

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 2152 OF 2014

Biju K. Balan
adult, Indian inhabitant, residing at
Flat No. 601, Vikrant Co-operative Housing
Society Limited, A-3, Kalpak Estate,
S.M. Road, Antop Hill, Mumbai 400 037. .. Petitioner

Versus

1. The State of Maharashtra
through Ministry of Urban Development,
Mantralaya, Mumbai – 400 032.
2. The Municipal Corporation of Greater
Mumbai, through the Municipal Commissioner,
having its head office at Mahapalika Bhavan,
Mahapalika Marg, Opp. C.S.T., Mumbai 400 001.
3. Vikrant Co-operative Housing Society Limited,
having its address at A-3,
Kalpak Estate, S.M. Road Antop Hills,
Mumbai – 400 032.
4. ATC Telecom Tower Corporation Pvt. Ltd.,
403, 4th Floor, Skyline, Near Mittal Industrial
Estate, Andheri Kurla Road,
Andheri (East), Mumbai – 400 059. .. Respondents

**WITH
WRIT PETITION NO. 2800 OF 2015**

1. Mr. Kiran Shantaram
residing at Flat No.3, Grosvenor House,
Peddar Road, Mumbai 400 026.
2. Mr. Ravindra K. Vankudre,
residing at 101, Shiromani Towers - “A” Wing,
Rajkamal Lane, Off: Dr.S.S. Rao Road, Parel, .. Petitioner
Mumbai – 400 012.

Versus

1. The Municipal Corporation of Greater Mumbai, through its Commissioner, having his office at Mahapalika Marg, Fort, Mumbai – 400 001.
 2. State of Maharashtra through its Urban Development Department, Mantralaya, Mumbai – 400 032.
 3. Reliance Jio-Infocomm,
A company registered under the Companies Act, 1956 having its office at Fortune 2000 Building Basement, C-3, G-Block, Bandra-Kurla Complex, Bandra (East), Mumbai 400 051.
- .. Respondents

**WITH
WRIT PETITION NO. 1382 OF 2016**

1. Lake View Co-operative Housing Society Limited having its office at Chikoowadi, Borivali (West), Mumbai – 400 092.
- .. Petitioner

Versus

1. The Municipal Corporation of Greater Mumbai, through its Commissioner, having his office at Mahapalika Marg, Fort, Mumbai – 400 001.
2. State of Maharashtra through its Urban Development Department, Mantralaya, Mumbai – 400 032.
3. M/s. Reliance Jio Infocomm Ltd.,
A company registered under the Companies Act, 1956 having its office at Fortune 2000 Building Basement,

C-3, G-Block, Bandra-Kurla Complex,
Bandra (East), Mumbai 400 051.

.. Respondents

**WITH
WRIT PETITION NO. 2060 OF 2016**

1. Casa Grande Co-operative Housing Society
Limited
having its office at Senapati Bapat Marg,
Lower Parel, Mumbai – 400 013.

.. Petitioner

Versus

1. The Municipal Corporation of
Greater Mumbai, through its
Commissioner, having his office at
Mahapalika Marg, Fort, Mumbai – 400 001.
2. State of Maharashtra
through its Urban Development Department,
Mantralaya, Mumbai – 400 032.
3. M/s. Reliance Jio Infocomm Ltd.,
A company registered under the
Companies Act, 1956 having
its office at Fortune 2000 Building Basement,
C-3, G-Block, Bandra-Kurla Complex,
Bandra (East), Mumbai 400 051.

.. Respondents

Ms. Sneha Phene along with Mr. Gireesh U G Menon, Advocate for
Petitioner/s in WP/2800/2015, WP/2060/2016 and WP/1382/2016.

None for Petitioner in WP/2152/2014.

Ms. P. H. Kantharia, Government Pleader for State along with Ms. Deepali
Patankar, Hon. Asst. to Government Pleader for State, Advocate for
Respondent No.1 in WP/2152/2014.

Mr. Sagar Patil, Advocate for Respondent No.2 in WP/2152/2014 and
Respondent No.1 in WP/2800/2015, WP/1382/2016 and WP/2060/2016
Mr. Sanjay Sinha, Advocate for Respondent No.3 in WP/2152/2014.

Mr. S. K. Nair along with Mr. Hafeezur Rahman, Advocate for Respondent No.4 in WP/2152/2014.

Ms. G. R. Shastri, Addl. Government Pleader for State, Advocate for Respondent No.2 in WP/2800/2015.

Mr. L. T. Satelkar, Asst. Government Pleader for State, Advocate for Respondent No.2 in WP/2060/2016.

Dr. Milind Sathe, Senior Counsel along with Mr. Firdosh Pooniwalla, Mr. Ankit Lohia, Ms. Melanie Dsouza i/by M/s. A. S. Dayal & Associates, Advocate for Respondent No.3 in WP/2800/2015, WP/1382/2016 and WP/2060/2016.

**CORAM : B.R. GAVAI &
N. J. JAMADAR, JJ
ARGUMENTS WERE HEARD ON : 4TH JANUARY 2019
JUDGMENT PRONOUNCED ON : 23RD JANUARY 2019**

JUDGMENT (PER N.J. JAMADAR, J.) :

1 In these Writ Petitions, the challenge is to the permissions granted by the Municipal Corporation of Greater Mumbai to the telecommunication companies for erection of the Telecommunication Cell Site (“TCS”) / Base Station (BS) and installation of Equipments for Telecommunication Network.

2 In Writ Petition Nos. 2060 of 2016, 2800 of 2015 and 1382 of 2016, the petitioners question the permission granted to respondent No.3- Reliance Jio-Infocom to erect the Telecommunication Cell Site (“TCS”) / Base Station (BS) and installation of Equipments for Telecommunication

Network in a Recreational Ground. Whereas, in Writ Petition No. 2152 of 2014, the petitioner assails the grant of permission for setting up of Telecommunication Cell Site(s)/Base Station(s) and installation of equipments for Telecommunication Network (for short, referred as “TCS/BS”) on terrace of the building of Vikrant Co-operative Housing Society Limited-respondent No.3 therein, granted by the Municipal Corporation of Greater Mumbai, respondent No.2 to ATC Telecom Tower Corporation Private Limited, Respondent No.4.

