

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION Nos.30931 and 42366 of 2015

COMMON ORDER:

W.P.No.30931 of 2015 is filed seeking a Writ in the nature of Mandamus to declare the endorsement, dated 02.09.2015, bearing Roc.No.1240/2015/G1, issued by the 2nd respondent withdrawing the abeyance orders, dated 29.07.2015, bearing Roc.No.1240/2015/G1, related to erection of cell tower in the premises belonging to the 4th respondent viz., premises bearing D.No.2-7-350/2, without considering the objections raised by the petitioner & the people of the locality and also the written complaint, dated 29.07.2015, as illegal, arbitrary and unconstitutional and consequently set aside the same.

1.1 WP.No.42366 of 2015 is filed seeking a Writ in the nature of Mandamus declaring the action of the 2nd respondent in disconnecting the power supply to the service connection bearing No.2511201022145 provided to the cell tower erected by the petitioner company on the premises of the 4th respondent without issuing any notice as arbitrary, illegal and violative of principles of natural justice.

2. I have heard the submissions of Sri J. Janaki Rami Reddy, learned counsel for the petitioner in WP.No.30931 of 2015; of Sri Ghanta Sridhar, learned counsel for the petitioner in WP.No.42366 of 2015; and, of Sri Md.Saleem, learned standing counsel for Municipal Corporation, Rayalaseema, representing the Pulivendula Municipality in both the writ petitions.

2.1 In the first of the afore-said writ petitions, notice sent to the 4th respondent was returned un-served. In the second writ petition, no notice is taken to the 4th respondent. He is the owner of the premises/house over which the cell tower in question is erected according to the submissions of the cell tower company.

3. The parties in these two writ petitions shall be referred to as arraigned in WP.No.30931 of 2015 for convenience and clarity. However, the owner of the premises/house will be referred to as the owner.

4. The case of the petitioner and the submissions made on his behalf, in brief, are as follows:

He is an agriculturist by profession and is resident of Jandamanu Street, Pulivendula village, where the subject property over which an attempt is being made to erect a cell tower is situate. The petitioner and the residents of the locality are poor people of downtrodden community; they eke out their livelihoods on daily wage coolie works; and, their residential locality, which is a slum area, is however a peaceful and busy residential locality. While so, the owner of the subject premises/house constructed a new floor on his existing premises in the said locality and the said construction work is nearing completion. While so, on 24.07.2015, some persons claiming to be the officials of the 3rd respondent-cell tower company came to the locality and made attempts to install a cell tower on the terrace of the newly constructed upstairs portion of the said house property. The said house property is in the midst of the residential locality. If any proposed cell tower is erected on the said newly

constructed terrace of the said house property, all the residents of the locality and other living beings of the locality will be exposed to radiations (RF radiations) that emanate from the tower and be subjected to health hazards. Further, the radiations also lead to pollution of environment and endanger human lives. The micro wave radiation and the heating effect that occurs during the functioning of the cell tower causes temperature to increase. The studies indicate that exposure to RF radiations is likely to increase health hazards. When the locality people questioned the officers of the 3rd respondent Cell Tower Company, they informed that 2nd respondent accorded permission *vide* proceedings, dated 22.07.2015 for erection of new telecommunication infrastructure tower. However, the said permission was accorded without any Structural Stability Certificate and No Objection Certificate from fire department. In the event any fire incident occurs, there is no chance for the fire engine or an emergency vehicle to enter the locality and undertake rescue operations. There is an elementary school at a distance of 50 meters from the subject house property. Therefore, resistance was offered by the petitioner & the people of the locality for erecting the cell tower by the 3rd respondent company on the subject house property. Then the officials of the 3rd respondent Company left the locality stating that they would install the tower. The 2nd respondent before according permission for erection of the tower is obligated to call for objections from the neighbours; but, no objections are called for in the instant case. In fact all the locality people are against installation of the tower. The guidelines in G.O.Ms.No.380, dated 01.08.2013, were not followed

by the 2nd respondent while according permission for erection of the cell tower by the 3rd respondent company. Therefore, the petitioner along with the people of the locality submitted a written complaint, dated 29.07.2015, to the 2nd respondent bringing to notice of the said authority all facts besides the health hazards & inconvenience that may be faced by the locality people in the event the cell tower is permitted to be erected in the locality and requested the 2nd respondent to withdraw the permission accorded in favour of the 3rd respondent. In view of the said complaint with objections, the 2nd respondent by an order, dated 29.07.2015, kept in abeyance the proceedings, dated 22.07.2015, whereby permission was accorded to the company to erect the cell tower. However, on account of the influence of the 3rd respondent company and the owner of the subject house property, the 2nd respondent, by the impugned proceedings/endorsement, has surprisingly withdrawn the said abeyance orders, dated 29.07.2015, referring to an order, dated 10.03.2015, of this Court in WP.No.5781 of 2015. However, the said orders of this Court in the said writ petition are not relevant to the present case as the said writ petition pertains to a matter that relates to East Godavari District, wherein permission pertains to a property viz., an open land of an extent of Ac.0.50 cents. The 2nd respondent, who considered the objections raised by the locality people, had first granted abeyance orders; but, later the 2nd respondent has withdrawn the abeyance orders by giving a go-bye to the objections raised by the locality people due to the influence of the 3rd respondent and the owner of the house property. Hence, the present writ petition is filed assailing the orders withdrawing the

