

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.NO.11027 OF 2017

ORDER

Heard Sri Ganta Rama Rao, learned Senior Counsel, representing the learned counsel for the petitioner on record, learned Government Pleader for Panchayat Raj (Telangana) for the 1st respondent and Sri G.Narender Reddy, learned Standing Counsel for the 2nd respondent – Gram Panchayat.

Petitioner herein is a company regulated by Indian Telegraph Act, 1885. Petitioner submitted an application on 09.01.2017 seeking permission for erection of cell tower to the 2nd respondent – Gram Panchayat. The same was acknowledged by the 2nd respondent on 18.01.2017. By way of impugned order dated 07.02.2017, the 2nd respondent refused to grant permission on the ground of objections raised by the neighbours.

According to the learned Senior Counsel, the reason assigned by the 2nd respondent for rejecting the permission, is unsustainable and untenable and contrary to procedure contemplated under G.O.Ms.No.334 Panchayat Raj and Rural Development (PTS.IV) Department dated 09.10.2012. Elaborating the said contention, the learned Senior Counsel submits that clause (iv) Rule 2 of the Rules published vide G.O.Ms.No.334 dated 9.10.2012 initially mandated to furnish 'No Objection Certificate' from the

surrounding building owners and from the concerned building owners in case of rooftop installations. It is further submitted by the learned Senior Counsel that by way of G.O.Ms.No.420 Panchayat Raj and Rural Development (PTS.IV) Department dated 24.09.2013, the State Government deleted clause (iv) of Rule 2 of the Rules published vide G.O.Ms.No.334 dated 09.10.2012. It is further contended by the learned Senior Counsel that in view of the said deletion, the impugned rejection order passed by the Gram Panchayat, cannot be sustained in the eye of law.

On the other hand, it is the submission of the learned Standing Counsel for 2nd respondent – Gram Panchayat that even though clause (iv) of Rule 2 of the Rules published under G.O.Ms.No.334 dated 9.10.2012 was deleted by the State Government, the impugned order can be sustained under Rule 3 (a) of the Rules under the said governmental order, which reads as under:

3. Norms for issuing licence:

(a) The Inter – Ministerial Committee of EMF radiation in its report has recommended that mobile towers should not be installed near high density residential areas, schools, play grounds and hospitals. Accordingly, the Executive Authority of Gram Panchayat shall impose restrictions on installation of mobile towers near high density residential areas, schools, playgrounds and hospitals as far as possible.

It is further submitted by the learned Standing Counsel that petitioner herein has an effective alternative remedy of appeal before the Gram

Panchayat under Rule 3(h) of G.O.Ms.No.334 dated 9.10.2012 and without availing the same, the present writ petition is filed directly before this court.

In view of the above said alternative remedy of appeal to the Gram Panchayat Committee against the order of Executive Authority as stipulated under Rule 3(h) of G.O.Ms.No.334 dated 9.10.2012, this court is not inclined to entertain the writ petition by going into the merits of the case.

It is open for the petitioner to file appeal before the appellate authority as mentioned supra.

Accordingly the writ petition is disposed of leaving it open for the petitioner to file appeal as per Rule 3(h) of G.O.Ms.No.334 dated 9.10.2012 against the order passed by the 2nd respondent dated 7.2.2017 within a period of two weeks from the date of receipt of a copy of this order. If any such appeal is filed, the same be considered and appropriate orders be passed in accordance with law after notice and opportunity to the petitioner herein, within a period of three weeks thereafter.

No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

A.V.SESHA SAI,J

DATE:04.04.2017

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