

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

WEDNESDAY, THE 11TH DAY OF NOVEMBER 2015/20TH KARTHIKA, 1937

WP(C).No. 15874 of 2012 (H)

PETITIONER(S):

**INDUS TOWERS LTD,
CIRCLE OFFICE AT:VANKARATH TOWERS, 8TH FLOOR, NH-47
PALARIVATTOM, KOCHI-24. REPRESENTED BY ITS
ASSISTANT MANAGER, LEGAL
V.G.SANKARAN.**

BY ADV. SRI.V.PHILIP MATHEWS

RESPONDENT(S):

- 1. KUMBALANGHI GRAMA PANCHAYAT,
KUMBALANGHI.P.O, ERNAKULAM DISTRICT
REPRESENTED BY ITS SECRETARY.**
- 2. THE SECRETARY,
KUMBALANGHI GRAMA PANCHAYATH, KUMBALANGHI.P.O
ERNAKULAM DISTRICT.**
- 3. DILEEP,
S/O.KUNJOOTTY, KAYIPURATHU HOUSE, KUMBALANGHI.P.O
ERNAKULAM DISTRICT.**

**R1&2 BY ADV. SRI.K.L.JOSEPH
R1&2 BY ADV. SRI.V.N.KAMATH
R3 BY ADV. SRI.BIJU MARTIN
R3 BY ADV. SRI.D.M.NOWFAL
R3 BY ADV. SRI.M.M.SALIM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11-11-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

VS

APPENDIX

PETITIONER(S)' EXHIBITS :

- EXT.P1- COPY OF THE CERTIFICATE OF INCORPORATION ISSUED BY THE ASSISTANT 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 DATED 10.1.2008 ISSUED BY THE MINISTRY OF COMMUNICATIONS & IT, DEPARTMENT OF TELECOMMUNICATIONS.
- EXT.P4- COPY OF THE FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON CHANGE OF NAME ISSUED BY THE DEPUTY REGISTRAR OF COMPANIES, NATIONAL CAPITAL TERRITORY OF DELHI AND HARYANA
- EXT.P4(A)- TYPED COPY OF EXT.P4
- EXT.P5- COPY OF THE COMMUNICATION SEND BY THE DIRECTOR (CS-III) OF THE MINISTRY OF COMMUNICATIONS & IT, DEPARTMENT OF TELECOMMUNICATIONS, NEW DELHI.
- EXT.P6- COPY OF THE BUILDING PERMIT DATED 1.12.2011 ISSUED BY THE 2ND RESPONDENT.
- EXT.P7- COPY OF THE APPEAL NO.72/2012 FILED BY THE PETITIONER BEFORE THE TRIBUNAL
- EXT.P8- COPY OF THE WRITTEN STATEMENT FILED BY THE RESPONDENTS 1 AND 2 IN APPEAL NO.72/2012
- EXT.P9 - COPY OF THE WRITTEN STATEMENT FILED BY THE 3RD RESPONDENT IN APPEAL NO.72/2012
- EXT.P10- COPY OF THE ORDER DATED 15.6.2012 PASSED BY THE TRIBUNAL FOR LOCAL SELF GOVERNMENT INSTITUTIONS, THIRUVANANTHAPURAM IN APPEAL NO.72/2012

RESPONDENT(S)' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

VS

A.M.SHAFIQUE, J.

W.P.(C).No.15874 of 2012

Dated this the 11th day of November, 2015

JUDGMENT

Petitioner challenges Ext.P10 order passed by the Tribunal for Local Self Government Institutions, by which the Tribunal had directed the Grama Panchayat to cancel the building permit granted in favour of the petitioner.

2. Short facts involved in this writ petition would disclose that the petitioner obtained a building permit from the first respondent Panchayat and started construction of a mobile telecommunication tower. While the construction was in progress, Panchayat had issued a stop memo dated 04.01.2012, calling upon the petitioner, not to proceed with the construction, on account of a complaint given by a local person regarding the construction of the said telecommunication tower and to enquire into the question whether the the procedure prescribed as per Government Order dated 10.08.2009 is

required to be considered. The petitioner preferred Ext.P7 appeal before the Tribunal for Local Self Government Institutions against the aforesaid stop memo. The respondents and the private persons filed counter affidavit, pursuant to which the order came to be passed. While considering the appeal against the issuance of stop memo, the Tribunal proceeded to consider whether the permit was validly granted and ultimately formed an opinion that the permit was granted by the Committee and not by the Secretary and that the file does not contain any documents to the effect that the petitioner and the agreement holder, namely Messrs, Indus Towers Ltd., are one and the same person. Accordingly, it confirmed the stop memo and also observed that the permit was illegally obtained.

3. The main contention urged by the learned counsel for the petitioner is that in an appeal filed by the petitioner before the Tribunal challenging the stop memo, there was no reason for arriving at a finding that the building permit was wrongly issued and that it ought to have been cancelled.

4. Respondent Panchayat had not filed any counter in the matter. The third respondent has filed a counter affidavit supporting the stand taken by the Tribunal.

5. The learned counsel for the petitioner also submits that on account of an interim order of stay granted by the Tribunal against the issuance of stop memo, the construction had been completed.

6. It is submitted by the learned counsel for the petitioner that the contractor, who was constructing the tower had approached this Court by filing a writ petition and this Court had granted police protection in the matter.

7. Be that as it may, the fact remains that when a stop memo has been issued by the Panchayat, in relation to a building permit granted in favour of the petitioner, the Tribunal had committed serious error of law in directing cancellation of the building permit and arrived at a finding that the building permit was wrongly issued. These aspects ought to have been gone into by the Panchayat in an appropriate proceedings.

8. When the Panchayat has issued a stop

memo, it is for the Panchayat to take a final decision in the matter, after hearing the affected parties.

9. In the said circumstances, I am of the view that the order passed by the Tribunal is liable to be set aside, to enable the petitioner to approach the Panchayat and to seek finality of the proceedings relating to the stop memo dated 04.01.2012. Accordingly this writ petition is disposed of as under.

(i) Ext.P10 order passed by the Tribunal is set aside.

(ii) Petitioner is permitted to file necessary objection to the stop memo dated 04.01.2012, before the Panchayat and the Panchayat shall consider the matter afresh, after hearing all the affected parties and taking into account the fact that the construction of the tower has already been completed. It is made clear that the petitioner shall be entitled to operate the tower only after subject to any decision taken by the Panchayat in this regard.

Sd/-
A.M.SHAFFIQUE
JUDGE

VS