

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13275 of 2021

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ATC Telecom Infrastructure Private Limited (formerly known as Viom Networks Ltd.) a company incorporated under the Companies Act, 1956 having its registered office at 404, 4th Floor, Skyline Icon, Andheri Kurla Road, Andheri East, Mumbai, Mumbai City, Maharashtra-400059 and Circle Office at Plot No. 9, Patliputra Colony, P.S. Patliputra, Town and District-Patna through its Circle Legal Lead and Authorized Signatory Smt. Parul Ranjan, aged about 42 years, Gender-Female, Wife of Shri Kumar Manish, resident of House No. 236, Patliputra Colony, Patna-800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
2. The Principal Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
3. The Joint Secretary, Department of Urban Development and Housing, Government of Bihar, Patna.
4. The Sub-Divisional Officer, Danapur.
5. Danapur Nagar Parishad, Danapur Nizamat, Dist Patna, through its Municipal Executive Officer.
6. The Municipal Executive Officer, Danapur Nagar Parishad, Danapur Nizamat, Dist Patna,

... .. Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Nikhil Kr. Agrawal, Advocate
For the State	: Mr. Abbas Haider (SC-6)
For Danapur Nagar Parishad	: Mr. Sunil Kumar, Advocate
For the Intervenor	: Mr. Amarnath Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT
Date: 08.10.2021

1. The present writ petition has been filed for setting aside the notice dated 01.02.2021 as also the notice dated 24.02.2021 issued by the Municipal Executive Officer, Danapur Nagar Parishad, Danapur i.e. the respondent no. 6, whereby and



where under the respondent Parishad has purported to seal the telecommunication tower installed by the petitioner company on the ground that no permission has been taken for installing the same. The petitioner has also prayed to direct the respondents to immediately unseal the telecommunication tower installed by the petitioner company at the premises of one Ms. Shakuntala Devi situated at Sadhu Ji Ka Khatal, Gajadhar Chauk, Danapur, District-Patna, Bihar, appertaining to Khesra No. 712, Khata No. 631, Thana No. 21, situated within the territorial limits of Danapur Nagar Parishad.

2. The brief facts of the case are that the petitioner had installed a ground based tower in the aforesaid premises in the year 2004 pursuant to an agreement entered into with the said Smt. Shakuntala Devi, as extended by an agreement dated 21.11.2014 for a further period of 15 years. It is submitted that the respondent State authorities vide notification dated 08.10.2012 had notified the Bihar Communication Towers & Related Structure Rules, 2012 (hereinafter referred to as the 'Rules, 2012') whereafter the petitioner company had received a demand notice for payment of the registration fees and renewal charges, which was challenged by the petitioner company before this Court by filing two writ petitions, however,



during the pendency of the aforesaid writ petitions bearing CWJC No. 3300 of 2013 and CWJC No. 3159 of 2013, the State Government notified the Bihar Mobile Tower, Optical Fibre Cables (OFC) & Related Telecom Infrastructure Rules, 2020 (hereinafter referred to as the 'Rules, 2020') vide notification dated 19.08.2020 and the aforesaid Rules, 2012 were repealed. The aforesaid writ petitions were allowed vide order dated 29.09.2020 passed by the Hon'ble Patna High Court and it was directed that no coercive action shall be taken against the petitioner unless the process under the Rules, 2020 were finalized. Nonetheless, the respondent no. 6 has issued a notice dated 01.02.2021 as also a notice dated 24.02.2021, whereby and whereunder the respondent Parishad has purported to seal the telecommunication tower installed by the petitioner company at the premises of the aforesaid Smt. Shakuntala Devi on the ground that no permission has been taken for installing the tower in a residential area and that a complaint has been received with regard to EMF radiation. The petitioner company is stated to have furnished its detailed response to the aforesaid notices on 25.02.2021 and had stated that it provides passive infrastructure to the telecom service providers and the EMF radiation, which is within the permissible range, are emitted by



the active infrastructure belonging to the telecom service providers. It was also stated that the action of the respondent Parishad was contrary to the Rules, 2012 as well as the Rules, 2020 and that the Rules mandate that before sealing the tower in question, consent of the Urban Development and Housing Department is essential. Nonetheless, without affording any opportunity of hearing and without obtaining the consent of the Urban Development & Housing Department, the respondent no. 6 had sealed the telecommunication tower installed by the petitioner company at the aforesaid premises of Smt. Shakuntala Devi.

