

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.31871 OF 2010

ORDER: (per Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The petitioner herein erected a cell tower under the cover of a deemed permission under Section 437 of the GHMC Act. They filed W.P. No.10683 of 2009 which, along with a batch of Writ Petitions in W.P. No.12314 of 2009 and batch, was disposed of by a Division bench by its order dated 02.01.2013. The Division bench struck down condition No.1 of G.O.Ms. No.183 dated 27.02.2008 and directed that, in case any application had been filed by the Telecom companies for erection of the Cell tower, the authority should consider the same without taking into consideration Clauses 1 and 4 of G.O.Ms. No.183 dated 27.02.2008; and, in cases where the Telecom Companies were asked to pay the fee as per the existing rules, any fee paid by them shall be subject to the result of the representations made by the Telecom companies with respect to the fee demanded.

Sri Ghanta Rama Rao, Learned Senior Counsel appearing on behalf of the petitioner, would contend that the applications submitted by the petitioner has not been disposed of till date; and, in the interregnum, the GHMC had addressed a letter to the electricity distribution companies directing them to disconnect power supply to the petitioner.

The letter addressed to the distribution company, by the GHMC on 29.07.2010, records that the Cell tower was erected on a building consisting of Cellar + four floors at Hyderguda without valid permission from the GHMC; the building was in a dangerous condition, and would

cause damage to the neighbouring building and human beings; and, therefore, electricity connection should be disconnected.

On the petitioner invoking the jurisdiction of this Court, by way of the present Writ Petition, the impugned order dated 29.07.2010 was suspended on condition that the petitioner did not have any arrears of electricity. The petitioner was directed to pay the demanded consumption charges pending further orders.

As the very basis of the impugned order is the notice issued by the GHMC that the tower was erected without their permission, I consider it appropriate to direct the GHMC to consider the petitioner's application, for erection of a Cell phone tower, in terms of the earlier Division bench judgment in W.P. No.10683 of 2009 dated 03.01.2013, with utmost expedition, and in any event not later than three months from the date of receipt of a copy of this order.

In case the petitioner is found ineligible to claim the benefit of a deemed permission under Section 437, it is open to the GHMC to take necessary action in accordance with law. Even if the petitioner is held entitled for the benefit of a deemed permission under Section 437 of the Act, such a benefit is subject to the condition that the construction was made only in accordance with the provisions of the GHMC Act, and the byelaws made thereunder. It is open to the GHMC, therefore, to examine whether the tower, erected by the petitioner, was in accordance with the provisions of the GHMC Act, and the byelaws made thereunder. In case the respondents find that the tower erected by the petitioner does not fulfil the conditions stipulated in Section 437 of the Act, it is always open to them to proceed and take action against the petitioner in accordance with law.

The Writ Petition stands disposed of accordingly. The miscellaneous petitions pending, if any, shall stand closed. No costs.

RAMESH RANGANATHAN, ACJ

Date: 30.11.2017

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