3 As Writ Petition Nos.2800 of 2015, 2060 of 2016 and 1382 of 2016 arise out of an identical factual backdrop and Writ Petition No. 2152 of 2014 is also based on the premise of perceived adverse effect of electromagnetic radiation, generated by TCS/BS and installation of Equipments for Telecommunication Network, on health and well-being of humans and other living species, we deem it appropriate to dispose of all these petitions by a common judgment and order.

4 Writ Petition No. 2800 of 2015 was reckoned by the parties as the lead petition. Thus, the facts in Writ Petition No. 2800 of 2015 are required to be noted in greater detail in this batch of the Writ Petitions, i.e., Writ Petition Nos. 2800 of 2015, 2060 of 2016 and 1382 of 2016.

BACKGROUND FACTS :

5 Rajkamal Studio Compound Residents Welfare Association consists of seven Co-operative Housing Societies within Rajkamal Studio Compound and one society situated outside the said compound. While permitting the development of the Rajkamal Studio Compound (hereinafter referred to as “Compound”), a condition was imposed that certain area be surrendered to the respondent No.1-Corporation for the purpose of a recreational ground for children below the age of 12. Accordingly, an area admeasuring 1841 sq.mtrs., designated as C.S. 121, came to be surrendered in favour of respondent No.1-Corporation. A childrens' recreational park, namely, “V.Shantaram Balodyan” came to be built. This garden is the only green lung for the residents of the Compound.

6 In May-2015, the representatives of respondent No.3 came to the said garden for the purpose of erecting TCS/BS. Upon enquiry, it transpired that respondent No.1-Corporation had granted permission to respondent No.3 on 20th February 2015 for erecting the TCS/BS. Firstly, the petitioners assert that, the said permission dated 20th February 2015 has been granted by respondent No.1-Corporation in violation of the Notification issued by respondent No.2-State of Maharashtra, on 4th March 2014, whereby “Regulations for setting up of Telecommunication Cell

Site(s) /Base Station (s) and installation of equipments for Telecommunication Network in the State of Maharashtra” were published. The petitioners assert that the said permission dated 20th February 2015 is legally unsustainable as it has been accorded without obtaining the 'No Objection' of the concerned registered co-operative housing societies or consent of the 70% of the total number of legal occupants/plot holders of the said layout, in terms of the aforesaid Notification dated 4th March 2014. Secondly, the permission was also assailed on the ground that it permits installation of TCS/BS and Equipment for Telecommunication Network in the ecologically sensitive/important area. Thirdly, the distance between the proposed TCS/BS and installation of Equipments for Telecommunication Network and the Primary Health Centre, set up by the respondent No.1-Corporation, is less than three meters.

7 Apart from the challenge on the ground of the permission having been granted in breach of the Regulations published vide Notification dated 4th March 2014, the petitioners have averred that respondent No.1-Corporation has accorded the permission for erection of TCS/BS and installation of Equipments for Telecommunication Network in utter disregard to ill effects and adverse impact of TCS/BS and installation of Equipments for Telecommunication Network upon the health and well-

being of the residents in the vicinity of the said location. Relying upon the report of Ministry of Environment and Forests, Union of India, i.e., 'Report on Possible Impact of Communication Towers on Wildlife including Birds and Bees' and other studies and reports of the possible and perceived deleterious effects of electro-magnetic radiation generated by TCS/BS and mobile towers on human health and other living creatures, the petitioner submitted that the very erection and existence of telecommunication TCS/BS and Equipments for Telecommunication Network and mobile towers jeopardizes the environment, in general, and the health and safety of the humans, in particular.

8 The petitioners, therefore, prayed that the permission granted by respondent No.1-Corporation to respondent No.3 dated 20th February 2015 for erecting TCS/BS and installation of Equipments for Telecommunication Network at the said garden be quashed and set aside. In the alternative, the petitioners have prayed that, in the event the permission is found to be in conformity with the aforesaid Regulations dated 4th March 2014, then the said Regulations be declared as unconstitutional and void for infringing the fundamental right of the petitioners to life under Article 21 of the Constitution of India.

9 At this juncture, it may be apposite to briefly note the facts in Writ

Petition Nos. 2060 of 2016 and 1382 of 2016 as the grounds of challenge are almost identical.

FACTS IN WRIT PETITION No.2060 OF 2016 :

10 The petitioner-society is located on the land which was a part of erstwhile 'Matulya Mills'. When the said land was put up for development, one of the conditions was to surrender an area admeasuring 474.67 sq.mtrs. to respondent No.1-Corporation for being used as a recreational ground. Accordingly, an area admeasuring 474.67 sq.mtrs. came to be surrendered in favour of respondent No.1 and eventually a garden namely 'Matoshri Ramabai Keshav Thackeray Udyan' came to be built thereon. The members of the petitioner-society and nearby residents have access to the said garden. In February 2005, a TCS/BS came to be erected in the said garden, on the strength of the permission granted by respondent No.1-Corporation in favour of respondent No.3, on 3rd February 2015. The petitioner assailed the said permission on the grounds, which are more or less identical to the grounds of challenge in Writ Petition No. 2800 of 2015, enumerated above. The prayers are also identical with an additional prayer that the tower which has already been erected may be directed to be deactivated.

FACTS IN WRIT PETITION No.1382 OF 2016 :

11 In this petition, the petitioner-housing society is one of the 21 housing societies with surround Joggers Park, situated at C.S. No. 479 RG Joggers Park, admeasuring 8263 sq. mtrs. It is full of tall trees and plants. Joggers Park is the only green lung for the members of the petitioner-society and the other society buildings, having approximately 3000 residents. On 27th October 2015, the petitioners found that a cell tower was erected in the Joggers Park, overnight. The said TCS/BS was erected by respondent No.3 on the strength of the permission dated 15th April 2015 granted by respondent No.1. The petitioner has, thus, invoked the writ jurisdiction of this Court for the identical reliefs.