abeyance orders, which were issued ignoring the objections of the locality people.

5. On 27.10.2015, this Court admitted the first writ petition and granted the following interim order in WPMP.No.39985 of 2015: ‘.....There shall be interim stay as prayed for.’

6. Thus, this Court stayed further proceedings including erection of cell tower by the 3rd respondent on the terrace of the subject house property. While so, it appears, on 23.12.2015, the officials of electricity department disconnected the power supply to the service connection bearing no.2511201022145 provided to the cell tower and did not restore the power supply on the oral requests as well as a representation, dated 24.12.2015, made by the 3rd respondent cell tower company. Therefore, the 3rd respondent while seeking vacation of the afore-stated interim orders obtained by the petitioner further filed the latter writ petition assailing the said action of the electricity department in disconnecting the power supply to the cell tower as arbitrary, illegal and violative of principles of natural justice and seeking restoration of power supply which was disconnected without any notice to it.

7. In this backdrop, the case of the 3rd respondent cell tower company and the submissions made on its behalf, in brief, are as follows:

The 3rd respondent is an infrastructure company responsible for providing cell site towers/equipments for providing mobile coverage to public at large through various cell site operators in the Country. The company is a joint venture of Bharti

Airtel, Vodafone (formerly Hutchison Essar Limited) and Idea Cellular group of companies. Pursuant to the order, dated 18.04.2013, in Company Petition No.14 of 2012 of the High Court of Delhi, the subject passive infrastructure assets including the mobile towers of Vodafone Infrastructure Limited, Bharti Infratel Ventures Limited and Idea Cellular Towers infrastructure Limited have been transferred to Indus Towers Limited (Indus) and the said transfer is operative from 11.06.2013. The Central Government granted registration certificate to this respondent to provide telecom infrastructure in the State of Andhra Pradesh. As per the said licence, this Company is required to erect and install cell towers such as ground based towers & roof top towers and fix antennas & signal trans receiving equipment etcetera and provide the same for the benefits of various telecom providers. The petitioner did not challenge the permission granted by the 2nd respondent to the 3rd respondent for erection of the cell tower. The petitioner is only challenging the proceedings whereby the abeyance orders were withdrawn. Hence, the writ petition is mis-conceived and is liable for dismissal. The allegations that the permission was accorded without Structural Stability Certificate and NOC from Fire Department are all false. The allegation that there is an elementary school within a distance of 15 metres from the house of the 4th respondent is false. The 3rd respondent Company identified the building/subject house property and entered into a lease deed with the owner thereof and submitted an application, dated 04.07.2015, to the 2nd respondent for grant of permission for erection of tower by it, after due compliance of all requirements

including submission of Structural Stability Certificate. The allegation about emissions and the health hazards that may occur due to radiation and the further allegation about pollution of environment due to emissions etcetera are all false. According to the reports of World Health Organization (WHO) and other international organisations, the emission of radiation from the mobile base stations are well within the permissible limits and that the same will not cause any health hazard to any human being. The Government of India adopted the standards laid down by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). The radiation that would emanate from the cell towers is much below than the permissible limit as per the guidelines of ICNIRP. The Government of India constituted a committee headed by Director General, ICMR, to conduct scientific study on the issue; and, the Committee after an elaborate study submitted a report to the High Court of Bombay. Later, a writ petition that was filed was withdrawn. The Kerala High Court also held that radiations that emanates from base stations and mobile phones are much less than those that emanate from the TV and FM radios and dismissed a writ petition. The same view was expressed by Gujarat High Court. Department of Telecommunications, Government of India, which is the competent authority to grant licences has formed a forum called Telecom Enforcement and Resource Monitoring (TERM) Cell and the said Cell has been dealing with representations related to radiation issues. And, any citizen can approach the TERM Cell if he apprehends that radiations, which are emanating from base stations are hazardous to health. Hence, the petition is not

