

23.11.2021

Court No.13

Sl. 20

pk

W.P.A. No. 13615 of 2021

**Pralay Sankar Banerjee and others
Versus
The State of West Bengal & Ors.**

(Through Video Conference)

Mr. Amitava Chaudhuri,
Mrs. M. Chaudhuri,
Mr. Moniruzzaman,
Mr. N. Roy

...for the petitioners.

Ms. Chaitali Bhattacharya,
Mr. Kartick Chandra Kapas

...for the State.

Mr. N. C. Bihani,
Mrs. Papia Banerjee Bihani

... for the Pollution Control Board.

Mr. Rajesh Upadhyay

... for the private respondents.

Mr. Snehasish Sen,
Mr. R. Banerjee

... for the respondent no. 11.

The writ petitioners are the residents of a place of Pubali Garden, Narendrapur, Kolkata-700 103. They complain that the private respondent no. 11 has installed a mobile telecom tower on the land of the respondent nos. 12 and 13 in violation of the guidelines of the Central Government Department of Telecommunication. They were issued an advisory of the State Government for installation of mobile towers dated 01.08.2013. Additional guidelines have also been issued and the same are produced before this Court.

The petitioners complain that the said tower is in violation of such guidelines and is likely to seriously hamper their health and living conditions. They have made representations to the Officer-in-Charge, Narendrapur Police Station, Local Panchayat and the S. D. O., Baruipur, in this regard.

Reliance has been placed by counsel for the petitioners in the case of **Jayanta Biswas and others Vs. State of West Bengal and others** being judgement dated 17th September, 2019 in W. P. No. 17230(W) of 2019 and **Pradipta Kumar Jana Vs. State of West Bengal and others** in W. P. No. 16267(W) of 2019 being judgement dated 05.02.2020.

This Court is of the view that a finding of fact is required to be made.

Hence, the District Magistrate, South 24 Parganas/respondent no. 5 shall cause inspection of the aforesaid mobile tower lying at Plot Nos.B-7, Ward No.-31 in Rajpur Sonarpur Municipality and ascertain and decide as to whether the same is in consonance with the aforesaid guidelines of the D.O.T.

For the aforesaid purpose, a copy of the application shall be served on the respondent no. 5 afresh along with a copy of this order. The Respondent No. 5 shall hear all the affected parties and pass a reasoned order.

The said order may be communicated to the parties within a week thereof.

In the event the District Magistrate finds that there is deviation from or violation of the aforesaid guidelines, appropriate steps may be initiated after complying with the principles of natural justice.

The aforesaid exercise shall be completed by the District Magistrate within two months from the date of communication of a copy of this order.

Since no affidavit has been used by the respondents, the allegations made in the writ petition shall not be deemed to have been admitted.

With the aforesaid directions, the writ petition is disposed of.

In view of disposal of the writ petition, connection application being CAN 1 of 2021 is also disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)