STAND OF RESPONDENTS :

12 Though respondent No.1-Corporation has not filed reply to the petitions, yet from the communication which was addressed on behalf of respondent No.1 to the petitioner on 24th June 2015 in Writ Petition No. 2800 of 2015, the stance of respondent No.1 becomes clear. Respondent No.1 has justified its action of granting permission to respondent No.3 to erect TCS/BS and installation of Equipments for Telecommunication Network on the ground that the said permission is in conformity with the guidelines issued by the Government of India, Department of Telecommunication for setting up of the TCS/BS and installation of

Equipments for Telecommunication Network dated 1st August 2013 and the Regulations issued by the State Government, by Notification dated 4th March 2014.

13 Respondent No.3 has resisted the petition by filing affidavit of one Dhananjay S. Kulkarni. Respondent No.3 contends that the permission in question has been granted in full compliance with “Advisory Guidelines for State Government for issue of clarifications for installation of mobile towers” dated 1st August 2013. These guidelines are comprehensive and regulate every aspect of the grant of permission for erection of TCS/BS and installation of Equipments for Telecommunication Network. It is further contended that the Department of Telecommunication has also issued test procedure for measurement of electro-magnetic fields strength from base station antennas in September 2012. These procedures and guidelines thoroughly prescribe and regulate the detailed procedure for certification by the service providers and audit by the Telecom Enforcement Resources Monitoring (TERM) Cell of Department of Telecommunication (DOT).

14 Respondent No.3 contested the claim of the petitioners that the permission in question has been granted in violation of the Regulations. The Regulations, according to respondent No.3, do not envisage the

consent of the 70% of the adjoining housing societies or lawful occupants and the plot holders in the layout, if the land upon which the TCS/BS is to be erected, is designated for non-buildable reservation. In such cases, the only stipulation is that the area for installation of TCS/BS and installation of Equipments for Telecommunication Network shall not be more than 5% of the area of the reserved site or 100 sq.mtrs., whichever is less, and shall be located in one corner of the reserved site. The consent contemplated under these Regulations, according to respondent No.3, is that of the owner or the lessor of the plot, on which a TCS/BS and installation of Equipments for Telecommunication Network is proposed. The claim that the impugned permission is granted in an ecologically sensitive area is stated to be bald and unsubstantiated. Respondent No.3 has also contested the assertion of the petitioners that the aerial distance between the proposed TCS/BS prescribed is less than minimum.

15 As regards, the fundamental challenge on the score of the adverse impact of the electro magnetic radiation emanating from the TCS/BS and Equipments for Telecommunication Network on human health and well-being, respondent No.3, after referring to a number of studies, including the documented view of the World Health Organization, asserts that the Government of India has adopted stricter norms, and has directed to limit

the radiation from the Cell Phone Towers to 1/10th of the limits prescribed by the International Commission on Non-Ionizing Radiation Protection (ICNIRP) guidelines. The DOT 'Advisory Guidelines for the State Government for issue of clarifications for installation of mobile towers' which became effective from 1st August 2013 have also adopted the very strict limits for radiation. Resultantly, the radiation norms in respect of radiation from Cell Phone Towers in India are as under :-

Frequency	ICNIRP Radiation Norms	Revised DOT Norms
900 MHz	4.5 Watt/Sqm.	0.45 Watt/m2.
1800 MHz	9 Watt/Sqm.	0.90 Watt/m2
2100 MHz and above	10.5 Watt/Sqm.	1 Watt/m2.

16 Respondent No.3 has collated and culled the extant Regulatory Mechanism, put in place by the Government of India, which is as under :-

“(a) A telecom Service Provider, like RJIL, is bound to ensure that a Cell Phone Tower constructed by it. Whether at the ground level or on a building, has to emit radiation which is within the aforesaid radiation norms prescribed by DOT and has to ensure compliance of the various provisions of the Test Procedure Guidelines and DOT Advisory Guidelines.

(b) Within a period of 15 days from the date of start of radiation, for testing purpose, from the Cell Phone Tower, the Telecom Service Provider has to furnish a Survey Certificate establishing / certifying that the radiation from the Cell Phone Tower is within the aforesaid norms prescribed by DOT.

(c) The Telecom Service Provider can start the commercial operation of the Cell Phone Tower only after furnishing such a Self Certificate.

(d) Further, a fresh Self Certificate has to be issued by the Telecom Service Provider after every 2 years, and, in addition, at the time of upgradation of the site.

(e) The TERM Cell of DOT has been given the power to verify and audit any Cell Phone Tower for the purpose of ensuring that the radiation therefrom is within the radiation norms prescribed by DOT.”

17 Lastly, after referring to numerous studies and research papers on the subject, the respondent No.3 contends that there is no conclusive evidence which suggests adverse health effects on account of exposure to electro-magnetic filed radiation of TCS/BS and Equipments for Telecommunication Network. Respondent No.3 has also relied on various judicial pronouncements wherein fears of ill effects of electro-magnetic radiation on account of TCS/BS and installation of Equipments for Telecommunication Network have been declared to be unfounded.

WRIT PETITION NO. 2152 OF 2014 :

18 In this petition, the petitioner has challenged the action of respondent No.3-Co-operative Housing Society, of which he is a member, permitting respondent No.4 to erect the TCS/BS and install Equipments for Telecommunication Network on the terrace of the said building. The petitioner claims that the members of the respondent No.3-Society resolved to permit erection of TCS/BS and Equipments for Telecommunication Network on the terrace of the society despite the genuine objections of the

petitioner, a top floor resident. According to the petitioner, the installation of TCS/BS and Equipments for Telecommunication Network on the terrace of the building of respondent No.3-Society had a disastrous effect on the health of the petitioner's wife, who lost the power of hearing. The petitioner also claimed to have obtained Radiation Measurement Report from NESAI, a firm of Professor Girish Kumar attached to Electrical Engineering Department of IIT, Mumbai, which revealed prevalence of high level of radiation in some portion of the house of the petitioner. Since the Regulations dated 4th March 2014, issued by the State Government, do not warrant the consent of the occupants of the top floor of the buildings, on the terrace of which installation of TCS/BS and Equipments for Telecommunication Network is proposed, the petitioner has preferred this petition, *inter-alia*, praying for a writ of mandamus, or direction in the nature of mandamus, to respondent No.1 to make the consent of the top floor residents mandatory along with the consent of the residents for setting up of the TCS/BS in the State of Maharashtra.

