

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 22ND DAY OF MAY 2015/1ST JYAISHTA, 1937

WP(C).No. 6782 of 2012 (W)

PETITIONER:

INDUS TOWERS LTD,
CIRCLE OFFICE AT: VANKARATH TOWERS, 8TH FLOOR, NH-47A
PALARIVATTOM,
KOCHI - 24.REPRESENTED BY ITS HEAD - LEGAL
PREMAKRISHNAN NAIR.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S) :

1. CHOTTANIKKARA GRAMA PANCHAYATH
CHOTTANIKKARA PANCHAYATH OFFICE, CHOTTANIKKARA
ERNAKULAM DISTRICT - 682 312 REPRESENTED BY ITS SECRETARY.

2. THE SECRETARY
CHOTTANIKKARA GRAMA PANCHAYATH
CHOTTANIKKARA PANCHAYATH OFFICE, CHOTTANIKKARA
ERNAKULAM DISTRICT - 682 312.

3. P.T.KARTHIKEYAN
S/O.THEVAN, CONVENOR, JANAKEEYA SAMITHI
ERUVELY, RESIDING AT EDACHARIMALAYIL HOUSE
CHOTTANIKKARA PO, ERUVELY
ERNAKULAM DISTRICT - 682 312.

4. SUJATHA
W/O.RAJAN, DAMODAR NIVAS, CHOTTANIKKARA P.O.
ERNAKULAM DISTRICT - 682 312.

R3 BY ADV. SRI.VARGHESE P.CHACKO
R1,R2 BY ADV. SRI.S.SREEKUMAR (SR.)
R1,R2 BY ADV. SRI.P.MARTIN JOSE
R1,R2 BY ADV. SRI.P.PRIJITH
R1,R2 BY ADV. SRI.ANEESH JAMES

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
22-05-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A P P E N D I X

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE CERTIFICATE OF INCORPORATION ISSUED BY THE ASST.REGISTRAR OF COMPANIES, NATIONAL CAPITAL TERRITORY OF DELHI AND HARYANA.

EXT.P2: COPY OF THE CERTIFICATE FOR COMMENCEMENT OF BUSINESS ISSUED BY THE ASSISTANT REGISTRAR OF COMPANIES, NATIONAL CAPITAL TERRITORY OF DELHI AND HARYANA.

EXT.P3: COPY OF THE REGISTRATION CERTIFICATE NO.177/2008 DT.10.01.2008 ISSUED BY THE MINISTRY OF COMMUNICATIONS & IT, DEPT. OF TELECOMMUNICATION.

EXT.P4: TRUE COPY OF THE FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON CHANGE OF NAME ISSUED BY THE DY.REGISTRAR OF COMPANIES, NATIONAL CAPITAL TERRITORY OF DELHI AND HARYANA.

EXT.P4(a): TYPED COPY OF EXT.P4.

EXT.P5: COPY OF THE COMMUNICATION SENT BY THE DIRECTOR (CS-III) OF THE MINISTRY OF COMMUNICATIONS & IT, DEPT. OF TELECOMMUNICATIONS, NEW DELHI.

EXT.P6: COPY OF BUILDING PERMIT NO.A2-980/11 DT.26.05.2011.

EXT.P7: TRUE COPY OF THE JUDGMENT DT.23.08.2011 PASSED BY THIS HON'BLE COURT IN WPC.NO.18429/2011.

EXT.P8: COPY OF THE CAVEAT PETITION DT.21.06.2011.

EXT.P9: COPY OF THE APPEAL NO.684/2011 FILED BY 3 BEFORE THE TRIBUNAL.

EXT.P10: COPY OF THE PETITION TO CONDONE DELAY IN FILING APPEAL BEFORE TRIBUNAL ALONG WITH AFFIDAVIT.

EXT.P11: COPY OF THE WRITTEN STATEMENT FILED BY THE PETITIONER IN APPEAL NO.684/11.

EXT.P12: COPY OF THE ORDER DT.20.12.2011 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM IN APPEAL NO.684/11.

EXT.P13: COPY OF THE STABILITY CERTIFICATE DT.5.1.12.

RESPONDENTS' EXHIBITS

EXT.R3(A): TRUE COPY OF THE JUDGMENT DT.23.8.2011 IN WPC.NO.18429/2011.

EXT.R3(B): TRUE COPY OF THE ORDER DT.22.09.11 IN I.A.NO.1138/11 IN APPEAL NO.684/11.

EXT.R3(C): TRUE COPY OF THE AGENDA OF GRAMA PANCHAYAT COMMITTEE DT.7.7.2010.

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EXT.R3(D): TRUE COPY OF THE REPRESENTATION DT.22.06.2011 FILED BY R3
BEFORE THE PANCHAYAT.

EXT.R3(E): TRUE COPY OF THE SUMMONS FOR MEDIATION TALKS WITH THE
PETITIONER THAT WAS ISSUED BY THE GRAMA PANCHAYAT TO R3.

EXT.R3(F): TRUE COPY OF THE MINUTES OF THE MEDIATION TALKS THAT TOOK
PLACE AMONGST THE PETITIONER, R3 AND THE GRAMA PANCHAYAT.

/TRUE COPY/

P.S TO JUDGE

P.V.ASHA, J.

W.P(c) No.6782 of 2012-W

Dated this the 22nd day of May, 2015

JUDGMENT

The petitioner, wants to construct a mobile telecommunication tower, for which he needs a permit. In this Writ Petition, he is challenging Ext.P12 order passed by the Tribunal for Local Self Government Institutions, Thiruvananthapuram, in Appeal No.684 of 2011, mainly on 3 grounds- (1)the appeal was filed beyond the period of limitation,;

(2) the appeal was filed beyond the time limit permitted by this Court in Ext.P7; and

(3) the Tribunal set aside the permit on a ground not urged in the appeal ie. regarding the stability certificate.

The Tribunal found that the stability certificate was issued by an incompetent person. Further it was also found that the Secretary did not take a decision on his own independently, but under the influence and on directions issued by the Committee. Therefore, the appeal was allowed and the building permit granted in favour of the petitioner was set aside with a direction

to the Secretary, to consider the application for building permit for the petitioner in the correct perspective and in accordance with law and to pass orders untrammelled or uninfluenced by the directions or the recommendations of the Panchayat Committee.

2. I heard the learned counsel appearing for the petitioner Shri V.Philip Mathews, the learned Senior Counsel Shri S.Sreekumar appearing for respondents 1 and 2 and Shri Varghese P.Chacko appearing for respondent No.3. According to the learned counsel for respondent No.3, disputes relating to installation of mobile tower are to be considered by the District Telecom Committee.

3. The petitioner has produced a copy of stability certificate issued by Er.Sunil K.Jose M.E (Structure), Chartered Engineer (India), Reg.No.A.M.088590-0, which is marked as Ext.P13 in this Writ Petition. It is submitted that he is a qualified and competent person to issue the stability certificate.

Therefore in the circumstances of the case, without considering any other contentions raised on either side, I direct the 2nd respondent to consider the application of the petitioner for permit with reference to the stability certificate also, which is produced as Ext.P13 in this Writ Petition, while reconsidering

the application for building permit in terms of the directions of the Tribunal in Ext P12 order. The petitioner shall produce the stability certificate in original along with a copy of this judgment, before the 2nd respondent, within 2 weeks from the date of receipt of this judgment. The 2nd respondent shall pass orders within a period of one month from the date of receipt of the same.

The order Ext P12 is modified to the above extent and this Writ Petition is disposed of accordingly.

Sd/-
(P.V.ASHA, JUDGE)

rtr/