

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.18881 OF 2010

ORDER:

The action of the respondents, in preventing the petitioner from utilising the tower erected on the terrace of premises No.10-4-9, Gowtami Nagar, Kovvur, West Godavari District, is under challenge in this Writ Petition.

The petitioner claims to have submitted an application on 24.12.2009 seeking permission to erect a telecom tower at the specified premises complying with all the requirements of G.O.Ms.No.183 dated 27.02.2008, apart from clauses 1 and 4 of the said G.O. Contending that they had waited for 60 days, and in as much as their application for grant of building permission was not considered till then, the petitioner went ahead and erected the tower. In the meanwhile, neighbours of the building, where the tower was erected, filed WP.No.3022 of 2010 complaining of inaction on the part of respondents 1 to 3 in preventing erection of the tower by the petitioner herein. WP.No.3022 of 2010 was disposed of by this Court by order dated 24.10.2013 in terms of the order passed in WP.No.1514 of 2009 and batch dated 03.01.2013. A Division Bench of this Court, by its order in WP.No.1514 of 2009 and batch dated 03.01.2013, permitted the petitioners therein to make a representation, and directed the authorities concerned to deal with the matter, if necessary, after affording the petitioner as well as the cell tower companies an opportunity of being heard. Admittedly, no such order has been passed till date.

In the counter affidavit, filed by the respondents, it is stated that the municipality had issued a notice on 19.01.2010 itself directing the petitioners to remove the poles erected by them; the application of the petitioner was returned, as they had started erection of poles without permission from the municipality; on their application being returned, notice dated 19.01.2010 was issued directing them to remove the poles; as such the question of allowing W.P. No.3022 of 2010 did not arise; the allegation that no communication was received from the respondent-municipality was false, in as much as the petitioner's application was returned when they had started to erect poles without permission; and the assertion to the contrary was not tenable.

Reliance is, however, placed by Sri Ghanta Rama Rao, Learned Senior Counsel appearing on behalf of the petitioners, to the letter sent by them to the Commissioner of the Municipality on 18.06.2010 wherein the petitioner had contended that, by the time they had received the notice in June, 2010, the cell tower was erected without a copy of the said notice dated 19.01.2010 being served upon them.

Section 214 of the Andhra Pradesh Municipalities Act, 1965 ("the Act" for brevity) stipulates that, within the period prescribed by Section 212 of the Act or Section 213 of the Act (ie 60 days of receipt of the application), if the Commissioner has neither given nor refused its approval for construction of a building on the site, nor permission is granted to execute any work, such approval or permission shall be deemed to have been given; and the applicant may proceed to execute the work, but not so as to contravene any

of the provisions of the Act or any rule or bye-law made under the Act.

It is only if permission for construction is not refused, would the provisions of Section 214 of the Act be attracted. Even in cases where the Commissioner has neither given permission nor refused approval, construction of the building must not contravene any of the provisions of the Act or the rules and bye-laws made thereunder. The question whether a copy of the notice dated 19.01.2010 was served on the petitioner before June, 2010 is again a factual aspect which this Court would, ordinarily, not examine in proceedings under Article 226 of the Constitution of India. Even if the construction is raised by the petitioner, under the protection of the deeming provision under Section 214 of the Act, the construction, which they are entitled to make, can only be in accordance with the provisions of the Act, the rules and bye-laws made thereunder.

I consider it appropriate, therefore, to direct the respondent-Municipality to consider the petitioner's claim of non-receipt of the notice dated 19.1.2010; and, in case the petitioner is not entitled for protection under Section 214 of the Act, to put them on notice, given an opportunity of being heard, and thereafter take action in accordance with law. Even if the Commissioner of the Municipality is satisfied that the petitioner is entitled for protection, under Section 214 of the Act, he shall then examine whether the cell tower erected by them is in accordance with the provisions of the Act, the rules and the bye-laws made thereunder; and, thereafter, take necessary action in accordance with law. The entire exercise of verification, issuing a notice, giving the petitioner an opportunity

of being heard, and passing of an order thereafter shall be completed within three months from the date of receipt of a copy of this order. As the petitioner has had the benefit of an interim order, for the past more than seven years, the respondents shall not take any coercive steps against them till orders are passed afresh as directed hereinabove.

The Writ Petition is disposed of accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

30th November 2017
RRB

