

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15238 of 2013

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1. Saket Chandra Samaiyar Son of Late Ram Chandra Samaiyar.
 2. Arti Kumari Wife Of Saket Chandra Samaiyar both Resident Of Mohalla-Nayatola, Madhopur, P.S.- Kotwali, District- Munger.

.... Petitioner/s

Versus

1. The Vodafone Essar Spacetel Limited, A Company Incorporated Under The Companies Act Having Its Registered Office At C-48, Okhla Industrial Area, Phase-II, New Delhi And Local Office At Maharaja Kameshwar Complex, Frazer Road, Patna.
2. Smt. Sunita Sinha Wife Of Sri Ajoy Kumar Sinha Resident Of Mohalla-Nayatola, Madhopur, P.S.- Kotwali, P.O. And District- Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Keshav Srivastava, Sr. Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-03-2017

Heard Mr. Keshav Srivastava, learned senior counsel for the petitioners.

Questioning the legal acceptability of the impugned order passed in appeal affirming the dismissal of the prayer for injunction by the plaintiffs in the suit, the present application under Article 227 of the Constitution of India has been filed.

From the perusal of the materials on record, it transpires that the present petitioners are the plaintiffs in the T.S. No. 09 of 2011 which has been filed for direction to the defendant 1st set-



respondent to remove the mobile tower and generator set established over the land described in schedule-II of the plaint. From the averments made in the plaint (Annexure-2), it is apparent that the earlier an order under Section 133 Cr. P.C. was passed directing the defendant 1st set to remove the generator set and mobile tower. However, the said order was challenged by the defendant 1st set before this Court in Cr. W.J.C. No. 633 of 2010 which was disposed of by order dated 05.01.2011 (Annexure-1) holding as follows:-

“.....Setting up a Vodafone tower for providing mobile services is a perfectly legal profession and it cannot be said that the setting up of a tower is prohibited and is a health hazard as it is a duly licensed business. The question that the generator set causes discomfort or is injurious to the health of the inhabitants of the colony concerned can be regulated in a manner so that the company or the person incharge of the tower utilize a generator set, which is duly approved by the Pollution Control Board and is as soundless as possible.....

In the circumstances, the petitioner would be required to change the generator set within a period of eight weeks on receiving a copy of this order. The order impugned is thus modified and clarified to the extent mentioned in this order.”



Further perusal of the plaint shows that the relief as sought for in the suit for removal of the mobile tower and generator set against the defendant 1st set has been sought mainly on the ground that the defendant 1st set had failed to change the generator set according to the direction of the High Court.

From the perusal of the order passed by the trial court in the suit rejecting the petition for injunction praying for restraining the defendant 1st set from operating the mobile tower and generator set, it transpires that the trial court took into notice the Emission Consent Order as well as consent to establish (NOC) mobile tower by the Bihar State Pollution Control Board dated 08.04.2011 and 14.03.2011 respectively manifestly after the order dated 05.01.2011 of this Court as contained in Annexure-1 and on that basis the trial court came to the conclusion that the plaintiffs failed to establish disobedience of the order of the High Court by the defendant 1st set. Finding absence of prima facie case, balance of convenience and irreparable loss and injury to the plaintiffs, the trial court rejected the prayer for injunction.

In appeal by the plaintiffs, the appellate court below, after elaborate consideration of the facts and materials on record, has concurred with the conclusions of the trial court and has dismissed the appeal by the impugned order.



During the course of submission on behalf of the appellants, it could not be shown or established that after the order of this Court dated 05.01.2011 (Annexure-1), the operation of the mobile tower by the defendant 1st set over schedule-II land of the plaintiff and functioning of the generator set to provide electric energy to the mobile tower, after approval by the Bihar State Pollution Control Board, can be stopped by grant of injunction order when the defendant 1st set has produced materials showing prima facie compliance of the direction of this Court so far as it concerns the generator set.

This Court has thus not been persuaded to find perversity or unreasonableness in any manner in the impugned order deserving interference under Article 227 of the Constitution of India.

The present application is, accordingly, dismissed.

(V. Nath, J)

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