

**CRM-M-97-2014 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CRM-M-97-2014 (O&M)
Date of Decision: 24.07.2024****INDUS TOWERS LTD.****... Petitioner****Versus****STATE OF HARYANA & OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI****Present:** Mr. Vishal Gupta, Advocate
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

Mr. Bijender Dhankar, Advocate with
Mr. Karandeep, Advocate
for respondent No.2.Mr. Ashwani Gaur, Advocate
for respondent No.3.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the order dated 25.09.2013 passed by the Court of Addl. Sessions Judge, Sonapat (Annexure P-12) whereby the revision petition filed by the petitioner was dismissed and order dated 28.04.2011 passed by the Sub Divisional Magistrate, Ganaur (Annexure P-10) in proceedings under Section 133 Cr.P.C. in application dated 21.07.2010 titled as Santosh Versus Sudhir and others whereby the removal of mobile towers and DG set has been ordered.

2. The brief facts of the case are that a complaint under Section 133 Cr.P.C. was instituted by respondent No.2-Santosh wife of Shri Kishan



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against respondent No.4-Sudhir son of Sube Singh with the allegations that a mobile transmission tower was being installed on the premise of the accused Sudhir Singh son of Sube Singh. As it was a huge structure there was possibility that it would fall endangering the life of the community living in the vicinity. Further, as it was being tested through a generator set, black smoke was being emitted thereby causing physical discomfort to the inhabitants. The copy of the complaint dated 10.08.2009 is attached as Annexure P-4 to the present petition.

3. A reply thereto was submitted on behalf of the respondent No.4-Sudhir.

4. The report of the Tehsildar, Ganaur was sought who on spot inspection found that the transmission tower installed had an accompanying sound proof generator which did not emit any sound nor did it cause any air-pollution and on inquiry the people in the neighbourhood had informed him that there was no pollution from the transmission tower and therefore, they had no problem with the same. The copy of the inquiry report dated 01.12.2009 is attached as Annexure P-6 to the petition.

5. The complaint came to be dismissed with permission to file a fresh complaint. The copy of the order dated 13.07.2010 is attached as Annexure P-7 to the petition.

6. Thereafter, a second complaint was instituted by respondent No.2-Santosh wife of Shri Kishan against respondent No.4-Sudhir son of Sube Singh, M/s Indus Infatel Ltd. (petitioner) and respondent No.3-Secretary, Municipal Committee, Ganaur. In addition to the allegations



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levelled in the first complaint it was stated that deep cracks had appeared in the walls of the house of the complainant. The copy of the second complaint dated 21.07.2010 is attached as Annexure P-8 to the petition.

7. A reply was submitted by respondent No.4-Sudhir son of Sube Singh and M/s Indus Infatel Ltd. It was stated by way of a preliminary objection that the first petition had already been dismissed and the instant second complaint was not maintainable. In fact, the tower had been installed on the plot of Kamla Devi wife of Sube Singh, the mother of Sudhir. As per the structural design engineers, the tower had been found to be stable. No smoke was to be produced by the tower and therefore, it was totally pollution free. The copy of the said reply is attached as Annexure P-9 to the petition.

8. Based on the respective pleadings of the parties, the Court of SDJM, Ganaur ordered the removal of the tower within 15 days on account of the smoke being emitted and noise pollution being caused.

9. A revision petition was preferred by respondent No.4-Sudhir son of Sube Singh and the present petitioner. The said revision petition came to be dismissed by the Court of Addl. Sessions Judge, Sonapat holding that not only was public nuisance being caused on account of the noise caused by the generator but also that the tower had been installed in violation of the Haryana Municipal (Erection of Communication Towers) Bye-laws, 2009. The copy of the said order dated 25.09.2013 is attached as Annexure P-12 to the petition.

10. The orders dated 25.09.2013 (Annexure P-12) and 28.04.2011 (Annexure P-10) are under challenge in the present petition.

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11. The learned counsel for the petitioner contends that the first report of the Tehsildar dated 01.12.2009 (Annexure P-6) had not been considered in its proper perspective wherein it had been categorically held that the tower was not causing any pollution. As per Section 138 Cr.P.C. the evidence was not taken in the matter as it ought to have been taken as in a summons case. As no generators were being used on any installed tower which ran on electricity/batteries/power backup, the question of noise and sound pollution did not arise. As regards obtaining permission under the Haryana Municipal (Erection of Communication Towers) Bye-laws, 2009, he contends that the petitioner would seek approval in accordance with the Act for the installation of the tower. He, therefore contends that the impugned orders were liable to be set aside and he be permitted to apply under the requisite law after removing the anomalies, if any.

12. The learned counsel for the respondents contends that both noise and air-pollution being caused when the impugned orders had been passed. Even otherwise, the tower had been erected in violation of the Haryana Municipal (Erection of Communication Towers) Bye-laws, 2009. Therefore, the impugned orders had been passed correctly in accordance with law. However, the learned counsel for respondent No.3 admits that in case it is found that no air or sound pollution is caused, there is no structural flaw in the installation of the tower and the petitioner seeks permission to install the tower in terms of the Haryana Municipal (Erection of Communication Towers) Bye-laws, 2009 then no party could possibly have any objection to the installation of the same.

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13. I have heard the learned counsel for the parties.

14. Undoubtedly, in pursuance to the filing of the first complaint the report of the Tehsildar was to the effect that the generator was not causing any pollution. Despite the said fact, the second complaint came to be filed and subsequent reports of the same officer were obtained. It is the categorical case of the petitioner that the towers in question do not cause any sound or air-pollution as they run on electricity/batteries/power backup. As regards installing the towers in violation of the Haryana Municipal (Erection of Communication Towers) Bye-laws, 2009, it is the categorical averment of the petitioner that they would install the same only after seeking approval under the said Act.

15. In view of the above, the orders dated 25.09.2013 passed by the Court of Addl. Sessions Judge, Sonapat (Annexure P-12) and 28.04.2013 passed by the Sub Divisional Magistrate, Ganaur (Annexure P-10) are hereby quashed. The petitioner is at liberty to apply for the installation of the tower afresh in terms of the Haryana Municipal (Erection of Communication Towers) Bye-laws, 2009 and the concerned authority may consider the application of the petitioner as per law subject to any objections be raised of the tower causing any pollution of any kind.

(JASJIT SINGH BEDI)
JUDGE

24.07.2024

JITESH

Whether speaking/reasoned:- Yes/No**Whether reportable:- Yes/No**