

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

W.P.A.No.7452 of 2019

Sk. Abu Abbasuddin

Vs.

State of West Bengal & Ors.

Before : The Hon'ble Justice M.V. Muralidaran

Mr. Rajdeep Bhattacharya,

Mr. Abul Mannan Mollah,

Mr. Debashis Banerjee,

Mr. Arpayan Mukherjee

----- for the petitioner.

Mr. Jhuma Chakraborty, Sr. Govt. Adv.

----- for the State.

Mr. Sourav Roy

----- for Respondent No. 8.

Hearing & Judgment On :

20.02.2024

M.V. Muralidaran, J.:

Heard Mr.Rajdeep Bhattacharya, learned counsel for the petitioner, Ms.Jhuma Chakraborty, learned Senior Government Advocate for the respondent State, and Mr.Sourav Roy, learned counsel for the eighth respondent.

2. The petitioner has filed the writ petition seeking the following reliefs:

- (a) An order or direction upon the District Magistrate, Hooghly to enquire or cause an enquiry to be made at the area wherein the Reliance Jio Infocom Ltd. has been erecting the mobile tower under Bhagabatipur Mouza within Chanditala Police Station, District Hoogly and submit a status report to this Court.
- (b) A writ or in the nature of mandamus commanding the respondent particularly the sixth respondent/Prodhan Bhagabatipur Gram Panchayat to forthwith demolish and/or dismantle the unlawful installation of mobile tower in Plot

No.1608 in MouzaBhagabatipur, District Hoogly which is adjacent to the petitioner Viti land.

3. The case of the petitioner is that the land in Mouza Bhagabatipur, J.L.No.41, Plot No.1613/3183 originally belonged to the father of the petitioner having 14 annas share and during his life time, the father of the petitioner, in the year 1989, gifted the said land in favour of his two sons, namely Sk. Abu Abbasuddin (petitioner herein) and Sk. Abu Afsaruddin. Pursuant to the gift, the petitioner and his brother became the owners of the said land and are residing there with their family members. Plot No.1613/3183 is adjacent to Plot No.1608 in Mouza-Bhagabatipur and the area where the petitioner resides is thickly populated area.

4. On 13.11.2018, the petitioner noticed that the private respondent along with some other people gathered on the Plot No.1608 and started digging earth by a JCB vehicle. When the petitioner asked the private respondent, respondent No.7 replied that they have leased out a part of the said plot to Reliance Jio Company for installation of a mobile tower. Immediately, the petitioner made a protest stating that it is a densely populated area and within two meters distance there is a

room where many cows are kept. In spite such protest, they did not stop installation work. On 14.11.2018, the petitioner made a written representation to the Gram Prodhan of Bhagabatipur Gram Panchayat and on 16.11.2018, the petitioner submitted an objection petition to the District Magistrate, Hooghly, SDO, Serampore, BDO, Chanditala-I, BL&LRO, Chanditala-I praying them to take action against such erection of mobile tower in the locality. After receiving such objection petition, the Prodhan Bhagabatipur Gram Panchayat orally said that they have issued notice not to make any erection of mobile tower on the said spot. While so, all of a sudden on 26.3.2019, the petitioner found that respondent No.7 with the help of his associates started erection work of mobile tower on Plot No.1608.

5. According to the petitioner, respondent No.7 violating the guidelines for installation of mobile tower and rules framed thereunder has leased out the land where respondent No.8 started erection work of the illegal mobile tower in the residential area. Unless a mandate is issued, the respondent, particularly, the Prodhan, Bhagabatipur Gram Panchayat will not make the offenders stop committing unlawful activities. Since the respondent Gram Prodhan has not paid any heed to

the complaint made by the petitioner, the petitioner has filed the present writ petition.

6. The contesting respondent No.8 filed affidavit-in-opposition stating that advisory guidelines were issued by the Ministry of Communication and Information Technology, Government of India to the State Governments so as to issue clearance for installation of mobile tower. In terms of the said guidelines, respondent No.8 obtained all necessary permissions in order to install and operate the mobile tower at the location. Respondent No.8 obtained a SACFA clearance, structural stability certificate, no objection certificate and also the acknowledgement issued by the Term Cell Authority of the Department of Telecommunication. It is stated that the electromagnetic radiation exposure is within the permissible limit and cannot by any stretch of imagination be considered to be harmful to the local inhabitants.