maintainable. The allegations that the 2nd respondent is bound to call for objections and that if only no objections are received, permission has to be accorded and that permission was accorded in violation of G.O.Ms.No.380 are all false. Permission was accorded, on 22.07.2015, for erection of roof top tower on the terrace of the subject house property. This respondent company commenced the work. At that time, this respondent was informed that on account of objections received, permission issued for erection of the cell tower was kept in abeyance. After receipt of the said information, a detailed representation, dated 14.08.2015, was submitted to the 2nd respondent with all relevant facts including the fact that this Court granted an interim order in WP.No.5781 of 2015, in a matter arising under similar circumstances, and a request was made to consider the representation and drop all further proceedings. The 2nd respondent received the representation, on 19.08.2015. Considering the representation of this respondent, the 2nd respondent issued an endorsement, dated 02.09.2015, withdrawing the abeyance orders, dated 29.07.2015. As permission granted by the 2nd respondent stood revived, the 3rd respondent company erected the tower and made it functional by obtaining electricity connection, on 13.10.2015, *vide* service connection no.2511201022145 and started paying consumption charges without any default. While so, without notice, the electricity department disconnected the power supply to the subject tower erected by the 3rd respondent on the terrace of the subject house premises. Hence, this company filed the (latter) writ petition for restoration of the power supply.

8. In the counter filed by the 3rd respondent company in the writ petition of the petitioner, its above stated case is reiterated.

9. I have given earnest consideration to the facts and submissions and contents of material documents. I have carefully perused the material documents produced.

10. It is not in dispute that when the 3rd respondent sought permission for erection of a cell tower on the terrace of the subject house property after entering into a lease deed with the owner of the said property, permission was accorded by the 2nd respondent *vide* proceedings, dated 22.07.2015. Subsequently, on the objections said to have been raised by the petitioner and others, the 2nd respondent issued an order/proceedings, dated 29.07.2015, stating that in view of the objections raised by the residents of Jandamanu street area for the permission issued for erection of cell tower, the said permission proceedings are kept in abeyance until further orders. Later, when the 3rd respondent company made a representation, dated 14.08.2015, along with an order, dated 10.03.2015, of this Court in WP.No.5781 of 2015, the 2nd respondent has withdrawn the afore-stated abeyance orders by his endorsement, dated 02.09.2015. Aggrieved thereof, the petitioner filed the writ petition requesting to set aside the said orders/endorsement whereby the abeyance orders were withdrawn. The 3rd respondent company, after the service connection provided to the cell tower was disconnected, filed the other writ petition seeking restoration of power supply *inter alia* raising various contentions which are stated supra.

11. In the first place, it is to be seen that the 3rd respondent company produced copy of Structural Stability Certificate, which was submitted along with its application for issuance of permission for erection of cell tower on the terrace of the subject house property. Therefore, *prima facie* the contention of the petitioner that without examining the structural stability, permission was accorded by the 2nd respondent needs no countenance. As regards absence of NOC issued by the Fire Department, it is stated that the guidelines which are to be followed for issuance of clearance for installation of mobile towers clearly state that clearance from fire safety department is required in case of high rise buildings where fire clearance is mandatory. Therefore, it is clear that in the case on hand, no such clearance from fire safety department is necessary as the subject house property is admittedly not a high rise building. It is to be next noted that the petitioner is not challenging the permission accorded to the 3rd respondent company for erection of cell tower; but, is only challenging the orders by which the abeyance order was withdrawn. It is also to be noted that after the abeyance orders were withdrawn and after the permission for erection of the cell tower revived, the 3rd respondent company completed the erection process and erected the cell tower and even obtained electricity service connection and started paying the consumption charges from the month of October, 2015, onwards. Therefore, by the time the interim order was obtained by the petitioner, the tower was already erected and was functioning till the power supply was disconnected, on 23.12.2015. Therefore, even by the date, the interim order was obtained by the petitioner, the cell tower is

functioning. Further, it is not in dispute that a TERM Cell is constituted for auditing the RF radiations from the Base Tower Stations like the subject cell tower and for considering the complaints concerning thereto. Therefore, when once the permission is accorded and the cell tower is functioning, in the considered view of this Court, the petitioner is required to approach the TERM Cell if he has still any grievance with regard to RF radiations.

12. On the above analysis and for the above reasons, this Court finds that the writ petition filed by the petitioner is liable for dismissal and that the writ petition filed by the 3rd respondent deserves to be allowed directing restoration of power supply to the subject tower forthwith.

13. In the result, WP.No.30931 of 2015 is dismissed. However, liberty is reserved to the petitioner to approach the TERM Cell for redressal of his grievance if he still desires so to do or is so advised.

WP.No.42366 of 2015 is allowed as prayed for.

There shall be no order as to costs.

Miscellaneous Petitions pending, if any, in these Writ Petitions shall stand closed.

M.SEETHARAMA MURTI, J

2nd July, 2018
Vjl