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HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 693 of 2015

1. Ramprakash Jaiswal S/o Late Gaya Prasad Jaiswal, Aged About 45 Years, R/o Qtr. No EWS 53, Maharana Pratap Nagar Korba, Distt. Korba Chhattisgarh
2. Budhram Dhurv S/o Gorela Dhurve, Aged About 41 Years, R/o Qtr. No EWS 176 Maharana Pratap Nagar, Korba Distt. Korba Chhattisgarh
3. Ashish Kumar Jain S/o K.C. Jain, Aged About 33 Years R/o Qtr. No EWS 176 Maharana Pratap Nagar, Korba Distt. Korba Chhattisgarh

---- Petitioners

Versus

1. Union Of India, Through Secretry Department Of Telecommunication Sanchar Bhawan, 20 Ashoka Road, New Delhi,
2. State Of Chhattisgarh Secretary, Urban Administration And Development Department Mantralaya, Naya Raipur Chhattisgarh
3. Collector Cum District Magistrate Korba, Distt. Korba Chhattisgarh
4. Municipal Corporation Through Commissioner, Municipal Corporation Saket Bhawan, I.T.I. Chowk, Korba Distt. Korba Chhattisgarh
5. Reliance Geo Infrocom Limited Through Director, 4th Floor, S Global G.E. Road, Telibandha Raipur Distt. Raipur Chhattisgarh
6. Manoj Tiwari, Head Constable, Rampur, I.T.I. Chowki, Korba, Distt. Korba Chhattisgarh
7. Smt. Awadh Devi Tiwari W/o Rameshwar Tiowari Plot No. Ews 40 Maharana Pratap Nagar Korba, Distt. Korba Chhattisgarh

---- Respondents

And

WPC No. 879 Of 2015

- Reliance Jio Infocomm Limited S/o A Company Registered And Incorporated Under The Indian Companies Act, 1956, Having Its Head Office At 3rd Floor, Makers Chamber, IV 222 Nariman Point, Mumbai 400021, For The Purpose Of The Petition, The Company Is Represented By Mr. Shailesh Rastogi, Aged About 34 Years S/o Shri Suresh Prasad Rastogi, Authorized Signatory On Behalf Of The Company to file, petitions, suits, affidavits, returns etc.

---- Petitioner

Vs

1. State Of Chhattisgarh, Through The Secretary, Department Of Urban Development, Mantralaya, New Raipur, Chhattisgarh
2. Municipal Corporation- Korba Through The Commissioner, Municipal Corporation, Korba, (Chhattisgarh)
3. Commissioner, Municipal Corporation, Korba, (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Kishore Bhaduri, Shri Sanjay Patel and Shri Pawan Kesharwani, counsel for the respective petitioners
For UOI	:	Shri N.K. Vyas, A.S.G.
For State	:	Shri R.K. Mishra, Dy. A.G.
For Corporation	:	Shri Pankaj Agrawal, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

28/04/2017

1. Heard.
2. Both the petitions are being disposed off by common order. The petitioner in W.P.(C) No. 693 of 2015 filed a petition before this Court seeking a direction to restrain the respondent-Corporation and also to set-aside the order dated 13/02/2015 passed by the Corporation granting permission to erect the mobile tower as also to seize installation of mobile tower. The ground on which the challenge is made is that the grant of permission is in grave violation of Telegraph Act and Chhattisgarh Bhumi Vikas Rules, 1984 and if the Mobile Company is allowed to operate, it will violate petitioner's fundamental right under Article 21 of the Constitution of India. The other ground is that the Corporation has not made any survey that if the tower is allowed to be installed it would not be hazardous to the health of residents living in the vicinity of the mobile tower. In the petition, it has been averred that there are various research work done at the global level exposing the hazardous radio frequency by use of mobile towers.

The other petition has been filed by the Mobile Tower Company when the permission dated 13/02/2015 granted in favour of mobile tower company was cancelled by the Corporation looking to the public agitation and grievance and further that despite there being a direction not to proceed further with erection, the Mobile Tower Company

allegedly proceeded to erect the tower.

3. Neither the counsel for the petitioner in WP(C) No. 693 of 2015 nor the counsel for Corporation, despite repeated opportunity could point out before this Court that the Mobile Tower Company could not be granted permission to erect the tower on account of any impediment under existing laws including Corporation rules and regulation regulating erection of mobile tower it is common knowledge that large number of mobile towers have come up and the Corporation has granted permissions. It is not a case of the petitioner that in the area of the petitioner there are number of mobile tower installed and governing regulatory laws prohibit installation of more mobile towers.
4. In the absence of their being any legal impediment in granting permission to erect the tower, the Mobile Tower Company would be entitled to seek license provided it fulfills the regulatory requirements framed by the Corporation in the matter of grant of license for erection of mobile tower. In fact, the Mobile Tower Company was granted a license, but because of some agitation of the local residents, the Corporation was driven to cancel the same, though the grant of license was not found contrary to the provisions of any regulatory laws.
5. In view of the above, I am constrained to hold that the Corporation only adopted reflexive attitude without there being any legal impediment, these two aforesaid petitions are accordingly disposed off. The Mobile Tower Company may approach the Corporation and the Corporation shall act in accordance with law in the matter of consideration for grant of license for erection of mobile tower.

Sd/-

(Manindra Mohan Shrivastava)
Judge