19 Respondent No.3-Society has filed reply through its Chairman, Mr.Badriprasad Pandey. Respondent No.3 contends that an agreement to erect the TCS/BS and install Equipments for Telecommunication Network came to be executed with the respondent No.4 with the consent of all the

members of the society, except the petitioner, and in conformity with the Regulations dated 4th March 2014. Structural stability of the building was assessed before the installation of the TCS/BS and Equipments for Telecommunication Network.

20 Respondent No.4 has assailed the petition on the ground that respondent No.4 is unnecessarily dragged into the dispute *inter se* between the petitioner and respondent No.3-Society. On the aspect of the perceived adverse effects of the electro-magnetic radiation, based on the report of Mr.Girish Kumar of NESAI, respondent No.4 contends that the said report of Professor Girish Kumar has been adversely commented upon in the subsequent studies conducted by the Committee of Experts constituted as per the directions of the Allahabad High Court, Lucknow Bench in ***Ram Singh Jauhari Vs. Union of India & Ors.***¹. Respondent No.4 (like respondent No.3 in the above batch of Writ Petitions) has relied upon judgments of various high courts, which have not accepted the proposition that the radiation emitting from the TCS/BS and Equipments for Telecommunication Network has ill effects on the health of human beings.

21 It would be contextually relevant to note at this stage itself that during the course of arguments, it was submitted on behalf of respondent

1 Writ Petition No. 11275 of 2010

No.4 that the TCS/BS and Equipments for Telecommunication Network installed, on the site in question, has already been dismantled. In view of this subsequent development, the issue in this petition becomes academic. However, since a common question is raised, we thought it fit to enumerate the facts and deal with the core issue involved in this petition.

22 We have heard Ms.Sneha Phene, learned Advocate for the petitioners, Dr. Milind Sathe, learned Senior Counsel for respondent No.3 in Writ Petition Nos. 2060 of 2015 2800 of 2015 and 1382 of 2016, Mr. S. K. Nair, Advocate for respondent No.4 in Writ Petition No.2152 of 2014, and the learned Government Pleader for the respondent State. The petitioners and the respondent No.3 in Writ Petition Nos.2060 of 2015 2800 of 2015 and 1382 of 2016 have also tendered Notes of Arguments in support of their respective submissions.

23 In the backdrop of the aforesaid facts and rival contentions, the following points arise for our consideration :-

(i) Whether the impugned permissions granted by the Municipal Corporation, Greater Mumbai in favour of Telecom Service Providers for erecting TCS/BS and installation of Equipments for Telecommunication Network are in breach of the Regulations dated 4th March 2014 especially for want of consent of the 70% of the legal occupants of the sanctioned layout/residents of the surrounding

buildings/co-operative housing societies?

(ii) Whether the impugned permissions are liable to be quashed and set aside on the fundamental ground of the adverse effects of electro-magnetic radiation emanating from the TCS/BS and Telecommunication Network upon the health and well-being of humans and other living creatures?

24 At the outset, we make it clear that the question as to whether permissions for erection of TCS/BS and installation of Equipments for Telecommunication Network on recreational grounds and play grounds (which the DC Regulations dated 4th March 2014 permit), ought to be granted is under consideration of this Court in ***Nagar (NGO Alliance for Grievance and Renewal) Trust & Ors. Vs. State of Maharashtra***². In this PIL, while granting an ad-interim order on 20th July 2015, a Division Bench of this Court has directed that till the next date of hearing the respondents shall not grant any further permission for installation of TCS/BS in any RG or PG. By a subsequent order dated 12th July 2016, a Division Bench of this Court has directed that the said ad-interim order dated 20th July 2015 shall continue to operate as interim relief. Thus, we are not dealing with the question as to whether the permission for installation of TCS/BS and installation of Equipments for Telecommunication Network in a RG/PG or a non-buildable area, ought to be granted or not.

2 Public Interest Litigation No. 79 of 2015

25 As the challenge to the impugned permission is based on the alleged violation of the Regulations framed vide Notification dated 4th March 2014, it may be apposite to briefly advert to the said Notification. Vide the said Notification dated 4th March 2014, the Government of Maharashtra, in Urban Development Department, directed that the following entry shall be appended to the Notifications sanctioning the Development Plans of various planning authorities in the State of Maharashtra :

“Entry

Setting up of Telecommunication Cell Site/Base Station and Installation of the Equipments for Telecommunication Network shall be governed by the Regulations, specifically described in Schedule-A appended to Notification No.TPS-1810/1975/CR NEW 65/12/DP/UD-13, dated the 04/03/2014.”

Schedule-A appended to the said Notification contains Regulations for setting up Telecommunication Cell Site(s)/Base Station (s) and installation of the equipments for Telecommunication Network in the State of Maharashtra. It provides that no Telecommunication Cell Site/Base Station shall be set up or installed without the previous permission in writing of the Competent Authority. Clause No.4 prescribes the procedure for obtaining development permission. Planning Norms for erection of TCS/BS are provided in Clause No.6. The norms to regulate Electro-magnetic Field (EMF) radiation are incorporated in Clause No.7. Under Miscellaneous

Provisions, a Grievance Redressal Mechanism is also provided.

26 In the case at hand, the petitioners urged that the impugned permissions have been granted in breach of the Planning Norms especially item No.(iii) of sub-clause (a) of Clause (6). As the controversy revolves around the construction of the norms prescribed by the aforesaid clause, the relevant part is extracted below :-

6. Planning Norms For Erection of TCS/BS :-

a) Notwithstanding the land use provisions under the relevant Development Control Regulations (DCR) pertaining to any Development Plan (DP) or Regional Plan (RP), subject to the compliance of other provisions of these Regulations, it shall be permissible to install TCS/BS, on :-

(i) all land uses as earmarked in any DP or RP,

(ii) all lands which are designated for non-buildable reservations in any DP or RP, subject to the condition that the maximum permissible area for installation of such TCS/BS shall not be more than 5% of the area of the reserved site or 100 sq.m. whichever is less, and shall be located in one corner of the reserved site.

