

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.32876 of 2015

ORDER:

This writ petition is filed by the petitioner, under Article 226 of the Constitution of India, seeking to declare the action of respondents 2 to 4 in allowing the 6th respondent for erection of the Roof Top Cell Tower (RTT) contrary to the Rules made in G.O.Ms.No.96, dated 05.08.2015, in the premises bearing Plot Nos.289 & 290, H.No.4-41-146/1, Papi Reddy Nagar, Kukatpally, Ranga Reddy District, as illegal and arbitrary and violative of Rules therein and consequently direct respondents 2 & 3 not to allow the 6th respondent for erection of Roof Top Cell Tower in the premises bearing Plot Nos.289 & 290, H.No.4-41-146/1, Papi Reddy Nagar, Kukatpally, Ranga Reddy District.

2. Heard the learned counsel for both the parties and perused the material available on record. With the consent of the learned counsel for both the parties, the writ petition is taken up for disposal at the stage of admission.

3. The case of the petitioner is that the petitioner is the resident of H.No.4-41-103/1, Papireddy Nagar, Kukatpally, Balnagar, Hyderabad, and absolute owner and possessor of the above said property and neighbour of the property bearing Plot Nos.289 & 290, H.No.4-41-146/1, Papi Reddy Nagar, Kukatpally, Ranga Reddy District. It is further case of the petitioner that on the application, dated 22.06.2015, said to have been submitted by the 6th respondent for erection of cell tower, the 3rd respondent has not taken any action and that the 6th respondent is proceeding

with the erection of the cell tower in the premises bearing Plot Nos.289 & 290, H.No.4-41-146/1, Papi Reddy Nagar, Kukatpally, Ranga Reddy District, without obtaining permission and also proceeding under the deemed provision without following the guidelines contemplated under the G.O.Ms.No.96, Municipal Administration & Urban Development (M1) Department, dated 05.08.2015, on the ground that the 3rd respondent failed to grant permission, which amounts to deemed permission granted to the 6th respondent.

4. The main grievance of the petitioner is that the petitioner has submitted representations, dated 17.11.2014 & 26.09.2015, to the respondent authorities, but so far, the respondent authorities have not taken any action on the said representations and the same are pending.

5. Learned counsel for the petitioner submitted that the erection of cell tower by the 6th respondent in the premises of the 5th respondent will discharge the radiations in the locality, which would cause health hazards and also there is a school very adjacent to the above said premises, which would also lead to ill-health of school children and prays to take action against respondents 5 & 6.

6. This Court, at the time of admission, granted interim direction directing respondents 2 & 3 not to allow the 6th respondent for erection of Roof Top Cell Tower in the premises bearing Plot Nos.289 & 290, H.No.4-41-146/1, Papi Reddy Nagar, Kukatpally, Ranga Reddy District. Aggrieved by the said interim

direction, the 6th respondent filed vacate stay petition in W.V.M.P.No.2176 of 2016.

7. In W.V.M.P.No.2176 of 2016, the 6th respondent filed counter affidavit stating that after entering into license agreement, dated 16.08.2014, with the 5th respondent, the 6th respondent has made an application, dated 22.06.2015, to the Greater Hyderabad Municipal Corporation by complying with all the requirements as per G.O.Ms.No.96, Municipal Administration & Urban Development (M1) Department, dated 05.08.2015, including payment of Rs.1,00,000/- and waited for a period of 30 days. As there was no response from the Greater Hyderabad Municipal Corporation, either by granting permission or refusing to grant permission within 30 days from the date of receipt of application, the 6th respondent has commenced the erection of the roof top poles by virtue of deemed permission as per the application submitted to the Greater Hyderabad Municipal Corporation. It is further stated that the 6th respondent is not aware about the representation said to have been submitted by the locality people to the 3rd respondent and it is further stated that the radiations which are emanating from the tower/pole mounted antennas are not hazardous to health as apprehended by the petitioner.

8. Learned counsel for the 6th respondents submitted that the 6th respondent has started construction of the tower pole on the ground that the 3rd respondent has not granted permission, which amounts to deemed permission and it is further submitted that the 6th respondent will not proceed with the construction till the permission is granted by the 3rd respondent on the basis of the

application, dated 22.06.2015, said to have been submitted by the 6th respondent for erection of cell tower.

9. Considering the facts and circumstances of the case and the submissions of learned counsel for both the parties, this Court is of the view that the writ petition can be disposed of with the following direction:

The official respondents are directed to take a decision on the basis of the application, dated 22.06.2015, said to have been submitted by the 6th respondent and also take into consideration the representations, dated 17.11.2014 & 26.09.2015, said to have been submitted by the petitioner and after affording reasonable opportunity of hearing to both the petitioner as well as respondents 5 & 6, pass appropriate orders, in accordance with law and also as per the guidelines contemplated under the G.O.Ms.No.96, Municipal Administration & Urban Development (M1) Department, dated 05.08.2015, as expeditiously as possible, more preferably within a period of eight (08) weeks from the date of receipt of a copy of this order and communicate the decision to the petitioner. Till a decision is taken by the official respondents, the 6th respondent is directed not to proceed with the erection of Roof Top Cell Tower in the premises bearing Plot Nos.289 & 290, H.No.4-41-146/1, Papi Reddy Nagar, Kukatpally, Ranga Reddy District. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

RAJA ELANGO, J

Date: 17th July, 2017

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