

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 23RD DAY OF JULY 2015/1ST SRAVANA, 1937

WP(C).No. 9156 of 2015 (T)

PETITIONER(S):

**INDUS TOWERS LIMITED,
CIRCLE OFFICE AT: VANKARATH TOWERS, 8TH FLOOR,
NH 47, PALARIVATTOM, KOCHI - 682 024.
REPRESENTED BY ITS HEAD-LEGAL- MR. M.N. PREMKRISHNAN NAIR
AGED: 53, S/O. LATE NARAYAN NAIR**

BY ADV. SRI. V.PHILIP MATHEW

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. THE SECRETARY,
DEPARTMENT OF TAXES (E), KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 3. SECRETARY,
DEPARTMENT OF LOCAL SELF GOVERNMENT INSTITUTIONS,
KERALA GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001**
- 4. INSPECTOR GENERAL OF REGISTRATION,
OFFICE OF THE INSPECTOR GENERAL OF REGISTRATION,
THIRUVANANTHAPURAM - 695 035.**
- 5. DIRECTOR OF URBAN AFFAIRS,
DIRECTORATE OF URBAN AFFAIRS,
PUBLIC OFFICE BUILDING, MUSEUM P.O.,
THIRUVANANTHAPURAM - 695 033.**
- 6. DIRECTOR OF PANCHAYAT,
PUBLIC OFFICE BUILDING, MUSEUM P.O.,
THIRUVANANTHAPURAM - 695 033.**

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**7. POOTHAKULAM GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, POOTHAKULAM PO
KOLLAM-691 302**

**8. SECRETARY,
POOTHAKULAM GRAMA PANCHAYAT, POOTHAKULAM PO
KOLLAM - 691 302**

**R1 TO R6 BY SENIOR GOVERNMENT PLEADER SMT. ANITHA RAVINDRAN
R7 BY ADV. SRI. V. VENUGOPALAN NAIR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 23-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1: A COPY OF THE MEMORANDUM OF ASSOCIATION OF THE PETITIONER.

EXHIBIT P2: A COPY OF THE REGISTRATION CERTIFICATE NO.177/2008 DATED 10.01.2008.

EXHIBIT P3: A COPY OF CIRCULAR DATED 07.05.2014 (MALAYALAM).

EXHIBIT P3(a):AN ENGLISH TRANSLATION OF EXHIBIT P3.

EXHIBIT P4: COPY OF THE APPLICATION FOR PERMIT DATED 13.11.2014 SUBMITTED BEFORE THE 8TH RESPONDENT.

EXHIBIT P5: COPY OF THE CONSENT DEED DATED 24.11.2014 ISSUED BY MR. SHIHAR, OWNER OF THE PROPERTY.

EXHIBIT P6: COPY OF THE COMMUNICATION DATED 25.02.2015 IN MALAYALAM FROM THE 8TH RESPONDENT.

EXHIBIT P6(a):TRUE ENGLISH TRANSLATION OF EXHIBIT P6.

RESPONDENT(S)' EXHIBITS - NIL

//TRUE COPY//

P.A. TO JUDGE

SHAJI P. CHALY, J.

W.P. (C) No. 9156 of 2015

Dated this the 23rd day of July, 2015

JUDGMENT

Petitioner has filed this writ petition mainly contending that even though Ext.P4 application, seeking permission to construct a Mobile Tower, was submitted before the respondent Panchayat without taking a positive decision on the same has passed Ext.P6 order and referred the same for clarification to the Director of Panchayat.

2. In Ext.P6 order, the Panchayat has referred the matter to the Director of Panchayat in view of the contentions put forth by the petitioner that the consent of a lessee alone is sufficient and no registered sale or lease deed is required under the provision of law in order to grant permission. Expressing doubt over the same, the

Panchayat has referred the matter to the Director of Panchayat seeking clarification of the assertion so made by the petitioner.

3. The learned counsel for the petitioner has brought my attention to Rule 130 of the Kerala Panchayat Building Rules, 2011, along with Note (1) the enabling provision for grant of permit for construction of telecommunication tower, which reads as follows:

130. Submission of application and its disposal -

(1) Application for permit shall be submitted to the Secretary in the form in Appendix A along with two copies of the site plan, location plan, elevation, section, structural stability certificate, copy of the agreement executed with department of Telecommunication or license or permit issued by an authority approved by Government of India from time to time and document to prove ownership.

Note.-(1) Ownership document may be a sale deed or mortgage deed or deed of agreement or license or consent document, etc.

4. On a reading of the note to the said rule what I gather is that, the application for permit shall be

accompanied along with other required statutory formalities, either a sale deed or mortgage deed or deed of agreement or license or a consent document etc. In that circumstances any of the documents suggested under note (1) to Rule 130, of the rules alone is required to suffice the situation. Therefore, so far as the right in the property is concerned under which the construction of the Tower is proposed, it can be any of the circumstances mentioned under note (1) to Rule 130. Petitioner has produced Ext.P5 consent before the Panchayat from the owner of the property concerned and going by the provisions of law same alone is required to ascertain the right over the property, in order to process the permit application. When the note (1) to Rule 130 is vivid and clear, there was no occasion at all for the Panchayat to seek any clarification.

5. In this regard petitioner has also brought my attention to the decision reported in '**Posidon**

Infrastructure Pvt. Ltd v. Sub Inspector of Police and others' [2012 (3) KHC 455 (DB)] and the decision in ***'Indus Towers v. Sub Inspector of Police'*** [2013 (3) KLT 828] and contended that a consent issued by a land owner permitting the petitioner to carry out the construction does not require registration. On a reading of the said judgments I am of the opinion that if and when a consent is produced along with other attendant documents as provided under rules the Panchayat is empowered to grant a permit in accordance with law.

6. Heard the learned counsel for the petitioner and the learned counsel for the Panchayat.

7. After evaluating the facts law and circumstances and appreciating the documents produced along with writ petition, I am of the considered opinion that the Panchayat can consider the application submitted by the petitioner along with the consent letter from the owner of the property in order to grant the permit as provided

under the rules, without insisting for registration of Ext.P5 consent letter.

8. Therefore, there will be a direction to the respondent Panchayat to take into account Ext.P5 consent letter issued by the owner of the land and take a decision on Ext.P4 application for permit without waiting for any clarification sought under Ext.P6, in accordance with law. This exercise shall be completed within a period of one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of accordingly.

Sd/-
SHAJI P. CHALY
JUDGE