7. It is stated by respondent No.8 that any complaint and/or allegation pertaining to the erection of mobile tower is to be dealt with by the Committee at the District Level and State Level. Despite direction upon the State Government to form grievance committee, no steps as yet have been taken. The mobile tower has been installed in compliance with

all the terms laid down in the guidelines of 2013. The Bhagabatipur Gram Panchayat has instead issued a NOC to the eighth respondent to install a mobile tower and has also expressed their pleasure since the mobile tower is going to improve mobile connectivity for the local inhabitants. Hence, prayed for dismissal of the writ petition.

8. The learned counsel for the petitioner submitted that the seventh respondent has leased out the land to the eighth respondent for installation of the mobile tower in gross violation of the rules or regulations duly framed in this regard. The residents in the locality at a large have raised protest against such illegal acts and when the matter was reported before the sixth respondent, the sixth respondent though directed not to make any erection or installation of mobile tower on Plot No.1608, the seventh respondent with the help of his associates started work for installation of mobile tower.

9. The learned counsel further submitted that no tower should be installed within 100 meter radius of hospitals and educational institutions. With regard to the location of mobile towers, the cellular operators shall avoid residential areas for erection of the same. Since Plot No.1613/3183 where the petitioner resides is adjacent to Plot No.1608 and the said area

is thickly populated one and since the residential house of the petitioner is also within two meter distance, the private respondent is to be directed not to make any further construction or installation of mobile tower in the land in Plot No.1608.

10. The learned Senior Government Advocate appearing for the respondent State submits that the records reveal that the seventh respondent is the owner of the Plot on which the mobile tower has been constructed and that no permission was obtained prior to setting up of the mobile tower.

11. The learned counsel for the contesting eighth respondent submitted that the eighth respondent has already obtained NOC as well as other relevant permissions to install the mobile tower and the present writ petition has been instituted on the basis of an apprehension of purported harmful effects of radiation. Such allegations do not have any basis as they have not been substantiated. In fact, the mobile tower has been installed in compliance with all the terms laid down in the guidelines.

12. The learned counsel for the eighth respondent further submitted that no purported notice was issued by the sixth respondent to the eighth respondent not to erect and/or install the mobile tower as alleged by the petitioner and, in fact, the sixth respondent expressed their pleasure since the mobile tower is going to improve mobile connectivity for the local inhabitants. Further, the health hazard alleged by the petitioner is concocted one and there is no bona fide in the present writ petition. Thus, the learned counsel prays for dismissal of the writ petition.

13. This Court considered the submissions made by the learned counsel for the respective parties and also perused the materials available on record.

14. The case of the petitioner is that the residential house of the petitioner situated at Plot No.1613/3183, which is adjacent to Plot No.1608 where the eighth respondent erected mobile tower. Since the area where the mobile tower is installed is thickly populated and before installing no required permission was obtained by the eighth respondent from the authorities, the said mobile tower erected on the land of the seventh respondent by the eighth respondent has to be dismantled and/or demolished.

15. On the other hand, it is the plea of the eighth respondent that the seventh respondent leased the Plot No.1608 to the eighth respondent and the eighth respondent after obtaining necessary permissions from the government authorities, installed/erected the mobile tower on Plot No.1608 and the eighth respondent has not violated any guidelines.

16. As could be seen from the records, the State has filed a report dated 7.12.2021 and relevant portion of the report is extracted by this Court in the order dated 30.1.2024 as under:

"3. That from the report dated 07.12.2021 submitted by the Block Development Officer, Chanditala-I, appears that the concern telecom authority never asked for any permission/NOC from the appropriate authority. So, the mobile tower has not been installed according to the guidelines framed by the Government."

17. By relying upon the guidelines of the Department of Information Technology and Electronics, Government of West Bengal dated 28.12.2020, the learned counsel submitted that necessary clearance and permission to set up mobile tower or base tower station and line optical fibre cable are to be obtained. However, in the instant case, such

clearance and permission has not been obtained by the eighth respondent before installing the mobile tower.