(iii) all lands which are designated as open spaces/recreational open spaces/recreational grounds in a sanctioned layout, where such installation shall be permissible only with the no-objection certificate of the concerned registered co-operative housing society or consent of 70% of the total number of legal occupants/plot holders of such layout, subject to the condition that the maximum permissible area for installation of such TCS/BS shall not be more than 5% of such area or 100 sq.m. whichever is less, and the same shall be located in one corner of such area.....”

27 It was strenuously urged on behalf of the petitioners that the plain

reading of item (iii) of sub-clause (a) of Clause (6), extracted above, leads to the only inference that even in cases where a land in a layout is surrendered to respondent No.1-Corporation, as a part of the condition for development, the consent of the 70% of the total number of legal occupants/plot holders of the said layout is mandatory. With reference to the facts in Rajkamal Studio Compound, drawing attention to the sanctioned layout plan, wherein the area admeasuring 1841 sq.mtrs. is shown as amenity open space, which is converted into a children garden, it was urged that, being a part of the same layout, respondent No.1 could not have sanctioned the permission in question without adhering to the aforesaid requirement.

28 Per contra, it was stoutly submitted on behalf of the respondents that the aforesaid clause of the Notification dated 4th March 2014 cannot be read in isolation. If the provisions of Clause 4, which prescribe the procedure for obtaining development permission and Clause 6, extracted above, are read in conjunction, it leads to a legitimate inference that the consent contemplated under the Regulations, is the consent of the owner/lessor of the plot on which a TCS/BS is proposed. Thus, if erection of TCS/BS is proposed on open spaces or recreational open spaces in a sanctioned layout of co-operative societies and belonging to the said society

or a private owner then only the consent of such co-operative societies/plot holders is required. Since, in the case at hand, the plots/lands are vested in the Municipal Corporation of Greater Mumbai, the submission that the consent of the adjoining plot holders/residents ought to have been obtained is misconceived.

29 The relevant part of Clause 4 of the Regulations reads as under :-

4. Procedure for obtaining Development Permission :-

.....

(c) Notarised consent of the Owner of the premises, which shall mean and include consent of the owner of property or no-objection certificate of the concerned registered Co-op. Housing Society or notarised consent of 70% of the total number of legal occupants in case of Apartments or Condominium or no-objection certificate of the lessor in case of a lease-hold property.....”

30 From a conjoint reading of the aforesaid clauses, i.e., clause 4(3)(c) and Clause 6(a), extracted above, the following inferences emerge :-

(i) The notarised consent of the owner of premises; consent of individual owner and in case of a co-operative housing society, no objection of the said co-operative housing society or notarised consent of 70% of the total number of legal occupants in case of Apartments or Condominium;

(ii) The installation of TCS/BS and Equipments for Telecommunication Network in any RG or PG is permissible on all lands used or earmarked in any DP or RG;

(iii) The installation of TCS/BS and Equipments for Telecommunication Network is permissible on the lands designated for non-buildable reservations subject to the condition that area for installation shall not be more than 5% of the area of the reserved site or 100 sq.mtrs., whichever is less, and it shall be located in one corner of the reserved site.

(iv) In respect of the lands which are designated as open spaces/recreational open spaces/recreational grounds in a sanctioned layout, such erection of TCS/BS and installation of Equipments for Telecommunication Network can only be with the no-objection certificate of the concerned registered co-operative housing society or consent of 70% of the total number of legal occupants/ plot holders of such layout, subject to further conditions of the area to be occupied and its location, as above.

31 The moot question that crops up for consideration is whether the consent of the 70% of the total number of legal occupants/plot holders surrounding a site, which is designated for RG/PG or non-buildable reservation, owned by a Municipal Corporation, would be required, in the event the TCS/BS and installation of Equipments for Telecommunication

Network is proposed thereon.

32 So far as obtaining consent of the owners of the private premises on which the TCS/BS and Equipments for Telecommunication Network is proposed to be erected, the stipulation in item (ii) of sub-clause (a) of Clause 6 is clear and explicit. The controversy revolves around item (iii).

The word “open spaces/recreational open spaces/recreational grounds in a sanctioned layout” used in item (iii) of sub-clause (a) of clause (6) above are required to be construed keeping in view the object of the Regulations. The object of the Regulations appears to insulate the persons who reside in close proximity to the proposed site. This is borne out by the prescription of safe distance in Sub-clause (d) of Clause (6) of the said Regulations. It is pertinent to note that the term “layout” has not been defined therein. If the word “sanctioned layout” is construed too broadly so as to make the consent of 70% of the total number of legal occupants/plot holders of the layout mandatory, even when the plot in question does not form part of the open spaces/recreational open spaces or recreational grounds of the concerned housing society or group of plot holders and it is owned by an entity like a Municipal Corporation, then it may lead to unintended consequences. When the layout, in a given case, is huge one consisting of numerous plots, the insistence upon the consent of 70% of the legal occupants/plot holders may be onerous. It also runs counter to the

fundamental object of ensuring participation of the nearby residents in the decision making process as there may not be an element of proximity between the plots of the occupants and the plot owner on which the TCS/BS and installation of Equipments for Telecommunication Network is proposed.

33 In this view of the matter, we are not persuaded to construe the word “sanctioned layout” very broadly. In our view, the consent of 70% of the total number of legal occupants/plot holders of a layout would be required when the plot in question designated as “open spaces/recreational open spaces/recreational grounds” is part of the precinct of a co-operative housing society. If the submissions on behalf of the petitioners are acceded to, then it may lead to absurd consequences.

34 This propels us to the fundamental challenge to the impugned permissions on account of the alleged deleterious effects of the electro-magnetic radiation emanating from the TCS/BS. It was urged with a degree of vehemence on behalf of the petitioners that respondent No.1 has granted the permission for erection of the TCS/BS in utter disregard to the ill effects of electro-magnetic radiations. Banking upon certain reports of the Parliamentary Studies and the other research material, the learned counsel for the petitioners would urge that the majority of the studies have

indicated that the electro-magnetic radiation emanating from TCS/BS have negative impacts upon humans and other living creatures.

