

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

+ WRIT PETITION No.10349 of 2015

% Dated 15.02.2018

Sri K. Janardhan

....Petitioner

VERSUS

\$ The State of Andhra Pradesh, rep. by its
Principal Secretary, Municipal Administration Department,
Secretariat, Hyderabad and three others.

... Respondents

! Counsel for Petitioner : Sri P. Durga Prasad

^ Counsel for Respondents : Learned Government Pleader
for Municipal Administration
for respondent No.1.

Sri Nimmagadda Venkateswarlu
Learned Standing Counsel for
respondent No.2.

Sri B. Chandrasekhar,
learned counsel for respondent No.3.

Sri P.Hemachandra,
learned counsel for respondent No.4

< GIST:

> HEAD NOTE:

? CITATIONS:

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

+ WRIT PETITION No.10349 of 2015

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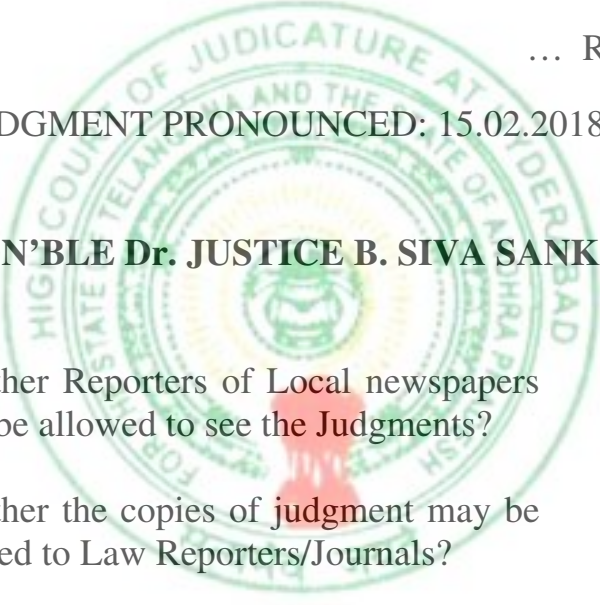
VERSUS

The State of Andhra Pradesh, rep. by its
Principal Secretary, Municipal Administration Department,
Secretariat, Hyderabad and three others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 15.02.2018

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No
 3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.10349 of 2015

ORDER:

Heard learned counsel for the petitioner, learned Government Pleader for Municipal Administration for the 1st respondent, Sri N. Venkateswarlu, learned Standing Counsel for the 2nd respondent-Municipality, unofficial 3rd respondent-owner of the premises in question and the 4th respondent-Reliance Jio Infocomm Limited, who erected the cell tower, which is in question by the petitioner in the writ petition.

2. The prayer in the writ petition reads as follows:

“.....to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus, declaring the proceedings Roc.No.4176/2013/G1 dated 11.08.2014 issued by the 2nd respondent herein granting provisional No Objection Certificate for installation of Roof Top Tower Telecommunication Tower on the premises of the 3rd respondent herein by the 4th respondent herein without calling for the objections from the public as is illegal, arbitrary, and violation of Articles 14 and 21 of the Constitution of India and contrary to the G.O.Ms.No.380 dated 01.08.2013 issued by the 1st respondent herein, consequently direct the Respondent No.2 not to allow the 4th respondent herein for installation of Roof Top Tower Telecommunication Tower on the premises of the 3rd respondent residential house bearing No.25-9-41/1, Peddetivari Street, Bhimavaram, West Godavari District and pass such further order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.”

3. Perused the affidavit averments and particularly G.O.Ms.No.380, dated 01.08.2013, with clarification memo, dated 05.12.2013, and the guidelines of the Department of Telecommunication (DOT) in this regard, dated 01.08.2013 and G.O.Ms.No.203 of the State of Andhra Pradesh, dated 01.10.2014 and G.O.Ms.No.146 of the State of Andhra Pradesh, which is in force, dated 19.06.2015.