18. Per contra, the learned counsel for the eighth respondent drawing this Court's attention to the West Bengal Telecom Infrastructure Guidelines, 2023 issued by the Government of West Bengal submitted that in supersession of earlier guidelines issued pertaining to erection and/or installation of mobile tower, the Government of West Bengal had issued the said guidelines 2023. As such, the Guidelines of 2020 relied upon by the petitioner has no relevance.

19. Guideline No.4 of the Guidelines 2020 relied on by the petitioner speaks about "*Appropriate Authority*" as under:

"4. Appropriate Authority

a) On behalf of Government of West Bengal, the Department of Information Technology & Electronics (DoIT&E) shall be designated as the Nodal Department and Appropriate Authority for the state of West Bengal. A designated officer nominated by the Department of Information Technology and Electronics, Government of West Bengal (DoIT&E) shall act as a designated Nodal Officer (NO) for entire gamut of activities involving Telecom infrastructure clearance, setting up, deployment, appropriate restoration w.r.t. public

inconvenience and maintenance of telecom infrastructure, including resolution of any dispute arising thereof, at State level for Telecom infrastructure deployment in public interest.

b) In pursuance with the order vide no.246(19)-JS(IT)/IT/0/10/2014 dated 21 July-2016, the District Magistrate (DM) of the concerned district shall be the responsible authority for scrutinizing application submitted by any applicant for establishment of telecommunication infrastructure within the respective district. The DM shall also head the District Level Committee (DLC) which shall comprise representatives from local bodies and other related departments viz. PWD, UD&MA, P&RD, Forest of State Government and TERM cell of DoT, GoI among others. The DLC shall also meet at least once in a month, if required more than once a month, to dispose of applications seeking clearance for laying underground optical-fibre cable and/or permission to set-up Mobile Tower or BTS in the district.

a. In case of PWD: The Superintending Engineer of the district or his nominee not below the rank of Executive Engineer, will be the representative-member for PWD Department in a district.

b. In case of UD&MA: The Deputy Magistrate & Deputy Collector, posted at the District Collectorate and looking after UD&MA affairs in the Collectorate will be

nominated as the representative-member for UD&MA Department.

c. In case of P&RD: District Panchayat& Rural Development Officer (DPRDO) of the district being the ex-officio Member-Convenor of the District Level Committee will be nominated as the representative-member of P&RD.

Provided that the District Level Committee (DLC) will facilitate and supervise permission to grant/allow or reject application seeking permission subject to certain conditions, to set up telecom infrastructure in the district. The DLC will be solely responsible for granting NOC and shall keep the State Level Clearance Committee (SLCC) and State Level Appellate Authority (SLAA) abreast of regular developments.”

20. Similarly, Guideline No.4 of the Guidelines 2023 relied on by respondent No.8 defines “Appropriate Authority” as under:

"4. Appropriate Authority

a) On behalf of Government of West Bengal, the Department of Information Technology & Electronics (DoIT&E) shall be designated as the Nodal Department and Appropriate Authority for the state of West Bengal. A designated officer nominated by the Department of Information Technology and Electronics, Government of West Bengal (DoIT&E) shall act as a designated Nodal Officer (NO) for entire gamut of activities involving

Telecom infrastructure clearance, setting up, deployment, appropriate restoration w.r.t. public inconvenience and maintenance of telecom infrastructure, including resolution of any dispute arising thereof, at State level for Telecom infrastructure deployment in public interest.

b) In pursuance with the order vide no.246(19)-JS(IT)/IT/0/10/2014 dated 21 July-2016, the District Magistrate (DM) of the concerned district shall be the responsible authority for scrutinizing application submitted by any applicant for establishment of telecommunication infrastructure within the respective district. The DM shall also head the District Level Committee (DLC) which shall comprise representatives from local bodies and other related departments viz. PWD, UD&MA, P&RD, Forest of State Government and TERM cell of DoT, GoI among others. The DLC shall also meet at least once in a month, if required more than once a month, to dispose of applications seeking clearance for laying underground optical-fibre cable and/or permission to set-up Mobile Tower or BTS in the district.

a. In case of PWD: The Superintending Engineer of the district or his nominee not below the rank of Executive Engineer, will be the representative-member for PWD Department in a district.

b. In case of UD&MA: The Deputy Magistrate & Deputy Collector, posted at the District Collectorate and

looking after UD&MA affairs in the Collectorate will be nominated as the representative-member for UD&MA Department.

c. In case of P&RD: District Panchayat& Rural Development Officer (DPRDO) of the district being the ex-officio Member-Convenor of the District Level Committee will be nominated as the representative-member of P&RD.

