

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-47206-2019
Date of Decision : 13.01.2020**

Sadhu Singh

.....Petitioner

Versus

Bharat Sanchar Nigam Limited, Yamuna Nagar

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Mr. Ashok Kumar Khubbar, Advocate for the petitioner.

ARUN KUMAR TYAGI, J.

The petitioner has filed present petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C.') for setting aside order dated 08.07.2019 (Annexure P-6) passed in criminal revision No. CRR-167-2018 by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri whereby revision petition filed against order dated 09.08.2018 passed under Section 133 of the Cr.P.C. in Case No.17/133 titled 'Sadhu Singh Vs. Bharat Sanchar Nigam Limited' by the Sub-Divisional Magistrate, Radaur has been dismissed.

2. The petitioner purchased land measuring 3 marlas out of total land of 4 marla comprised in Khasra No.481 from Smt. Sham Kaur vide sale deed No.668 dated 05.07.2002 and constructed his residential house over the same. The petitioner is residing therein along with his sons and grandsons. The respondent installed a high transmission wireless tower with generator set in the vacant land comprised in Khasra No.481 adjoining the house of the petitioner. The said mobile tower is run on electricity day and night but when there is no electricity, the mobile tower is run on the high/heavy capacity generator fueled by

diesel. The petitioner filed petition under Section 133 of the Cr.P.C. before Sub-Divisional Magistrate, Radaur for removal of illegal and unlawful nuisance created by the respondent by installation of high wireless transmission tower and generator set. The respondent appeared and filed its reply. The Sub-Divisional Magistrate, Radaur sought report from the Block Development and Panchayat Officer, Saraswati Nagar (for short 'the BDPO'). The BDPO, vide his report bearing memo No.716 dated 11.05.2018, submitted that due to long height of the tower birds in large number sit on the same and dropping of the birds fall on the house of the petitioner due to which there is a fear of spreading of disease; the residents in the neighbourhood are facing inconvenience due to the running of generator and the rays being emitted are having a bad effect on the health of the family members and recommended that the tower be shifted by 800 meters to 1 Kilometer away from the abadi. The Sub-Divisional Magistrate, Radaur, vide order dated 09.08.2018, directed the respondent to shift the generator 10 feet away and install Jali (mesh) on the tower immediately. The petitioner filed revision against the above-said order which was dismissed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri vide impugned order dated 08.07.2019. Feeling aggrieved the petitioner has filed the present writ petition.

3. The petitioner has averred that the high transmission wireless tower and the generator set have been installed within the abadi land of the village in total contravention of the rules governing the installation of high transmission wireless tower. The heavy vibration of the generator causes great nuisance to the petitioner and

other neighbours. The petitioner is a heart patient and undergoing treatment in P.G.I. Chandigarh. His grandsons are school going and unable to concentrate on their studies due to vibration and nuisance caused by generator set. The birds in large number sit on the mobile tower and droppings of the birds fall in the house of the petitioner. The impugned order is liable to be set aside as installation of tower is against the government policy stipulating that the mobile tower should not be installed in the residential areas. No reason has been assigned for ignoring the report of the BDPO. The permission for installation of the tower was not attached with the reply. The respondent did not produce any evidence in support of his plea that generator installed was of silent canopy and there is no vibration. Therefore, the impugned orders may be modified and the application under Section 133 of the Cr.P.C. for removal of mobile tower and generator in question may be allowed.

4. I have heard learned Counsel for the petitioner and gone through the relevant record.

5. Learned Counsel for the petitioner has argued that the mobile tower and generator set have been illegally installed in the residential area in violation of the government policy. Radiation from the mobile tower and the noise and vibration caused by the generator adversely affect the well being and health of the persons living in the locality and constitute nuisance as mentioned by the BDPO in his report dated 11.05.2018. The impugned orders suffer from material illegality. Therefore, the petition may be allowed as prayed for in the interest of justice.

6. On consideration of the submissions made by learned

Counsel for the petitioner and perusal of the record I am of the considered view that the petition is devoid of any merit and liable to be dismissed.

7. In ***Reliance Infocom Ltd. Vs. Chemanchery Grama Panchayat & Ors. : AIR 2007 (Kerala) 33*** the mobile phone company was seeking to erect a mobile base station. The plan was approved by the Panchayat and the petitioner was issued a building permit. However, when the petitioner started preparation for constructing the tower, certain segments of the local population raised objections. The Panchayat acting on complaints received from the local residents cancelled the permit issued to the petitioner apprehending that apart from pollution, the radiation from the tower would cause a health hazard. Hon'ble Kerala High Court noted that the panchayat had no scientific data or relevant material to cancel the license already granted on the ground that the installation of the tower would cause any health hazard. In that case Hon'ble Kerala High Court observed as under:-

“5. We have already found that RF exposures from Mobile Base Stations are much less than from radio, FM radio and television transmissions and that the consensus of scientific community is that the radiation from Mobile Phone Base Stations is far too low to produce health hazards if people are kept away from direct access to the antenna and the overall evidence indicates that they are unlikely to pose a risk to health. The strength of radio frequency fields in front of the antennae varies with the distance. Persons standing directly in front of the antennae in these high density zones will get higher exposures. We have also found that the height of Mobile Base Station antennae is normally 36 metres and the effect of radio waves depends on the distance from the base stations since the antennae are directed horizontally with a 5 degree downwards tilt. Human studies pertaining to base stations conducted by Santini R et al (2002), Borkiewicz et al (2004) and Hutter and kundi et al (2006) do not report any quantitative parameters related to

health hazards. Therefore it can safely be concluded that the permission granted for installation of Mobile Base Station by the Panchayat would not cause as such any health hazards nor will it affect the fundamental rights guaranteed to citizens under Article 21 of the Constitution.....”

