

May 11, 2022
Serial No.20
Court No.1
SG

MAT 165 of 2022
with
CAN 1 of 2022

Nitish Chowdhury and others
vs.
The State of West Bengal and others

Ms. Santi Das,
Mr. Firdous Samim,
Ms. Gopa Biswas,
Ms. Mousumi Hazra, Advocates

... for the appellants

Mr. Manas Kundu,
Mr. Debabrata Mondal, Advocates

... for the State

Mr. Tridib Bose,
Ms. Vidhi Sharma, Advocates

... for the respondent No.8

This appeal at the instance of writ petitioners questioning the interlocutory order of learned Single Judge dated 02.02.2022 whereby the interim order passed earlier in the writ petition has been vacated.

The appellants had approached the writ Court as against the action of respondent No.8 in respect of installation of a mobile tower. Learned Single Judge had earlier passed the order dated 24.12.2021 directing that if the tower was not put in operation till the date of passing the interlocutory order, the same would not be put in operation until the adjourned date. Thereafter in view of the circumstances of the case and taking note of other objections pending in the matter, learned Single Judge has lifted the restraint on the charging of the mobile tower against respondent No.8 and has vacated the order.

Submission of learned counsel for the appellants is that there is a school existing near the tower which is within impermissible limits, therefore the tower cannot be allowed to be operated and the appellants had submitted the representation before the municipal corporation which has not been considered while granting permission to respondent No.8 and the area is highly populated.

As against this submission of respondent No.8 is that in terms of the advisory guidelines, respondent No.8 has obtained all the requisite permissions and no objection certificates. He has also submitted that the tower has already been installed but on account of local resistance, antenna could not be installed and the radiation emission could not be ascertained. He has also informed that stay has not been granted in any other petition in the batch.

On perusal of the writ petition, we also find that there is no clear averment in respect of existence of any school within impermissible limits and no supporting material has been pointed out during the course of hearing.

In the aforesaid circumstances, we find no error in the impugned order of learned Single Judge. However, after installation of the antenna the private respondent is required to measure the radiation level and submit the report of the competent authority before learned Single Judge.

The appellants will also be at liberty to submit a fresh application seeking interim relief at that stage along with clear pleadings relating to distance of the school within prohibited limits. If any such application is filed, the same will be duly considered in accordance with law.

The appeal and the connected application are disposed of accordingly.

Urgent certified copies of this order, if applied for, be made available to the parties upon compliance of requisite formalities.

[Prakash Shrivastava, C.J.]

[Krishna Rao, J.]