

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.10484 of 2019

ORDER:

The case of the petitioner – company is that it is an infrastructure company responsible for providing cell site towers/equipments to various cell site operators in the country and the Central Government granted registration certificate to it to provide the telecom infrastructure in India including Andhra Pradesh. Pursuant to the said registration, the petitioner – company intended to provide telecom infrastructure facilities like Ground Based Towers, Roof Top Towers, Antennas and signal trans-receiving equipment etc. It is stated that the third respondent, after being satisfied, accorded permission to the petitioner – company in respect of six towers vide proceedings dated 20.03.2017 and that at the time of obtaining permission as per the documents of the property, house number was mentioned as H.No.131 and thereafter, the third respondent allotted H.No.1-2-29/70. Challenging the permission dated 20.03.2017 granted to the petitioner - company on the ground that it had not obtained consent of the fifth respondent in respect of the subject tower, the sixth respondent filed WP.No.16967 of 2017 and the same was disposed of directing the respondent authorities to consider the representation of the petitioner association dated 12.04.2017.

2. In pursuance of the orders passed in the writ petition, third respondent conducted hearing on 14.11.2017 and after hearing was concluded, the impugned proceedings bearing Proc.No.E/144212/TPS/Court/HO/GHMC/2017-19/259 dated 28.03.2019/12/04/2019 is passed canceling the permission granted to the petitioner – company on the ground that it has violated the orders and erected the cell tower at premises No.1-2-29/70 of Nandamuri

Nagari, Hydernagar instead of H.No.131 in Sy.No.25. Aggrieved by the said proceedings, the present writ petition is filed.

3. Counter is filed by the sixth respondent stating that pursuant to the orders passed in the above writ petitioner, the third respondent heard all the parties including the petitioner – company, the sixth respondent as well as the owner of the building upon which the tower was located. Thereafter, the third respondent cancelled the permission granted to the petitioner – company on the ground that it had constructed the tower at the place other than for which permission was granted. It is stated that the stand of the petitioner – company that the house number for which permission was granted had undergone conversion of house number is wholly illegal and misleading since there was no conversion of H.No.131 at Sy.No.25.

4. Heard learned counsel for the petitioner – company, Mr. Sampath Prabhakar Reddy, learned standing counsel for respondents 3 to 5 and Mr. B. Mayur Reddy, learned counsel for the sixth respondent.

5. Learned counsel for the petitioner – company submits that after hearing the parties on 14.11.2017, the third respondent called for a report and basing on the report, the impugned proceeding is passed without giving a copy of the same to the petitioner – company, which is in violation of principles of natural justice.

6. On the other hand, the learned standing counsel for respondents 3 to 5 produced a copy of the report relied upon in the impugned proceedings. The aforesaid argument of the learned counsel for the petitioner – company could not be disputed by the learned standing counsel. However, he submits that as the tower was erected

at a place other than for which permission was granted, the impugned proceedings are issued.

7. Learned counsel for the sixth respondent vehemently submits that the only issue that has to be to gone in the writ petition is whether the petitioner – company erected the tower at the place where permission was granted. But no document is produced even before this Court or before the Commissioner, at any point of time, as such, the petitioner – company cannot now contend violation of the principles of natural justice. He also submits that the petitioner was heard by the third respondent and basing on the material and contentions raised by the sixth respondent, the impugned proceeding has been issued.

8. Even when this Court granted opportunity to the petitioner – company to produce any proceedings to show that the place where the tower was erected and the place where permission was granted is one and the same, the petitioner – company had failed to produce any document. On this ground, the writ petition is liable to be dismissed.

9. However, in this case, it has to be seen that, admittedly, the sixth respondent filed a writ petition for taking action against the petitioner. Basing on the same, hearing was conducted on 14.11.2017 and admittedly, the petitioner – company and the sixth respondent participated in the hearing and thereafter, the third respondent called for a report and basing on the same, the impugned proceedings is passed. Admittedly, the said report was not served on the petitioner. Even the learned standing counsel and the learned counsel for the sixth respondent could not dispute the fact that the said report is not served on the petitioner – company. The counter affidavit also does not dispute the same, which goes to show that the impugned

proceedings is passed in violation of principles of natural justice. But the fact remains that the only ground raised by the learned counsel for the petitioner – company is that H.No.131 situated at Sy.No.25 is assigned new H.No.1-2-29/70 but no document is filed in support of the said ground either before this Court or before the authority. The said fact also could not be disputed by the learned counsel for the petitioner – company except stating that they are taking steps for obtaining the said material.

10. In view of the above facts and circumstances of the case, since the report is not served on the petitioner – company, which is the basis for passing the impugned proceedings, this Court is of the opinion that there is violation of principles of natural justice. In view of the same, the impugned order is set aside. However, since the learned standing counsel has now given a copy of the report to the learned counsel for the petitioner – company, the third respondent shall hear the matter afresh and take a decision within a period of two (2) weeks from the date of receipt of a copy of this order. The interim order dated 29.05.2019 to continue till a final decision is taken by the third respondent.

The writ petition is disposed of. Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A. RAJASHEKER REDDY, J

July 1, 2019
DSK