THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

Writ Petition No.10230 of 2015

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DATED:15.04.2015

Between:

M/s.Reliance Infratel Limited,

Hyderabad.

… Petitioner

And

Warangal Municipal Corporation,

Warangal.

….Respondent

THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA

AND

THE HON'BLE SRI JUSTICE SANJAY KUMAR

-

<u>Writ Petition No.10230 of 2015</u>

Order: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

We find that on identical matter, an order was passed by this Court on 18.2.2015 in Writ Petition No. 3492 of 2015. Hence, there shall be a similar order in this matter.

Admittedly, the writ petitioner is the owner of a cell phone tower, which has been installed on a building, which is owned by the person other than the writ petitioner. On the ground of non-payment of property tax, the respondent Corporation disconnected power supply to the cell tower and sealed the tower. According to us, the Municipal Corporation's coercive action, as stated in the writ petition, is without jurisdiction. The coercive action, in our view, as rightly contended by the learned counsel for the petitioner, can be taken only when a bill for the tax has been served under Section 266 of the Act, and then on failure to pay the bill amount, after service of notice under Section 268 of the Act.

Section 268 of the Act, for the sake of convenience, is set out hereunder:

> "**Notice of demand**: (1) If the amount of tax for which any bill has been served as aforesaid is not paid into the Municipal Office within fifteen days from the service thereof the Commissioner may cause to be served upon the person liable for the payment of the same a notice of demand in the form of Schedule K, or to the like effect.
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> (2) For every notice of demand which the Commissioner causes to serve on any person under this section, a fee of such amount not exceeding one rupee shall in each case be fixed by the Commissioner, shall be payable by the said person and shall be included in the costs of recovery."

After the aforesaid notice is issued, followed by non-compliance thereof, proceedings like the nature, which have been taken herein, can be initiated and this will be clear from the language of Section 269 of the Act. Sub-section (2) of Section 269 of the Act, for the sake of convenience, is set out hereunder:

> "(2) If after the service of the notice of demand the amount of the said tax is paid but the fee for the notice is not paid, the sum due on the account of the said fee may be levied under a warrant in the form of Schedule L, *mutatis mutandis* as if such sum were due on account the tax:
>
> Provided that a simple interest at the rate of two percent per mensum shall be charged in case of failure to pay property tax within the due date:
>
> Provided further that when payment of property tax is not made within the due date, the Commissioner may, after giving notice to the owner or occupier, disconnect the essential services to the premises."

Therefore, the entire action on the part of the respondent Corporation in sealing the tower and also disrupting power supply to the tower is without jurisdiction and unauthorized.

We therefore allow the Writ Petition and direct the Municipal Corporation to take steps to see that the power supply is not disrupted to the cell tower of the petitioner. However, this order will not prevent and prejudice the Municipal Corporation from taking steps in accordance with law against the petitioner or any other person for recovery of the alleged dues, if so advised.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

K.J. SENGUPTA, CJ

SANJAY KUMAR, J

15th April, 2015

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