

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.18942 OF 2011

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ORDER:

This petition is filed for a writ of *Mandamus* declaring the action of the respondents in interfering with the erection of tower at H.No.5-1-130, Plot No.87, Yadavamitra Colony, Bandlaguda Jagir Village, Rajendranagar Mandal, Ranga Reddy District by the petitioner company, without issuing any notice and without following due process of law, as illegal and arbitrary.

The case of the petitioner is that it has engaged in the business of providing infrastructure for telecommunication services by way of establishing and maintaining assets, such as DAC fibres, right of way, duct spaces and towers for the purpose of grant on lease/rent/sale basis to the licensees telecommunication services under Section 4 of the Indian Telegraph Act, 1885 on mutually agreed terms and conditions. While so, the petitioner has identified the terrace at H.No.5-1-130, Plot No.87, Yadavamitra Colony, Bandlaguda Jagir Village, Rajendranagar Mandal, Ranga Reddy District which is suitable for erection of tower and also obtained No objection from the 1st respondent vide letter dated 16.05.2011 and 22.06.2011 for erection of tower in the proposed site. Accordingly, commenced work of erection of tower and almost completed its work at the said premises. While so, the 1st respondent started interfering with the erection work of the petitioner without issuing any notice on the behest of the 2nd respondent. Aggrieved by the same, present writ petition is filed.

No counter is filed by the 1st respondent-Gram panchayat.

The 2nd respondent filed counter stating that the tower sought to be erected by the petitioner in the midst of thickly populated residential locality endangering the lives and health of the neighbouring residents and that the 1st

respondent unilaterally granted No Objection in favour of petitioner unmindful of health and safety of the people living around. It is also stated that the 1st respondent acted in utter violation of the Article 48 A of the Constitution of India and that just because license is issued under Telegraph Act, 1885 that does not mean they can endanger the lives of the people in and around the tower. It is further stated that the report submitted by the Professor Mr.Girish Kumar of Electrical Engineering Department IIT, Bombay Powai, reveals that establishment of cell tower and transmission of electronic waves endangers the health and safety of the people living around the tower and as such sought for vacating the interim order passed by this Court.

Heard learned counsel for the petitioner as well as learned counsel for the 2nd respondent who reiterated their submissions in tune with their pleadings.

At the time of admission this Court granted interim direction on 07.07.2011 and the same is in operation as on today and it is stated that the petitioner is operating the cell tower all through. Even the 2nd respondent in the counter has not stated that the petitioner was issued any notice before taking action against him. It is also not the case of the 2nd respondent that petitioner has not obtained permission from the 1st respondent for erection of cell tower. Government also issued G.O.Ms.No.334, PR&RD (Pts.IV) Department, dated 09.10.2012 which contains the rules governing the erection of cell tower in the Gram Panchayat area and the said G.O was also amended by the Government by issuing G.O.Ms.No.75, Panchayat Raj & Rural Developmetn (PTS.III) Department, dated 29.07.2015 and that the same is not disputed by both the parties.

Since the cell tower is already erected and started functioning from the year 2011 and the petitioner asserts that no notice is issued to him by the respondents before taking action, the 1st respondent cannot interfere with the functioning of the cell tower of the petitioner. However, it is open for the 1st respondent to take action against the petitioner in case he violates any rules in

erection of cell tower or functioning of cell tower, after issuing notice to the petitioner as well as to the 2nd respondent. Till then, *Status Quo* obtaining as on today shall be maintained by both the parties.

Accordingly, the writ petition is disposed of. No order as to costs.

As a sequel thereto, Miscellaneous petitions, if any pending in the writ petition shall stand closed.

A.RAJASHEKER REDDY, J

30.10.2015

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