conducted, as nearly as may be, in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure,1908 (for brevity 'the C.P.C.,'). This principle has been consistently affirmed by courts while examining the scope of the applicable election law provisions.

6. Most significantly, in ***P. Nalla Thampy Thera v. B.L. Shanker***[2], the Hon'ble Supreme Court at paragraph Nos.16, 17 & 19 directly addressed the contention that an election petition cannot be dismissed for default in the absence of an express statutory provision, and that default ought to be treated on par with withdrawal or abatement, requiring notice as contemplated under the provisions

[2]1984 Supp SCC 631

governing those situations. This contention was rejected. It was held that non-prosecution or abandonment is not the same as withdrawal: withdrawal is a positive and voluntary act attended by a prescribed procedure before the Court, whereas non-prosecution or abandonment may arise from negligence, indifference, inaction, or even incapacity, and does not require the petitioner to appear before the Court and obtain orders. It was held that since the statute is a self-contained code, nothing can be read into it that is not expressly provided, but by the same token, where the statute itself makes 'the C.P.C.,' applicable in the absence of a contrary provision, an election petition is liable to be dismissed under Order IX Rule 8 of 'the C.P.C.,' where the petitioner fails to appear and prosecute the petition.

7. It was further clarified in ***P. Nalla Thampy Thera*** *supra* that the remedy of restoration under Order IX Rule 9 of 'the C.P.C.,' in the case of dismissal for default, is available only to the election petitioner at whose instance the petition was dismissed, and cannot be invoked by a respondent or any other person, since the object of restoration is to revive the petition to its former stage at the instance of the very party whose default led to the dismissal.

8. Applying the above settled principles to the facts of the present case, it is evident that the provisions of 'the C.P.C.,' including Order IX and Order XVII, apply to the trial of the present election petition as nearly as may be, in the absence of any express provision to the contrary in the governing statute. As there was no representation for the petitioner on 07.08.2026, the matter was directed to be listed on 14.08.2026 under the caption "for dismissal", and no representation even on the date on which the matter is posted under the dismissal caption today. Such repeated and continued non-appearance amounts to non-prosecution of the election petition, distinct from and not requiring the procedural safeguards attendant upon withdrawal or abatement. This Court possesses both the procedural power under Order IX Rule 8 of 'the C.P.C.,' (as made applicable to the trial of election petitions) and the inherent power recognized in the authorities cited above, to dismiss the petition for default of appearance of the petitioner.

9. For the foregoing reasons, and in light of the consistent and settled position of law as enunciated in ***P. Nalla Thampy Thera*** *supra*, this Court finds that in the absence of any representation on behalf of the petitioner despite sufficient opportunity having been granted, the

present election petition is liable to be, and is hereby, dismissed in default of appearance/prosecution under Order IX Rule 8 read with Order XVII of 'the C.P.C.,' as made applicable to the trial of the present petition.

10. It is clarified that this dismissal, being one for default, shall be subject to the petitioner's right, if any, to seek restoration under Order IX Rule 9 of 'the C.P.C.,' by making an appropriate application before this Court and showing sufficient cause for the non-appearance, in accordance with law.

11. Accordingly, the Election Petition is dismissed for non-prosecution. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

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JUSTICE SUMATHI JAGADAM

9th October, 2026
cbs

THE HON'BLE SMT. JUSTICE SUMATHI JAGADAM

Election Petition No.4 of 2014

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