35 Amplifying the aforesaid submissions, it was urged that the human life cannot be placed in peril when there is a body of opinion which indicates electro-magnetic radiation is harmful to human life and well-being. It was submitted that the fact that it has not been conclusively proved that the electro-magnetic radiation emanating from TCS/BS and Equipments for Telecommunication Network is harmful to human beings, plants and animals is not decisive. On account of the existence of material which alludes to the possibility of ill effects of electro-magnetic radiation for human beings, plants and animals, on the touchstone of “precautionary principle”, it is necessary to address the situation by denying the permission to erect TCS/BS and for installation of Equipments for Telecommunication Network, the potential environmental hazard.

36 In opposition to this, it was urged on behalf of the respondents that the apprehensions that the electro-magnetic radiation emanating from TCS/BS and Equipments for Telecommunication Network has deleterious effect on human health has been shown to be unfounded. There is a regulatory regime which prescribes stringent standard for maintaining the radiation at $1/10^{\text{th}}$ of the International Standard. The regulatory regime

also prescribes the procedure for installation and even testing of the installation for the possible breach of the norms, which entails huge penalty. It was further urged that various High Courts in the country, including this Court, have repeatedly negated the challenge (to the installation of TCS/BS and Equipments for Telecommunication Network) based on unjustified and unfounded apprehensions. Thus, unsubstantiated claims cannot be the basis for prohibiting an otherwise legitimate activity.

37 Before we advert to deal with the material on this point and rival submissions thereon, we deem it appropriate to note the premise on which the challenge in question is required to be tested. In view of the voluminous material and various judicial pronouncements (to which we will advert a little later), it would have been possible to hold that the question is no longer *res integra* and stands concluded. However, since the petitioners alleged infringement of the fundamental right to life under Article 21 of the Constitution, which has wide protective umbrella, we considered it appropriate to deal with the issue in greater detail and on the touchstone of the principles which govern the environmental jurisprudence.

38 As fairly conceded by the learned counsel for the petitioners, there is no conclusive scientific evidence, as yet, to indicate that the electro-

magnetic radiation emanating from TCS/BS and Equipments for Telecommunication Network has deleterious effect on human well-being. Whether this lack of scientific certainty precludes the Court from inquiring into the issue? The “precautionary principle” provides a legitimate answer to this question.

39 A reference in this context can be made to the judgment of the Supreme Court in case of *Vellore Citizens' Welfare Forum V. Union of India* ³ wherein the precautionary principle was expounded in the following words :-

“11.We are, however, of the views that "The Precautionary Principle" and "The Polluter Pays" principle are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law – means:-

(i) Environment measures - by the State Government and the statutory Authorities must anticipate, prevent' and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage lack of scientific certainty should not be used as the reason for postponing, measures to prevent environmental depredation.

(iii) The "Onus of proof" is on the actor or the developer/industrial to show that his action is environmentally benign.”

In the aforesaid case, the Apex Court tersely observed that where there are threats of serious and irreparable damage, lack of scientific certainty cannot be used as a reason for postponing measures to prevent

³ (1996) 5 SCC 647

environmental degradation.

40 This problem of lack of scientific certainty and the uncertain nature of the scientific opinion, which the Court dealing with environmental issues often faces, was elaborately considered by the Supreme Court in the case of **A. P. Pollution Control Board Vs. Prof. M. V. Nayudu (Retd.) & Ors.** ⁴ and the concept of 'Special Burden of Proof in Environmental cases' was expounded, after referring to the judgment of the Supreme Court in *Vellore Citizens' Welfare Forum* (Supra). The observations in paragraph No.36, 37 and 38 are instructive in nature. They read as under :-

"36 We shall next elaborate the new concept of burden of proof referred to in the Vellore case at p.658 (1996 (5) SCC 647). In that case, Kuldeep Singh, J. stated as follows:

"(iii) 'The 'onus of proof' is on the actor or the developer/industrialist to show that his action is environmentally benign."

37 *It is to be noticed that while the inadequacies of science have led to the 'precautionary principle', the said 'precautionary principle' in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, - is placed on those who want to change the status quo (Wynne, Uncertainty and Environmental Learning, 2 Global Env'tl. Change 111 (1992) at p.123). This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the change would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less- polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden. (See James M.Olson, Shifting the Burden of Proof, 20 Env'tl.*

4 (1999) 2 Supreme Court Cases 718

Law p.891 at 898 (1990)). (Quoted in Vol.22 (1998) Harv. Env.Law Review p.509 at 519, 550).

38 The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment. (See Report of Dr.Sreenivasa Rao Pemmaraju, Special Rapporteur, International Law Commission, dated 3.4.1998, para 61)."

41 In the backdrop of the aforesaid enunciation of the legal position and the norms for judging the cases of environmental damage allegedly being caused due to the action under challenge, we proceed to deal with the submissions on behalf of the parties.

42 The learned counsel for the petitioners has placed strong reliance upon the Report of the Standing Committee on Information Technology under the title "Norms for the Setting up of Telecom Towers, its Harmful Effects and Setting up of Security Standards in expansion of Telecom Facilities" dated 12th February 2014. Reliance is also placed on the report of the Expert Committee constituted by the Ministry of Environment and Forest on "Possible Impacts of Communication Towers on Wildlife including Birds and Bees". The learned counsel for the petitioners laid emphasis upon the following paragraphs in the report of the Standing Committee on Information Technology :-

“..... In this regard the committee feel that the department is selectively relied on the research findings which have concluded that there is no health effects of EMF from telecom towers/ networks while ignoring post of other reliable research and concerns made which have proved to the contrary considering the seriousness of the matter which concerns the citizens of the country, the Committee recommend that Government should entrust the scientific study on impact of telecom towers and handsets on humans to a reputed government organization in a time bound programme. Till such time, Government should strictly enforce EMF radiation norms finalized in September 2012 which are reportedly 1/10th of ICNIRP prescribed norms.”