3. The learned counsel for the petitioner has submitted that the State Government was required to finalize the process of regularization of towers, installed prior to the coming into force of the Rules, 2020, since the registration was required to be done within a period of six months, however, since there was some delay, the State Government had issued a notification dated 19.03.2021, extending the said period by further six months i.e. till 29.08.2021. The petitioner had applied for NOC online on 14.07.2021 and had also deposited the requisite fee on 16.07.2021. The learned counsel for the petitioner has also referred to Rule 7.1.2 of the Rules, 2020, which is reproduced



herein below:-

"7.1.2. Places Permissible for Erecting Towers:

The mobile communication towers being essential and critical infrastructure and public utility services, there shall be no restriction of location unless restricted by order of Authority/Courts of law. The mobile communication towers can be installed at all locations regardless of its specified land use including but not limited to:--

- i. All types of Residential/Multi Storey Buildings/ Group Housing Buildings*
- ii. All types of Industrial/Commercial Buildings*
- iii. All types of Institutional Building/Hospitals*
- iv. Vacant Lands like parks, playground, forest land and land earmarked for public amenities*
- v. Land and Building under the jurisdiction of Government Departments/Govt. controlled bodies/ State PSU."*

4. Thus, it is submitted that as far as the place where the telecommunication tower has been installed by the petitioner is concerned, the same is in accordance with Rule 7.1.2. The learned counsel for the petitioner has next referred to Rule 9.4 and 9.10 which are reproduced herein below:-



“9.4 No Coercive Actions:

In order to avoid disruption in mobile communication which is an essential service, sealing of mobile communication towers/disconnection of electricity may not be resorted to without the consent of the respective Urban Development and Housing Department, Govt. of Bihar in case of any complain or issue related to EMF emissions. Mandatory advance notice of 90 days, mentioning the action to be taken, must be given to the applicant initiating any steps against the Telecom Infrastructure.

9.10 Regularization/Compounding:

Application for obtaining clearance for the existing unauthorized mobile towers or OFC shall be submitted within six months of issue of this Rules, after which the matter would be taken as per laid down procedure. Once the application is submitted within due time, the operation of the Mobile Tower or OFC shall not be discontinued till disposal of the application by the concerned Local Authority. In case the Local Authority declines clearance for any existing unauthorized mobile tower or OFC an appeal can be filed before the Competent Authority.

Notwithstanding anything contained herein, the operation of the Mobile Tower or OFC shall not be discontinued for such any appeal is filed and/or pending before DTC or STC.”



5. Thus, it is submitted that mandatory advance notice of 90 days, clearly mentioning about the action to be taken, is required to be given before sealing the mobile communication tower and that too only after taking the consent of the urban Development & Housing Department, Government of Bihar but in the present case neither 90 days notice has been given to the petitioner nor any permission has been taken from the Urban Development & Housing Department, Government of Bihar, Patna. It is further submitted that though the petitioner has filed an application for regularization of the existing telecommunication tower but the same has not been processed till date and moreover as per Rule 9.10, the operation of the mobile tower cannot be discontinued till disposal of the application filed by the applicant for obtaining clearance for the existing unauthorized mobile towers.

6. Per contra, the learned counsel for the respondent Nagar Parishad has submitted that the telecommunication tower in question has been erected without taking approval/permission from the Nagar Parishad, Danapur. It is also submitted that the land in question belongs to one Budhia Devi, who died leaving behind her three daughters, namely, Chinta Devi, Shakuntala Devi and Sona Devi and after the death of the



said Budhia Devi, a Title Partition Suit No. 73 of 1974 was filed by the said Smt. Shakuntala Devi in which Chinta Devi and Sona Devi were impleaded as defendant nos. 1 & 2 respectively. It is also stated that initially in the aforesaid suit, an injunction order dated 17.01.2002 was passed over the entire suit property, restraining the parties from alienating and encumbering the suit property till final disposal of the suit and then the final decree has also been passed by the learned Court of Sub-Judge-II, Patna on 05.07.2014, whereby the land in question has been apportioned in between the aforesaid three ladies and accordingly, mutation has also been carried out. It is also submitted that the tower in question has been installed in violation of the injunction order dated 17.01.2002, passed by the learned Sub-Judge-VI, Patna in T.S. No. 73 of 1994 and moreover, the tower has been installed over that portion of the land which has now fallen in the share of Chinta Devi and Sona Devi. It has also been submitted that neither any approval nor any no objection certificate was taken from the Nagar Parishad, Danapur, either at the time of installation of tower or till date, hence the installation of tower over the land in question by the petitioner is illegal. It is also submitted that finally the land in question where the tower has been installed has fallen in the



