

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.3333 of 2012

ORDER:

-
This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking the following relief/s:-

“....to issue an appropriate Writ, order or direction, especially one in the nature of Writ of Mandamus declaring the action of the respondents in initiating the action for removal of the tower and issuance of the impugned proceedings in Rc.No.P2/1590/2011-2 dated 2.2.2012 by the 2nd respondent directing the 1st respondent to remove the tower and the action of the 3rd respondent in disconnecting the power supply to the tower erected by the Tata Teleservices and subsequently transferred to the petitioner company in the land in Sy.No.232 at Kaviraj Nagar, Khanapuram Village, Khammam Urban Mandal, Khammam District without issuing any prior notice whatsoever and without following due process of law as arbitrary, illegal, contrary to the provisions of the Gram Panchayat Act and in violation of the well settled principles of natural justice and pass such other order or orders as are deemed fit and proper in the circumstances of the case.”

(Reproduced Verbatim)

2. After this writ petition is filed, the 4th respondent was impleaded. In view of the subsequent event that the Gram Panchayat is merged into Municipal Corporation, Khammam, the 5th and the 6th respondents were also impleaded.

3. I have heard the submissions of the learned counsel for the writ petitioner, the learned counsel for the unofficial 4th respondent, the learned Standing counsel for Khammam Municipal Corporation appearing for the 5th respondent and Sri *R.Vinod Reddy*, the learned counsel appearing for the 3rd respondent. I have perused the material record including the pleadings in the writ petition and the counter affidavit of the 2nd respondent and also the pleadings of the 4th respondent in the vacate petition.

4. The grievance of the writ petitioner is that the order impugned was passed without considering the explanation submitted by the writ petitioner in answer to the special notice issued by the Gram Panchayat on 21.01.2012. This Court, having heard the submissions made on 08.02.2012, while *inter alia* observing that the removal of the tower without considering the explanation of the petitioner will be in violation of the principles of natural justice and that the same may cause irreversible and irreparable injury to the rights of the petitioner, if its contentions were to be found tenable on merits subsequently, had held that interim intervention is called for and had accordingly granted interim orders for continuance of power supply, which supply was stated to have been stopped before filing of this writ petition. Thus, this Court granted interim orders not to interfere with the existence or the functioning of the tower and to continue to supply power to the said tower until the next date of hearing.

5. At the hearing, the learned counsel for the writ petitioner would submit that pursuant to the interim orders of this Court, power supply was restored and the tower is functioning. He would further submit that if the impugned order is set aside and liberty is given to the 5th respondent-Municipal Corporation, Khammam to proceed against the subject tower, if it so desires and so chooses, in strict accordance with the procedure established by law, the same would meet the ends of justice.

6. The learned counsel for all the respondents on record while endorsing the said submission of the learned counsel for the writ petitioner would state that if the direction as now sought by the writ petitioner is given, the same would sub-serve the ends of justice.

7. Recording the aforementioned submissions, the writ petition is disposed of by setting aside the impugned order and giving liberty to the 5th respondent-Municipal Corporation, Khammam to proceed against the subject tower of the writ petitioner, if it so desires and so chooses, in strict accordance with the procedure established by law. However, it is made

clear that in case any such action comes to be initiated by the 5th respondent, an opportunity of hearing shall be given to the 4th respondent also. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.Seetharama Murti, J

27th January, 2016

Bvv