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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.REV.P. 465/2017**

M/S IDEA CELLULAR INFRASTRUCTURE SERVICES LIMITED

..... Petitioner

Through: **Mr. Manoj Kumar Sahu, Advocate.**

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through: **Mr. Mukesh Kumar, APP for the State with SI
Prabhakaran, PS-Chhawla.**

**Mr. Neeraj Kumar, UDC, SDM Office,
Najafgarh:**

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

ORDER

% 26.10.2017

The present petition has been brought by the petitioner under Section 397 Cr.PC assailing the order dated 09.04.2017 passed by the Sub Divisional Magistrate, Najafgarh, New Delhi whereby the respondent No. 2 was directed to remove the mobile phone tower from the roof of his premises.

Learned counsel for the petitioner contended that the respondent No. 1 without issuing a show cause notice either to the petitioner or to the respondent No.2 or even providing an opportunity to be heard, passed the impugned order which is in gross violation of principal of natural justice, arbitrary, fair play and equity.

The brief and necessary facts of the present case is that the petitioner and the respondent No. 2 entered into a Licence Agreement dated 05.12.2016 by virtue of which respondent No. 2/ Licensor granted the

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petitioner/Licensee to use or occupy approx. 200 Sq. Ft. of plot bearing Plot No. 16, Khasra No. 14/3, Block G, Prem Nagar, German Nagar Colony, Najafgarh, New Delhi-110043); that the Government of India made it mandatory to provide a minimum of 90% area coverage and ensure a high quality service through the NCT of Delhi, which is not possible without installing pole sites; that only when the local police went to the site and informed the respondent No. 2 about the impugned order dated 09.04.2017, the petitioner came to know about the said order through respondent No. 2.

I heard the learned counsel for the parties and perused the material available on record.

Sub Divisonal Magistrate, Najafgarh, New Delhi on the basis of a complaint received from Vikram Singh, passed the following order :

“ COUDITIONAL ORDER UNDER SECTION 133 CR.PC

Whereas, a complaint has been received from Shr. Vikram Singh, German Nagar Colony, Najafgarh, New Delhi Regarding Removal of mobile tower installed in their colony at the roof of H. No. 16, Old Khair Road Owner – Mr. Satish Near by Khaira Government Sarvodaya Vidyalaya Najafgarh, New Delhi-110043.

And whereas mobile tower is being reportedly constructed near a school in residential area. Further, it is stated that the aforesaid tower is situated in thickly populated area, which might cause harm to general public owing to radiation and other reason.

Now, therefore, I ANJALI SEHRAWAT, IAS, SDM, Najafgarh Delhi in the view of the above direct Sh. Satish to remove the mobile phone tower from his roof within 10 days from the issue of this order or to appear at 02:00 p.m. in the Court of the undersigned on 02/05/2017 to show cause why this order should not be made absolute.

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Note: SHO, Police Station (Najafgarh) is hereby directed to ensure compliance of this order and submit status report on the next date of hearing i.e. 02/05/2017.

Note : Violation of order U/s 133 of Cr.PC will attract penal proceeding U/s 188 of IPC."

Since, the petitioner and the respondent No. 2 were not heard, this Court is of the considered view that a reasonable opportunity should have been afforded to the petitioner and respondent No. 2 before the direction to remove the mobile phone tower was issued. Accordingly, the present matter is remanded to the Sub Divisional Magistrate who shall hear the matter on merits.

The petitioner and the respondent No. 1 are already represented through counsel. They shall appear before the Sub Divisional Magistrate, New Delhi on 03.11.2017 and the Sub Divisional Magistrate shall issue a notice to the respondent No. 2/Satish Yadav to appear before her on the said date i.e. 03.11.2017.

With above directions, the present petition stands disposed of.

A copy of this order be given dasti to the parties, as prayed.

A copy of this order be communicated to the Sub Divisional Magistrate, Najafgarh, New Delhi for compliance.


SANGITA DHINGRA SEHGAL, J

OCTOBER 26, 2017

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