share of Sona Devi and the land in question has also been mutated in her name on 08.10.2014, whereafter the agreement in question was executed by the petitioner with Shakuntala Devi with respect to the land in question on which the said Shakuntala Devi had no right or title, hence the agreement dated 21.11.2014 is also void. It is also stated that the aforesaid Sona Devi and Chinta Devi had filed an application before the Sub-Divisional Public Grievance Officer, Danapur on 11.01.2021, alleging therein that the tower has illegally been installed by the petitioner on their land and despite repeated request/notices, the petitioner company is not removing the tower from their land, hence appropriate steps be taken for removal of the tower. Thereafter, the matter was referred to the Nagar Parishad, Danapur for taking appropriate steps in pursuance to the complaint filed by Sona Devi and Chinta Devi. After receiving the complaint, the Danapur Nagar Parishad had issued notice to the petitioner on 01.02.2021 but the petitioner did not respond, whereafter another notice dated 24.02.2022 was issued to the petitioner but again it did not respond, hence a decision was taken to seal the said tower & a request was sent to the S.D.M., Danapur to provide Magistrate and police force so that the illegal tower installed by the petitioner over the disputed land



can be sealed and accordingly, the tower in question was sealed.

7. The learned counsel for the newly added private respondent has supported the averments made by the learned counsel for the respondent Nagar Parishad.

8. In reply, the learned counsel for the petitioner has submitted that the petitioner company was neither a party to the aforesaid partition suit nor any injunction order has ever been served upon the petitioner company. It is also submitted that if at all there has been any violation of the injunction order, the parties are free to approach the competent court of civil jurisdiction by filing an appropriate execution petition, however, the said issue cannot be raised in the present proceedings. It has also been submitted that after coming to know about the aforesaid facts and circumstances regarding filing of the partition suit, the petitioner has enquired from its licensor about the dispute in question and it has transpired that the said Shakuntala Devi has filed a Title Appeal No. 2 of 2015, challenging the final judgment and decree passed in Title Partition Suit No. 73 of 1974, which is pending adjudication. It is stated that the said Sona Devi and Chinta Devi have also filed execution cases, which are pending adjudication, hence, it is clear that since the right, title and interest of the respective



parties are yet to be finally adjudicated, the private respondents or for that matter the respondent Danapur Nagar Parishad cannot be permitted to circumvent the process of law and convert the present proceedings into execution proceedings.

9. I have heard the learned counsel for the parties and gone through the materials on record from which it is apparent that the respondent no. 6 had issued two notices dated 01.02.2021 and 24.02.2021 to the petitioner wherein it was stated that in case the reply is not submitted, appropriate action would be taken under the Rules, 2012, including that of sealing of the mobile tower in question. It appears that though the petitioner had submitted his reply on 25.02.2021 but the same appears to have not been considered by the respondent no. 6 inasmuch as no final order/decision to seal the tower in question has been brought on record by the respondent no. 6. This Court is also of the view that the consent of the Urban Development & Housing Department, Government of Bihar, Patna, in terms of Rule 9.4 of the Rules, 2020 has not been taken by the respondent no. 6 before sealing the mobile tower in question, thus the action of the respondent no. 6 is patently illegal and contrary to the Rules, 2020. This Court further finds that though the petitioner has filed an application within the prescribed time,



as has been stated in paragraph no. 14 of the present writ petition, for regularization of the mobile towers under the Rules, 2020, however, the said application of the petitioner is still pending, hence in terms of Rule, 9.10, no coercive action could have been taken with regard to sealing of the telecommunication tower of the petitioner, as aforesaid. Thus, this Court finds that the action of the respondent no. 6 in sealing the telecommunication tower of the petitioner, situated at the aforesaid land in question, is illegal and *de horse* the Rules, 2020, hence the notices dated 01.02.2021 and 24.02.2021, issued by the respondent no. 6 are set aside and the respondent no. 6 is directed to unseal the aforesaid telecommunication tower of the petitioner within a period of one week from today.

It would not be fair to the respondents if this court does not deal with the order of injunction dated 17.01.2002 as also the final decree dated 05.07.2014, passed in Title Partition Suit No. 73 of 1974. In this connection, it would suffice to state that in the present case, this Court has only to examine the legality of the action of the Danapur Nagar Parishad, Danapur, to the extent it has sealed the telecommunication tower of the petitioner and this Court cannot be converted into an executing court for the purposes of enforcing the final decree dated



05.07.2014, passed in Title Partition Suit No. 73 of 1974 and the remedy of the private respondents lies elsewhere i.e. approaching an appropriate court of competent civil jurisdiction. It is a well settled law that even if the petitioner is a trespasser over the land in question, then also it cannot be dispossessed without following the due process of law, as such no action can be taken against the petitioner directly by the Danapur Nagar Parishad, without taking recourse to the due process of law. Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court, reported in *AIR 1968 SC 620 (Lallu Yeshwant Singh vs. Rao Jagdish Singh)*, in *(1986) 1 SCC 133 (Express Newspapers (P) Ltd. Vs. Union of India)* as also the one reported in *(2004) 1 SCC 769 (Rame Gowda vs. M. Varadappa Naidu)*.

10. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	17.08.2021
Uploading Date	13.10.2021
Transmission Date	

