

29.07.2024
Sl. 7
AKG
Ct.No.15

WPA 16099 of 2024
Indus Towers Limited
Vs.
The Kolkata Municipal Corporation and Ors.

Mr. Arindam Banerjee
Mr. Arindam Chandra
Mr. Atish Ghosh
Ms. Antara Dey

..for the petitioner

Mr. Gopal Chandra Ghosh

..for the private respondent

Mr. Alok Kumar Ghosh
Mr. Gopal Chandra Das

..for KMC

It is the case of the petitioner that the relevant mobile tower was constructed in and around 2009.

Respondent no.7, who is a neighbour of the writ petitioner, however, approached this Court in the year 2021 with a grievance that the relevant mobile tower was a continuous source of sound and high radiation causing health hazards. A Co-ordinate Bench of this Court by an order dated January 25, 2023 disposed of the said writ petition directing the relevant Executive Engineer of the Kolkata Municipal Corporation to take steps for consideration of the representation made on behalf of the petitioner on April 19, 2021 in accordance with law.

Following the said order, the Corporation had issued a notice under Section 401 read with Section

406 of the Kolkata Municipal Corporation Act, 1980 and after hearing the parties, the Corporation passed the impugned demolition order dated April 26, 2024 which reads as follows:-

“As reported by department notice U/S 400(1) had been issued to P.R. But no reply is received till date.

Date of hearing was scheduled on 24.04.24. Concerning Executive Engineer was present at the time of hearing.

Representative of Indus Tower Ltd. and petitioner appeared the at the time of hearing but Partha Roy Chowdhury did not appear. The representative of Indus Tower was requested to produce documents regarding the sanction of Installation of Tower from competent authority. But they failed to produce the same.

In this circumstances I am inclined to pass order to remove the said tele-tower along with machine room from the roof of the building taking all precautionary measures at the time of the removal within a period of 30 days from the date of communication of order.

In case of failing department may take action as per law.”

A perusal of the order dated April 26, 2024, suggests that the primary reason for the demolition order was the “lack of documents regarding sanction of installation of tower from competent authority”.

It is not in dispute that the petitioner subsequently obtained a “No Objection/Permission” dated May 3, 2024, from the Nodal Officer under the West Bengal Telecom Infrastructure Guidelines, 2020.

The petitioner suggests that since he was not in possession of such certificate/permission on the date

of hearing, the same could not be produced before the Special Officer (Building).

It has further been submitted by the learned advocate appearing for the petitioner that a mobile tower does not require prior sanction from the Kolkata Municipal Corporation authority in view of the definition of 'Building' as contained in Section 2(5) of the Kolkata Municipal Corporation Act, 1980.

Learned advocate appearing for respondent no.7 has placed reliance upon a judgment passed by a Co-ordinate Bench of this Court reported at 2012(5) CHN (CAL) 65 (Lipika Das versus Kolkata Municipal Corporation) to argue that construction of a mobile tower must be preceded by a sanction from the Kolkata Municipal Corporation.

In that view of the matter, I set aside the order dated April 26, 2024, issued by the Special Officer (Building), Kolkata Municipal Corporation and remand the matter back to the said authority for considering the matter afresh. The Special Officer (Building) shall take into account the "No Objection Permission" dated May 3, 2024, from the Nodal Officer under the West Bengal Telecom Infrastructure Guidelines, 2020.

The issue with regard to the sanctioned plan from the Corporation regarding installation of the tower is kept open. The Special officer (Building) shall

decide the same in accordance with law after hearing the parties and pass a reasoned order.

WPA 16099 of **2024** is disposed of.

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

(Kausik Chanda, J.)