

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 11TH DAY OF MARCH 2015/20TH PHALGUNA, 1936

WP(C).No. 3314 of 2015 (L)

PETITIONER:

**INDUS TOWERS LIMITED(INFRASTRUCTURE SERVICE PROVIDER OF
BHARTI AIRTEL LIMITED),
8TH FLOOR, VANKARATH TOWERS, NH BYPASS
PALARIVATTOM, KOCHI - 24
REPRESENTED BY ITS DULY AUTHORIZED MANAGER PREMAKRISHNAN
NAIR M.N.**

BY ADV. SRI.P.SATHISAN

RESPONDENT:-

- 1. SECRETARY,
KOLLAM CORPORATION, KOLLAM - 691001.**
- 2. SECRETARY,
LOCAL ADMINISTRATION DEPARTMENT, SECRETARIAT,
TRIVANDRUM - 695 001.**
- 3. KOLLAM CORPORATION,
REPRESENTED BY ITS SECRETARY, KOLLAM - 691 001.**

**R1 & R3 BY ADV. SRI.M.K.CHANDRA MOHAN DAS,SC,KOLLAM MPT
GOVERNMENT PLEADER SMT. C.K. SHERIN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11-03-
2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS :

EXHIBIT P1. TRUE COPY OF THE CERTIFICATE OF INCORPORATION ISSUED BY CENTRAL GOVT.

EXHIBIT P2. TRUE COPY OF THE JUDGMENT IN WP(C)35114/2009 DATED 30.07.2013.

EXHIBIT P3. TRUE COPY OF THE NOTICE DATED 23.01.2014 ISSUED BY THE RESPONDENT WITH TRANSLATION.

EXHIBIT P4. TRUE COPY OF THE ORDER OF THE TRIBUNAL DATED 20.10.2014 IN APPEAL NO.169/2014.

EXHIBIT P5. TRUE COPY OF THE COVERING LETTER DATED 12.01.2015 SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT.

EXHIBIT P6. TRUE COPY OF THE ACKNOWLEDGEMENT TO THE REGULARIZATION APPLICATION SUBMITTED BEFORE THE RESPONDENT.

EXHIBIT P7. TRUE COPY OF THE LAWYER NOTICE.

EXHIBIT P8. TRUE COPY OF STABILITY CERTIFICATE

EXHIBIT P9. TRUE COPY OF PHOTOGRAPHS

EXHIBIT P10.TRUE COPY OF REJECTION ORDER ISSUED BY THE CORPORATION WITH TRANSLATION.

EXHIBIT P11. TRUE COPY OF THE RECEIPT TOWARDS APPLICATION FEE.

EXHIBIT P12. TRUE COPY OF DECLARATION PRODUCED BEFORE THE POLLUTION CONTROL BOARD.

RESPONDENT(S)' EXHIBITS

EXHIBIT R1 : A COPY OF THE LETTER DATED 15.3.2010

//TRUE COPY//

P.A. TO JUDGE

smv

DAMA SESHADRI NAIDU, J.

W.P.(C) No.3314 of 2015

Dated this the 11th day of March, 2015

JUDGMENT

The petitioner filed the present writ petition on 30th January, 2015 complaining of demolition of telecommunication tower without due process. Both the learned counsel agreed that the machinery has been dismantled and the tower itself has been partially demolished.

2. The learned counsel for the writ petitioner submits that after filing of the writ petition, the respondent Corporation has served on him the order of rejection which was passed based on Ext.P6 application/receipt submitted by the petitioner for regularisation.

3. The learned counsel has further submitted that in the light of the subsequent developments, the writ petition may be disposed of leaving it open for the petitioner to exhaust its appellate remedies.

4. According to the learned counsel, from the date of

service of notice, the petitioner has 30 days for preferring the statutory appeal. If the respondent-Corporation proceeds further to demolish the remaining part of the telecommunication tower, contends the learned counsel, the appeal may become an empty formality.

5. The learned standing counsel for the respondent-Corporation has strenuously contended that for more than 6 years the petitioner has been operating the telecommunication tower without any valid licence, causing immense nuisance to the public around. He has further submitted that on earlier occasions, the respondent-Corporation has rejected its application. He has further contended that no appeal is maintainable and as such no limitation period can be thought of.

6. Be that as it may, this court does not desire to enter into the arena of disputed questions of fact or law, when the petitioner intends to exhaust its statutory remedies, if any.

7. In the facts and circumstances, having regard to the respective submissions of learned counsel for the writ petitioner and the learned standing counsel for the respondent-Corporation, this Court, without expressing any opinion on the merits of the matter, dispose of the writ petition, leaving it open

for the petitioner to exhaust his statutory remedies, if any, concerning the order dated 26.02.2015 said to have been served on the petitioner on 03.03.2015.

8. In the light of the apprehension expressed by the petitioner that before the petitioner could file the statutory appeal together with all the necessary material, the respondent-Corporation may take precipitous steps to demolish the remaining part of the telecommunication tower. This Court, therefore, directs the respondent-Corporation not to take recourse to demolition until the statutory period for appeal, if statutorily provided, is over. No order as to costs.

9. Given the acrimony the issue has generated, to avoid future complications, this Court desires to observe that since the petitioner is said to have been served with the order in question on 03.03.2015, if the order is appealable and there is any limitation provided therefore, it shall commence only from 03.03.2015.

Sd/-
DAMA SESHADRI NAIDU,
JUDGE

//true copy//

P.A to Judge

smv