

**01.04.2026**  
Court No. 12  
Item No. 01  
**Sandip**

IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE

**M.A.T. 366 of 2026**  
**IA No : CAN 1 of 2026**

**Arun Biswas & Anr.**  
**-Versus-**

**Purnima Saha & Ors.**

Mr. Indranath Mukherjee, Sr. Adv.,  
Mr. Anubrata Saha  
.....for the appellants

Mr. Mrinal Kanti Ghosh,  
Mr. Chandra Nath Sarkar  
.....for the private

respondents.

- 1) Despite service, none appears on behalf of Indus towers. Affidavit of service is taken on record.
- 2) The petitioner is aggrieved by an order dated January 21, 2026 passed in W.P.A. 4854 of 2025. It appears that the order was passed by His Lordship directing the Mobile Tower Company and the appellants before this Court to dismantle the Mobile Tower within six weeks from date of the order and to restore possession of the land to its lawful owner.
- 3) This order was passed on a finding of the Court that the writ petitioner/respondent no. 1 had right, title and interest in respect of 4 decimals of land in L.R. Plot No. 931, J.L. No. 29, Mouza- Joykrishnapur, Police Station – Jalangi as per the decree passed by the civil court (Junior Division).

4) However, we find that this finding of the learned Court is erroneous, inasmuch as, in a partition suit the preliminary decree with regard to the share of the writ petitioner/respondent no. 1 to the extent of 4 decimals has been declared in respect of L.R. Plot No. 931. The same is a joint property. The shares of the co-sharer have been declared, but there has not yet been any partition by metes and bounds and it was also not the case of the writ petitioner before the learned writ Court that the mobile tower had been constructed on the area specifically occupied by the writ petitioner. The records do not speak so.

5) These issues have to be decided upon exchange of affidavits.

6) There are several issues i.e., whether there is any order of injunction or status quo with regard to the plot in question, whether the mobile tower was installed in the teeth of such order. Whether in the absence of the consent of the co-sharers, the same could be installed; whether there is a mistake in respect of the plot number or the committee had granted permission knowingly and upon identification of the plot.

7) His Lordship found that the District Level Committee had granted permission for installation of the mobile tower on another plot. Mr. Mukherjee submits that L.R. Plot No. 931 was mentioned and the permission was recorded in plot No. 3093, by mistake. This submission of Mr. Mukherjee is not reflected in the order impugned although it is urged that such submission was made. However, apart from the District Level Committee, permission

has to be granted upon several compliances. There are regulations governing installation of mobile towers. This aspect was also not looked into by the Court.

8) However it is for the mobile tower company and the respondent authorities including the State respondent to submit before His Lordship relevant documents to show that all the compliance had been fulfilled.

9) Under such circumstances, without assessing these aspect and considering all the issues involved, the order cannot be sustained. However, it is directed that all the parties including the mobile tower company shall file their respective affidavit-in-opposition to the writ petition.

10) The order impugned is set aside. The writ petition shall be heard afresh upon exchange of affidavits. Let affidavit-in-opposition be filed within two weeks from date. Reply thereto, if any, be filed within one week thereafter. Liberty to mention before the learned Judge after expiry of the aforementioned period.

11) Moreover, the property appears to be a joint property. Whether the appellants alone could have entered into the agreement with the Indus Tower for setting up the mobile tower, is also a relevant question. These issues should be looked into by the writ Court.

12) It is specifically noted that, if affidavits are not filed by the respective respondents within the time frame fixed by us, the learned single Judge will proceed on the basis of the doctrine of non-traverse.

13) Copy of this order shall be served upon the mobile tower company as also upon the

State respondents by the respondent No. 1. As the mobile tower has been operational from 2022 and the public at large get service from the same, without assessment of the issues which have been raised in this appeal the mandatory direction for dismantling the mobile tower appears to be hasty. However, we are not expressing any opinion on the correctness of the factual contentions of the appellants. We are only of the view that the matter requires further adjudication.

14) Accordingly, the appeal and the connected application are disposed of.

15) Urgent photostat certified copy of the order, if applied for, be given to the parties, upon usual undertakings.

**(Shampa Sarkar, J.)**

**(Ajay Kumar Gupta, J.)**