8. This view was reiterated by Hon'ble Kerala High Court in ***Essar Telecom In fracture (P) Ltd Vs. The Circle Inspector of Police and others, 2008 (3) KLJ 672.***

9. Hon'ble Delhi High Court in ***Kapil Choudhary and another Vs. Union of India and others : 2016(231) DLT 158***; Hon'ble Himachal Pradesh High Court in ***Vijay Verma Vs. State of H.P. and others : 2015(78) R.C.R.(Civil) 572*** and Hon'ble Chattisgarh High Court in ***Reliance Infratel Limited v. State of Chhattisgarh, (Chhattisgarh) : 2018 (2) C.G.L.J. 1*** have also taken the view that there is no scientific data available to show that installation of mobile phone towers and the emission of the waves by the said towers is in any way harmful or hazardous to the health of residents.

10. Hon'ble Himachal Pradesh High Court in ***Vijay Verma's Case (Supra)*** observed as under:-

"17. It is evident from the perusal of the aforesaid reports that the exposures to electromagnetic fields (EMF) do not have any notable effect on the health of human beings. Evidently, the studies conducted till date by the two premier organizations i.e. WHO and SCENIHR go to indicate that despite a large number of studies having been carried out for the last two decades to assess the potential health risk on account of emission of EMF, no major adverse health effect has been noticed.

18. What in fact emerges is that radio frequency radiation from the mobile towers and phones are in minuscule range and is lakhs of time weaker than Xrays or UV rays or even normal visible light. In fact, so low that they simply cannot cause any disturbance of electrons in the basic atoms of matter or living tissue and hence classified as "non-ionising radiation".

19. *Radiation in itself is nothing new and has been there since life began on earth three and a half billion years ago. Radiation is all around us and we are all actually submerged in naturally occurring ionizing radiation reaching us from the outer space, even from the radioactive elements and materials around us. Sun shine in itself is a familiar form of radiation.*

20. *We in view of the overwhelming material are of the considered view that as of now there is no cause of alarm with regard to the possible ill-effect on human health by electromagnetic Field (EMF radiation) from mobile phone towers and mobile phones because the limits adopted in India cannot have any biological effect on human. In fact, the limits set by India are much lower than the internationally adopted recommendations of the International Commission of Non-Ionizing Radiation Protection (ICNIRP) which account for thermal and non thermal effect.*

21. *There is no conclusive evidence as on date which may have found any adverse health effect by EMF radiation from the mobile tower or mobile hand set by the WHO or SCENIHR and so long as EMP radiation power level in vicinity of Mobile Base Stations is below the prescribed limits, there should not be any cause or concern for adverse thermal effect on human beings living close to Mobile Base Station or in the nearby vicinity.”*

11. In the present case the Sub-Divisional Magistrate, Radaur held that the mobile phone tower has been installed after taking permission from the Ministry of Communication and Information Technology Department of Telecommunication Wireless Planning and Co-ordination Wing. The pollution is within limits. The generator installed is of silent canopy from which there is no noise, pollution and vibration. Keeping in view report of the BDPO and discomfort of the petitioner the respondent was directed that the Generator be shifted 10 feet away and jali (mesh) be installed immediately. While dismissing the revision petition learned Additional Sessions Judge, Yamuna Nagar at Jagadhari reiterated/affirmed the said findings and also observed that the petitioner had failed to produce any notification that

high transmission tower can not be installed in abadi area; that the generator was not to be put in working for 24 hours round the clock and was to be put in use when there was no electricity and that generator being silent approved by ARAI was not causing noise pollution and vibrations and the same had already been ordered to be shifted 10 feet away and that application was filed by the petitioner alone and no other resident of the locality had made any complaint of like nature. The findings recorded in the impugned orders are not shown to be absurd/perverse, factually wrong or legally untenable so as to warrant setting aside of the same.

12. Right to life enshrined under Article 21 includes all those aspects of life which make life meaningful and worth living. Science and technology which contribute to the same have also their ill-effects on human beings, yet for beneficial utilization thereof the discomfort, inconvenience and even the noise/air pollution caused thereby within permissible limits have to be lived with.

13. In the facts and circumstances of the case and above referred legal perspective, installation of the mobile tower and generator set cannot be said to constitute nuisance to the petitioner or other residents of the locality. The Sub-Divisional Magistrate, Radaur has already ordered shifting of the generator 10 feet away and installation of Jali (mesh) on the tower which order adequately remedies the grievances of the petitioner. The impugned order passed by the learned Additional Sessions Judge, Yamunanagr at Jagadhari and the Sub-Divisional Magistrate, Radaur do not suffer from any irregularity/illegality. Therefore, no interference with the same in

exercise of powers under Section 482 of the Cr.P.C. is called for and the petition being devoid of any merit is liable to be dismissed.

14. The petition is accordingly dismissed with the direction that the order of the Sub-Divisional Magistrate, Radaur for shifting of the generator 10 feet away and installation of Jali (mesh) on the tower be duly complied with in two months from the date of passing of this order.

13.01.2020
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No