43 The learned counsel for the petitioners also invited our attention to the “analysis of the result of Literature Survey” referred to in the “Report on Possible Impacts of Communication Towers on Wildlife including Birds and Bees”, which reads as under :-

“An analysis of Results of Literature Survey :

After careful screening that involved deletion of duplicate records and addition of new references, the 1080 references initially compiled for the analysis of literature (which formed the base for our overview) were reduced to 919 references. These final 919 study reports are used here for the present final analysis.

The studies were broadly classified based on the subject organisms into four categories- Birds, Bees, Other Animals (including wildlife) and humans. Based on the study's findings regarding the impart of EMFs on the subject, each category was further subdivided into three groups – Impact, No Impact or Neutral/Inconclusive, as given in table 3 below. As noted below, majority of the studies reported negative impacts by EMFs.

Table No.3 Number of research studies (collected from Open access Bibliographic databases) collected and collated based on the study subjects and results

	Impact	No Impact	Neutral/ inconclusive	Total (n)
Birds	23	3	4	30

Bees	6	1	0	7
Human	459	109	174	742
Other Animals (+ Wildlife)	85(+13)	16 (+1)	10 (+7)	111 (+21)
Plants	7	0	1	8
Total	593	130	196	919
....”				

On the strength of the aforesaid reports, it was urged that the adverse effects of electro-magnetic radiation cannot be brushed aside as mere misplaced apprehensions. There is an element of clear and present danger. In these circumstances, on the basis of “precautionary principle”, the possible health hazards and risk to the lives of numerous persons, the installation of the TCS/BS and Equipments for Telecommunication Network in densely populated human habitation is required to be prohibited, urged the learned counsel for the petitioners.

44 The learned counsel for respondent Nos.2 and 3 joined the issue. The learned counsel for respondent No.3 placed a very strong reliance upon the judgment of Allahabad High Court in case of **Smt. Asha Mishra Vs. State Of U.P. And Others** ⁵ not only for the legal proposition expounded therein but also for the reason that the report of the aforesaid Standing Committee as well as the report of a Professor Girish Kumar, were extensively

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considered therein in the light of the subsequent developments.

45 The Allahabad High Court, in the aforesaid case of **Smt. Asha Mishra**, had considered the question of restraining of the installation of mobile towers and 4G Base Transmission Stations (BTS's) on the identical ground of perceived ill effects of the electro-magnetic radiation generated therefrom. In the said case, the Allahabad High Court considered a report of 13 Member Expert Committee on the various issues highlighted in the report of Professor Girish Kumar. After advertng to the issues highlighted by Professor Girish Kumar and the remarks/comments thereon of the Expert Committee and its conclusion to the effect that there was no scientific evidence which may justify the perception of electro-magnetic radiation adversely affecting human health or well-being, the Allahabad High Court negated the challenge based on the report of Professor Girish Kumar.

46 The Allahabad High Court also considered the aforesaid report of the Parliamentary Standing Committee and the replies by the Government thereto and ultimately came to the conclusion that all the Experts have unanimously voiced therein that the present body of scientific research does not justify the threat to health and life, as alleged, on account of waves of electro-magnetic radiation emanating from the TCS/BS and

Equipments for Telecommunication Network. Consequently, Allahabad High Court ruled that as of date, there is no conclusive material or scientific study which may justify or be read as conclusive proof of the of the canvassed ill effects of EMF radiation on human health. However, the Court issued further directions to ensure strict adherence to the standards fixed.

47 It was submitted on behalf of the petitioners that in the analysis, referred to in the report on Possible Impacts of Communication Towers on Wildlife including Birds and Bees (extracted above), majority of studies have shown impact of electro-magnetic radiation on humans, and, therefore, the permission for erecting the TCS/BS and installation of Equipments for Telecommunication Network is required to be stalled.

48 We are unable to accede to this submission. The issue cannot be tested on the numerical strength of the reports without examining the nature of the scientific material and findings therein. It would be too simplistic way to deal with the issue. Unfounded and unsubstantiated claims do not command scientific weight. The mere fact that in majority of studies adverted to in the aforesaid Report some or other impact of the electro-magnetic waves was found on humans does not justify the

conclusion that the electro-magnetic radiation emanating from TCS/BS has adverse and ill effects on human health and well-being.

49 The learned counsel for the petitioners placed reliance on a judgment of the Rajasthan High Court in case of ***Justice I.S. Israni (Retd.) & Anr. Vs. Union of India & Ors.***⁶ wherein the Rajasthan High Court has upheld the validity of the bye-laws framed by the State Government to prohibit the installation of towers on play grounds, hospitals and places within vicinity of 500 mtrs. from jail premises and also near ancient monuments and old heritage buildings, as being neither illegal nor arbitrary. The aforesaid ruling does not assist the case of the petitioner. In the said case, the situation was converse. The validity of the duly framed bye-laws, which restricted the erection of the TCS/BS and installation of Equipments for Telecommunication Network, was under challenge therein. In the case at hand, the State Government has taken a policy decision to permit the erection of TCS/BS and installation of Equipments for Telecommunication Network with certain conditions. Thus, the aforesaid judgment will be of no assistance to the petitioners.

50 It would be contextually relevant to trace the development of the regulatory regime over a period of time based on orders passed by various

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High Courts as well as the reports submitted by the Expert Committees/ Parliamentary Standing Committees on the possible threat of electro-magnetic radiation :-

(i) In April 1998, the ICNIRP prescribed the safe levels of electro-magnetic radiation from the Base Stations.

(ii) In May 2006, the World Health Organization issued a Fact-Sheet wherein it was, *inter-alia*, observed that considering the very low exposure levels and research results collected till date, no convincing scientific evidence could be gathered to arrive at the conclusion that the weak RF signals from the base stations and wireless networks cause adverse impact on the health of the human beings.

(iii) In the year-2008, the Government of India adopted the restrictions and limits recommended by the ICNIRP guidelines.

(iv) Vide letter dated 4th November 2008, the DOT modified the terms of license agreement.

