

S/L 2  
07.12.2021  
Court. No. 19  
GB

WPA 14406 of 2021

Sri Tarun Das @ Tarun Kumar Das  
Vs.  
Khardah Municipality & Ors.

(Through Video Conference)

*Mr. Kushal Chatterjee,  
Mr. Iftekar Munshi.*

*...for the Petitioner.*

*Mr. Bikash Kumar Chatterjee.*

*...for the Municipality.*

The petitioner claims to be the owner on whose land Reliance Jio Infratel Private Limited, the respondent no.19 had decided to install a mobile tower. By virtue of a deed of lease dated October 25, 2019, the petitioner and the respondent no.19 had agreed that the respondent no.19 would install a mobile tower on a portion of the said land against payment of rent over an area measuring approximately 525 sq.ft. On the basis of the purported deed of lease, the petitioner had agreed to allow the respondent no.19 to install the alleged mobile tower.

It also appears that one of the clauses in the lease deed states that the parties had agreed to rent-free occupation of the premises during the process of installation and construction for a period of 180 days. The lease deed further provides that the lessor agreed that if the site is put on hold, then no rent would be paid to the lessor by the lessee. On the

strength of this lease deed, this writ petition has been filed alleging overt and illegal act of the Khardah Municipality.

According to Mr. Chatterjee, learned advocate appearing on behalf of the petitioner, the Municipality after granting permission for installation of the mobile tower to the respondent no.19 could not have stopped such construction by issuing a stop work notice and by asking the mobile tower company to put the construction on hold. Aggrieved by the communication of the Municipality to respondent no.19 regarding stoppage of the work of installation of the mobile tower, the lessor on whose land the mobile tower was to be installed by the respondent no.19, has approached this Court.

It appears that the Chairperson, Khardah Municipality instructed the Reliance Jio Infratel Private Limited to stop the work of installation of the mobile tower in view of the complaints received from the local people and the order passed by the learned Executive Magistrate dated August 12, 2021. The records also reveal that by a letter dated September 2, 2021, the Chairperson, Board of Administrator, Khardah Municipality also directed the Reliance Jio Infratel Private Limited to stop all the civil constructions for installation of the mobile tower pending the report from the Pollution Control Board. It is submitted by Mr. Chatterjee that the order of the learned Executive Magistrate has been stayed by a competent court of law.

A status report has been submitted by Mr. Chatterjee, learned advocate appearing on behalf of the Municipality, from which it appears that the installation work has been stopped by the respondent No. 19. The question to be determined in this writ petition is whether the petitioner is entitled to challenge the communication of the Municipality. The Municipality on the basis of some complaints and awaiting a report from the Pollution Control Board, has instructed Reliance Jio Infratel Private Limited, to stop the work and not to continue with the civil constructions in anticipation of problems that such installation may create in the locality.

Reliance Jio Infratel Private Limited is the respondent no.19, who is not before this Court. At best Reliance Jio Infratel Private Limited could have been aggrieved by the stoppage of work and the action of the Municipality in restricting them from continuing with the installation of the mobile tower, but the petitioner who has only permitted Reliance Jio Infratel Private Limited to install a tower on the basis of a deed of lease cannot have any grievance against the Municipality. The deed of lease of immovable property has not been sufficiently stamped either. It is a notarised agreement on Rs.10/- non-judicial stamp paper. Moreover, the lease deed says that for a period of 180 days from the date of handing over of site or after completion of the installation of the tower, no rent shall be paid by the lessee. The deed further states that the lessee shall have a right to

hold the rent if the work does not progress for whatever reason and the lessor will not be entitled to any monthly rent.

Under such circumstances, the writ petition has been moved for an order upon the Municipality to allow the construction of the mobile tower so that the petitioner would be entitled to the lease rent once the construction is complete.

This Court is of the opinion that the petitioner does not have any locus to challenge the order of the Municipality. At best, Reliance Jio Infratel Private Limited could have approached the Court against the directions of the Municipality. Reliance Jio Infratel Private Limited is the affected or aggrieved party. This is an indirect way to ensure that the tower is installed so that the lessor can earn the rent. Reliance Jio Infratel Private Limited has not exercised their right to install the tower on the land. Thus, the writ petition is not entertained. The petitioner cannot invoke the jurisdiction of the Court as the dispute would be at best between the petitioner and the respondent no.19 over lease rent etc. However, if any final decision is taken by the Municipality with regard to the installation of the purported tower, the petitioner shall be intimated of such decision.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

**(Shampa Sarkar, J.)**