4. It is the submission of the learned counsel for the petitioner in support of the prayer in the writ petition that without considering the radiations and the inconvenience and health hazard to the petitioner, who is neighbour to the cell tower erected, at the instance of the 3rd respondent by the 4th respondent and the permission provisionally accorded by the 2nd respondent, without authority and without compliance of the statutory norms, the same is liable to be cancelled and the tower to be uprooted. It is the submission of the learned counsel for the 4th respondent-Reliance Jio Infocomm Limited that they are going to comply with the requirements and pursuant to the interim order of this Court, dated 13.04.2015, of interim direction as prayed for by the petitioner, they are not operating the cell tower in obedience to this order. The learned counsel for the 3rd respondent-owner of the premises says they applied for regularisation of the so-called unauthorised construction and the second floor was regularised on 06.05.2016 though by the time the cell tower erected it is not regularised. G.O.Ms.No.380, dated 01.08.2013, particularly from

clause 'B' speaks of Essentiality of Permit that no person shall erect or re-erect any non-Governmental telecommunication tower or telecommunication pole structures or accessory rooms or make alteration or cause the same to be done without first obtaining a separate permission for each such tower or telecommunication pole structures from the Sanctioning Authority. The Sanctioning Authority is as defined in A.P. Building Rules, 2012. Thus, the Municipality must accord building approval first and it is only therefrom pursuant to that covered by the Rules supra, permit any cell tower provided, it will not effect by radiation the neighbouring dwellers and the occupants therein after complying with the necessary precautionary measures, if any, if at all to consider particularly in the residential areas. In this regard, on coming to G.O.Ms.No.146, dated 19.06.2015, particularly clause 'C' speaks application for permission shall be submitted to the Sanctioning Authority in the form in Appendix-A with location plan, site plan, Section (stability) and elevation Plan. As on the date the cell tower is erected, undisputedly there is no section (stability) and elevation plan etc., Clause 'C' sub-clause (viii) also speaks of no objection certificate, if required, issued by the Andhra Pradesh State Disasters Response & Fire Services Department, the Andhra Pradesh State Environment and Forest Department, copy of SACRA clearance or copy of SACFA application for the said location submitted to WPC wing of DoT with registration number as WPC acknowledgment along with undertaking that in case of any objection/rejection, TSPs/IPs will take corrective actions/remove the

tower and copy of Access Service License/IP Registration Certificate from Department of Telecommunications. There is nothing to show any such certificate obtained, leave about any regularization of the second floor on which the tower erected supra. Further, coming to G.O.Ms.No.146, clause 'F', it speaks of the basic requirements to erect Telecommunication Infrastructure Towers with Setback and sharing of sites, installations, protection from lightening, liability for any damage and clause F of sub-clause (vii) speaks in relation to unauthorised Telecom Infrastructure Towers that the Commissioner/Vice Chairman of CRDA/ULB/UDA shall take necessary action on unauthorised Telecom Infrastructure Towers erected without valid permissions/Completion Certificate, as per the Act provisions duly following the procedure. Clause '5' speaks the radiation norms given by DeITY have to be strictly followed by all Tower Infrastructure Service Providers and limit the Power Emissions/Radiations. All the complaints regarding radiation and radiation related technical details are being dealt by TERM cell of DoT and any citizen can approach the concerned TERM Cell of DoT with regard to grievance on any issues relating to radiation.

5. Once such is the direction, it is unknown how the 2nd respondent-Municipality even initially granted any provisional permission and even after G.O.Ms.No.146 not cancelled the permission and allowed to continue till passing of the interim order by this Court in the writ petition.

6. Having regard to the above, the writ petition is allowed by taking subsequent events by confirming the interim order of not to operate the cell tower until the compliance with the requirements of G.O.Ms.No.146 is made by the Municipal Authorities after obtaining the certificate regarding the radiation as contemplated by clause 5 of G.O.Ms.No.146. It is only after clearance and that too after hearing the petitioner for his grievance, if any, the necessary permission if at all to be finally granted for there is no question of any provisional permission meantime.

Miscellaneous petitions pending, if any, shall stand closed. No costs.

15th February 2018

L.R.Copy to be marked – Yes.

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Dr. B. SIVA SANKARA RAO, J

