

17.03.2023
Court No. 19
Item no.49
CP

W.P.A. No. 3766 of 2023

Aktar Ali Molla

Vs.

The State of West Bengal & Ors.

Mr. Pankaj Halder
Mr. Sanatan Panja
Mr. Tapas Manna

....for the petitioner.

Sk. Rejaul Alam

....for the respondent nos. 7 & 8.

Mr. A. K. Singh

.....for the respondent nos. 9 to 10.

Mr. VVV Sastry
Mr. Tridib Bose
Mr. D. Basu
Mr. Debjyoti Saha

.....for the respondent no. 13.

Mrs. Jhuma Chakraborty
Mr. Aritra Ghosh

....for the State.

The petitioner alleges that without taking consent of all the co-sharers, the respondent nos. 9 to 12 permitted the respondent no. 13 to install a mobile tower on Plot No. 252 of Mouza – Uttar Gangadharpur. They entered into an invalid agreement.

Further allegation is that the permission from the Mathurapur Purba Gram Panchayat, had also not been taken.

Learned advocate for the gram panchayat also submits that permission had not been granted to the Reliance Jio Infocom Ltd.

The report of the Block Development Officer, Mathurapur-I Development Block indicates that the Reliance Jio Infocomm Ltd. had approached the gram panchayat for permission and some money was also deposited.

Learned advocate for the gram panchayat submits that the panchayat is willing to refund the money, if there are controversies with regard to the installation of the mobile tower.

Learned advocate for the petitioner has relied upon a judgment of a coordinate Bench where His Lordship had observed that the agreement between the lessor and lessee therein, was defective as all the co-sharers of the property had not granted the lease.

Learned advocate for the respondent no. 13 submits that the order relied upon by the petitioner is distinguishable on facts. He next submits that the materials have been kept in the site but the tower is not operational. His further contention is that the Department of Information Technology and Electronics, Government of West Bengal has

prepared a guideline and the District Magistrate of the district is the competent authority to scrutinize the applications for establishment of mobile tower and infrastructure thereof. The District Magistrate is the head of the District Level Committee which is comprised of local bodies and other related departments.

In this case, the grievance of the petitioner is with regard to alleged installation of a mobile tower on an undivided property and the petitioner as a co-sharer does not intend to give his consent for the same.

The other allegation is that construction of a mobile tower would require permission from the local bodies in terms of the telecom policy.

Thus, the petitioner is granted liberty to file a comprehensive representation before the District Level Committee through the District Magistrate, South 24 Parganas. Once such representation is filed, the same shall be disposed of upon granting adequate opportunity of hearing to all the stake holders, namely, the petitioner, the respondent nos. 7, 9 , 10 and 13 and other interested parties.

It is expected that the guidelines framed by the Department of Information Technology and Electronics, Government of West Bengal has been implemented by now and the District Level

Committee and the District Magistrate are directed to discharge their functions on the basis of such policy and as per the direction of this court.

A decision shall be arrived at and communicated to all. The parties are entitled to make their appropriate submissions and file appropriate documents before the authority concerned.

As it has been already mentioned that the installation of the tower is awaiting further compliance and the tower is not operational, the District Level Committee should complete the entire process and pass a reasoned order before the tower becomes operational.

The entire exercise shall be completed within a period of three weeks from the date of communication of this order.

As affidavits are not called for, the allegations are deemed to have been denied.

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.)