Provided that the District Level Committee (DLC) will facilitate and supervise permission to grant/allow or reject application seeking permission subject to certain conditions, to set up telecom infrastructure in the district. The DLC will be solely responsible for granting NOC and shall keep the State Level Clearance Committee (SLCC) and State Level Appellate Authority (SLAA) abreast of regular developments.”

21. Guideline No.5 of the Guidelines 2020 speaks about the prior permission for establishment of telegraph infrastructure, which reads as under:

"5. Prior permission for establishment of telegraph infrastructure

No person shall erect, install or establish telegraph infrastructure without obtaining prior permission from the appropriate authorities by applying through online-portal comprising Single Window Clearance System (SWCS) to be developed for this purpose and hosted on

the State Data Centre or any other approved internet cloud storage as may be deemed fit in public interest.”

22. Similarly, as per Guideline No.5 of the Guidelines 2023, no person shall erect, install or establish telegraph infrastructure without obtaining prior permission from the appropriate authority. For proper appreciation, Guideline No.5 of the Guidelines 2023 is quoted hereunder:

"5. Prior permission for establishment of telegraph infrastructure

No person shall erect, install or establish telegraph infrastructure without obtaining prior permission from the appropriate authorities by applying through online-portal comprising Single Window Clearance System (SWCS) i.e, ANUMATI portal (<https://anumati.itewb.govt.in>) to be developed for this purpose and hosted on the State Data Centre or any other approved internet cloud storage as may be deemed fit in public interest.”

23. On a perusal of both the Guidelines, namely Guidelines 2020 and Guidelines 2023, if any person/applicant/licensee establishes any telegraph infrastructure without obtaining due and proper prior permission from the prescribed authority or violates the terms and conditions of the permissions, the prescribed authority is empowered to remove the same.

24. The eighth respondent contends that the mobile tower has been installed in compliance with the Guidelines 2023, which has been issued in supersession of all the earlier Guidelines issued pertaining to the erection and/or installation of mobile tower.

25. The petitioner alleges that before installation of the mobile tower on Plot No.1608, the eighth respondent has not obtained any prior permissions from the concerned authority and the subject mobile tower has been installed in thickly populated area which is not permissible under law and installation of the mobile tower in the said area will cause health hazards.

26. Now-a-days, the usage of mobile phone is very high. The installation of mobile towers is of utmost importance for the reason that every nook and cranny of the world, right from Villages, Cities, Metropolitans to other countries, are connected by telecommunication network. The information and communication technology network should be expanded for meeting the growing need. Installation and erection of mobile towers is one of the necessary steps to be taken for the effective and robust communication network. However, the same should be done after obtaining necessary permission from the competent authorities. If any person erects

any mobile tower without obtaining proper permission from the prescribed authority or in violation of the terms and conditions of the guidelines framed, the authority concerned is empowered to remove the mobile tower.

27. In the case on hand, as stated supra, the eighth respondent submitted that they have obtained permission for installation of mobile tower in Plot No.1608 and that Plot No.1608 is the proper location for installation of mobile tower. The said submission is denied by the petitioner by stating that the eighth respondent before installing mobile tower has not obtained any permission and, therefore, the mobile tower installed in Plot No.1608 has to be demolished in the interest of the inhabitants of the locality.

28. Admittedly, the establishment of mobile tower and the objection thereon by the people in the said locality has to be adjudicated by the duly constituted Committee, namely the District Magistrate, who would be the appropriate authority to deal with the same. Therefore, this Court is of the view that, it would be appropriate to refer the matter to the third respondent/District Magistrate for adjudication in the interest of justice.

29. Accordingly, the matter is referred to the District Magistrate, Hooghly, third respondent herein, with a direction to decide the matter by giving opportunity of hearing to the petitioner and respondent No.8 and to pass appropriate orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

With the above observation, the writ petition is disposed of. No costs.

(M.V. Muralidaran, J.)