(v) On 8th April 2008, the DOT directed all licensees to comply with prescribed limits/levels and also to issue self certification in respect of Base Stations. It was also directed to limit the radiation from the Cell Phone Towers to 1/10th of the limits prescribed by the ICNIRP guidelines.

(vi) An Inter-Ministerial Committee was constituted to examine the effect of electro-magnetic radiation from the BTS and Mobile Phones, which submitted its report, *inter-alia*, recommending that the RF Exposure limits in densely populated area may be lowered to $1/10^{\text{th}}$ of the existing level.

(vii) Based on the report of the Inter-Ministerial Committee, the Government adopted stricter norms on emission from the base stations being $1/10^{\text{th}}$ of the limits prescribed by the ICNIRP.

(viii) The Advisory Guidelines for State Government for issue of clearance for installation of mobile towers came to be issued by the Department of Telecommunications on 1st August 2013 and the following limit for radiation based transmission station, which is $1/10^{\text{th}}$ of ICNRP, came to be prescribed :-

<i>Frequency</i>	<i>ICNIRP Radiation Norms</i>	<i>Revised DOT Norms</i>
900 MHz	4.5 Watt/Sqm.	0.45 Watt/m ² .
1800 MHz	9 Watt/Sqm.	0.90 Watt/m ²
2100 MHz and above	10.5 Watt/Sqm.	1 Watt/m ² .

(ix) Additional Guidelines to TERM Cells for auditing BTS for EMF radiation issued, with effect from 1st August 2013, and safe distance from the mobile towers came to be prescribed, which are as under :

<i>Number of antenna(e)</i>	<i>Building/Structure safe</i>
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<i>pointed in the same direction</i>	<i>distance from the antenna(e) at the same height (in Meters)</i>
1	20
2	35
4	45
6	55

(x) The latest advisory on health risk associated with mobile phones and BTS of the World Health Organisation (WHO) reads as under :-

"Studies to date provide no indication that environmental exposure to RF (radio-frequency) fields, such as from base stations increases the risk of cancer or any other disease....."

(xi) The Regulations dated 4th March 2014 issued by the Government of Maharashtra incorporates all these precautions and safeguards envisaged by the Advisory Guidelines of Department of Telecommunication, Government of India. The issue of electro-magnetic radiation norms has been specifically dealt with in Clause 7 of the said Regulations. The safe distance requirement is provided in the table below sub-clause (d) of clause (6) of the said Regulations.

51 In the backdrop of the aforesaid regulatory regime, we are inclined to hold that the field is not left unregulated and un-canalized. On the other hand, the standards which are prescribed in the matter of radiation norms are 1/10th of the International norms. There are adequate regulations to

ensure that the installation of TCS/BS and Equipments for Telecommunication Network do not cause unwarranted intrusion and adverse impact upon human health and well-being.

52 Though the learned counsel for respondent No.3 has placed reliance upon a number of judgments of the various High Court, we deem it appropriate to note two of the judgments wherein identical challenge was repelled. In the case of *Muktipark Co Operative Society Vs. Ahmedabad Municipal Corporation* ⁷, a Division Bench of the Gujarat High Court, after referring to the judgments of the Division Bench of Kerala High Court in the case of *Reliance Infocom Ltd. Vs. Chemanchery Grama Panchayat and Ors.*⁸ agreed with the observations therein that the electro-magnetic radiation emanating from the Base Stations were unlikely to pose a risk to health. The Gujarat High Court went a step ahead to observe that the public at large be informed that there is no reason for them to fear of erection of Base Stations and telephone towers and thereby dispel the impression in the mind of common man that the mobile towers have the potential to cause health hazard due to emission of radio active waves.

53 In the case of *K.R.Ramaswamy @ Traffic Ramaswamy, Founder Chairman Tamilnadu Social Works Organization Vs. The Secretary,*

⁷ 2014 SCC OnLine Guj.9830

⁸ AIR 2007 Kerala 33

Department of Telecommunication & Ors.⁹, a Division Bench of the Madras High Court considered the challenge in the light of the afore-extracted material and negated the same. The Court observed as under :-

“10. We are, thus, of the view that in a judicial proceeding these aspects cannot be analysed. There being no materials atleast as on date, which can finally suggest any health hazards from these towers and the solution thereof, the Court would not venture into uncharted territory of technical expertise to determine the area where it should be installed. The Court, at best can place this matter before the appropriate Committee to look into this matter which the Kerala High Court already did and we have the benefit of the conclusion arrived at in those proceedings, as noticed above.

11. We are of the view that no further directions are required in these matters, other than to say that the concerned authorities would continue to analyse the materials as and when it emerges to look into the concern raised by the petitioners, especially, in view of the fact that there is no final view as yet on these aspects. Science grows and evolves and one does not know what may happen tomorrow. It is, in this context, we have made these observations.”

54 In the light of the aforesaid material and the judicial pronouncements, which, by and large, are based on the similar challenges, Expert Reports, Parliamentary Standing Committees Reports and the prevalent regulatory regime, we are not inclined to take a different view of the matter. We are of the view that there is a consistent judicial opinion, speaking through various judgments of the High Courts, about the absence of any scientific material or data to warrant the prohibition on installation of TCS/BS and Equipments for Telecommunication Network.

9 W.P. No.24976 of 2008 & connected petitions. dt.5.03.2015

55 Having examined the matters on the anvil of special burden of proof in environmental cases, as expounded by the Supreme Court, in the case of *A. P. Pollution Control Board* (Supra), we find that the scientific material, as of today, does not indicate any identifiable risk of serious harm on account of non-ionized radiation emanating from TCS/BS and Equipments for Telecommunication Network. Thus, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India on the basis of apprehensions which are not rooted in the facts and supported by reliable scientific material.

56 We are mindful of the fact that the foundational basis of the aforesaid judicial pronouncements and the view which we are persuaded to take is the prevalent body of scientific opinion. Since the risk potential is enormous, we need to be in a state of perpetual precaution and, thus, strict enforcement of the prevailing standards and continuous research to obviate the possible risk are absolutely necessary.

57 With these observations, the above petitions, stand dismissed. In the circumstances there shall no order as to costs.

[N.J. JAMADAR, J.]

[B.R. GAVAI, J.]