

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.36602 of 2014 and 169 of 2015

COMMON ORDER:

These two writ petitions are being disposed of by this common order as they arise out of the same cause of action.

The petitioner in W.P. No.36602 of 2014 is a company which is engaged in the business of providing cell towers/equipments in order to provide mobile coverage to the public at large through various cell site operators in the country. The petitioner company identified a site i.e., Roof Top of H.No.5-4-137 to 139, Gung Road, Tandur and after entering into the leave and licence agreement with the owner, the petitioner submitted an application on 10.02.2014 in accordance with G.O.Ms.No.380 dated 01.08.2013 to the respondent seeking permission to erect the tower. The respondent accorded permission vide proceedings dated 17.02.2014. The petitioner is in the process of erecting the tower. While so, the respondent-Tandur Municipality issued a notice dated 17.07.2014 under Section 344(5) & (6) of the Andhra Pradesh Municipalities Act, 1965 stating that the petitioner has been proceeding with the erection of tower in violation of G.O.Ms.No.380 dated 01.08.2013. The petitioner submitted a representation on 22.07.2014 stating that the notice dated 11.07.2014 mentioned in the letter dated 17.07.2014 was not received by them and sought for a copy of the said notice. The same was furnished to the petitioner. After receipt of the notice dated 11.07.2014, the petitioner submitted an explanation on 15.09.2014. When the respondent Municipality was interfering with erection of the tower without passing any order after receipt of

explanation, the petitioner filed W.P. No.36602 of 2014.

The neighbour of the house where the cell tower was sought to be erected filed W.P. No.169 of 2015 challenging the erection of cell tower on the house of his neighbour stating that the erection was taking place contrary to the provisions of G.O.Ms.No.380, Municipal Administration & Urban Development Department, dated 01.08.2013. He submits that as per the said Government Order the tower has to be erected in the middle of the Roof top, but it was being erected on the portion adjoining his building and hence, he sought action. The petitioner further states that the permission granted in favour of the cell tower company expired long back and no erection should have been permitted by the Tandur Municipality.

In view of the averments made by the petitioners in both these writ petitions, it is clear that the cell tower company wanted to erect a cell tower after obtaining permission from the Tandur Municipal Council. Initially permission was granted on 17.02.2014, subject to following conditions:

- 1) Permission is accorded subject to the restrictions to erect the Telecom infrastructure towers laid down in G.O.Ms.No.380 M.A. & U.D. Department dated 01-08-2013 in para 'E I to X and basic requirements laid down in the said Government orders para F I to X scrupulously.
- 2) The applicant shall erect the towers within 3 months from the date of receipt of the permission proceedings.
- 3) The applicant shall apply for use certificate to the Municipal Council after completion before commencing use of towers.
- 4) Soon after completion of Telecom infrastructure a completion certificate shall be submit to the

Municipality.

- 5) The applicant shall submit occupancy certificate of house and building permissions where there is applicable before issuance use certificate.

Thereafter, the Tandur Municipal Council issued a notice on 17.07.2014 and the company submitted its explanation. Without considering the explanation when the Municipal Council is interfering with the erection, the company filed the writ petition. The neighbour filed the writ petition stating that the erection is allowed contrary to the provisions of G.O.Ms.No.380 dated 01.08.2013 and his rights would be violated.

In the circumstances of the case, both these Writ Petitions are disposed of directing the Commissioner, Tandur Municipal Council, Tandur, Rangareddy District to inspect the site and hear the petitioners in both these writ petitions and consider the explanation submitted by the company erecting the tower and pass appropriate orders in accordance with law within a period of thirty (30) days from the date of receipt of a copy of this order. Till such time, it is open to the petitioner in W.P. No.36602 of 2014 to erect the tower, but the erection of such tower shall be subject to further orders to be passed by the Commissioner in this regard. No order as to costs.

Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed.

A.RAMALINGESWARA RAO, J

27.04.2016
MVA