

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.10188 OF 2015

ORDER :

This writ petition is filed seeking writ of mandamus declaring the action of the 2nd respondent in threatening to demolish the tower erected by the petitioner company at roof top of building bearing Municipal No.5-9-520/a, situated at Yapral, Alwal, Hyderabad, without issuing any notice whatsoever to the petitioner company and without following due process of law, as illegal and arbitrary.

2. The petitioner company was incorporated under the Companies Act, 1956 having registration No.325/10. It is an infrastructure provider I (IP-I) responsible to establish and maintain the assets such as Dark Fibres, Right of way, Duct Space and Tower for the purpose of grant on lease/rent/sale basis to the licensees of Telecom Services licensed under Section 4 of Indian Telegraph Act, 1885 on mutually agreed terms and conditions. The Central Government granted registration certificate to the petitioner company to provide Telecom Infrastructure (IP-I) in India including erstwhile State of Andhra Pradesh. In the process of providing infrastructure to the telecom service providers, the petitioner company has identified the terrace of H.No.5-9-520/a/CT, situated at Alwal, Hyderabad and agreement was entered into with the owner of the property for the purpose of erection of tower. Thereafter, the petitioner company has submitted an application dated 05.04.2010 which was received by the 2nd respondent on 10.04.2010 by complying with all the requirements as per G.O.Ms.No.183, dated 27.02.2008. It is stated that after waiting for a mandatory period of 30 days, the petitioner company has erected the tower by virtue of deemed permission. As there is no response from the 2nd respondent either by granting permission or refusing to grant permission within the stipulated time, tower was erected by virtue of deemed permission. It is stated that the tower has been functioning without any interruption for any corner and respondent Corporation has been collecting the property tax from the petitioner company in respect of the subject tower. While things stood thus, on

08.04.2015, the owner of the building has forwarded a copy of the impugned notice dated 07.04.2015 issued under Section 636 of the HMC Act, 1955, asking the petitioner to remove unauthorized cellular tower on the subject premises, within 24 hours. Aggrieved by the same, the present writ petition is filed.

3. Heard Sri Ganta Rama Rao, learned Senior Counsel for the petitioner as well as Smt.A.Deepthi, learned Standing Counsel for the respondent Corporation.

4. Sri Ghanta Rama Rao, learned Senior Counsel for the petitioner submits that when petitioner application for permission under G.O.Ms.No.183, dated 27.02.2008 is pending with the respondent Corporation and without disposing of the same, the respondent Corporation, without serving notice under Section 452 of the HMC Act, issued the impugned notice, which is in violation of principles of natural justice.

5. Smt. A.Deepthi, learned Standing Counsel for the respondent Corporation submits that application submitted by the petitioner is not in proper format and they have not paid any fees as required under the law. She also submits that notice under Section 636, which is impugned in the writ petition, may be treated as show-cause notice and petitioner to file explanation to the same and the same will be considered by the respondent authorities.

Since it is stated that no notice is issued to the petitioner, prior to issuance of notice under Section 636 of the HMC Act dated 07.04.2015, petitioner can file explanation to the same treating proceedings dated 07.04.2015 as show-cause notice and the respondent authorities shall consider the same along with the application filed by the petitioner as per G.O.Ms.No.183, dated 27.02.2008, and pass appropriate orders in accordance with law, within a period of four (4) weeks from the date of receipt of a copy of this order. Till then, status quo obtaining as on today shall be maintained.

Accordingly, this writ petition is disposed of. There shall be 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

09.04.2015

kvs

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Date: 09.04.2015

kvs