

HONOURABLE SMT. JUSTICE V. SUJATHA

Writ Petition No.24215 of 2010

ORDER:

The writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue a Writ or Order more in the nature of Mandamus in declaring the action of the 3rd respondent in installing/erecting cell tower in Ward No.55, behind e-seva, Desapatrunipalem, Gajuwaka, Visakhapatnam as illegal, arbitrary and without jurisdiction and consequently, to direct the respondents to remove the said cell tower by fixing the time limit.”

2. The case of the petitioner, in brief, is that all the petitioners are residents of Ukku Udyogula Colony, Desapatrunipalem, Paravada Mandal, Visakhapatnam District. The respondents 3 and 4 have approached the Government authorities for installation of Roof top cellular tower in the middle of the houses of the petitioners in Ward No.55 of Desapatrunipalem, which may cause endanger to health of the residents of the locality. When the construction work has commenced, the residents of the locality have objected such installation. Despite the objections, the respondents 3 and 4 have started construction of cell tower. It is further that the respondents 3 and 4 have not obtained any permission from the concerned authority before such installation and also have not followed any safety measurements as enumerated under G.O.Ms.No.183, dated

27.02.2008. Challenging the said highhanded action of the respondents 3 and 4, the present writ petition is filed.

3. The 2nd respondent Corporation filed its counter stating that the respondents 3 and 4 have submitted an application for permission for erection of roof top cell tower at Survey No176/11, 12, and 13 backside of E-seva Kendra situated at Desapathrunipalem, Ward No.55 of Greater Visakhapatnam Municipal Corporation, but the respondents 3 and 4, without waiting for approval from GVMC, commenced the installation of cell tower in spite of objections raised by surrounding people. As such, the respondent Corporation had issued a notice and stopped the further work. Aggrieved by the said action of the 2nd respondent Corporation, the petitioners filed W.P.No.23094 of 2009 to suspend the operation of proceedings in Rc.No.3621/2008/G1/CP, dated 15.09.2009 issued by the respondent Corporation and this court passed interim order directing the petitioners to pay a sum of Rs.25,000/- per each towards licence fee and Rs.5,000/- per year towards renewal fee as and when it becomes due. In obedience to the said order, the 2nd respondent issued an endorsement vide Lr.Rc.No.883/09/ACP-V, dated 28.01.2010 directing the respondents 3 and 4 to comply with the said direction. However, the respondents 3 and 4 complied with the endorsement and made a representation along with copy of the order in W.P.No.12314 of 2009, dated 12.12.2009.

Since the respondents 3 and 4 have complied with the endorsement dated 28.01.2010, the 2nd respondent Corporation accorded permission for the existing roof top cellular tower located at Survey No.176/11, 12, 13 back side of E-seva Kendra, Desapathrunipalem, Ward No.55, Gajuwaka, Visakhapatnam subject to certain conditions and accordingly proceedings were issued vide Rc.No.883/2009/ACP-V/G2/Dt. 24.02.2010. Hence, there is no administrative fault on the part of the 2nd respondent Corporation in granting such permission in favour of respondents 3 and 4.

4. Heard the learned counsel for the petitioner and Sri S. Lakshmi Narayana Reddy, learned standing counsel for the respondent-Corporation.

5. This Court, on 29.09.2010, while admitting the writ petition, directed the respondents 3 and 4 not to erect the tower in question without obtaining permission of the Greater Hyderabad Municipal Corporation and also further directed the 2nd respondent Municipal Corporation to ensure that the provisions of the Hyderabad Municipal Corporation Act, 1955, the Rules and Regulations, Building Bye-laws etc, are adhered to in construction of the cell tower as directed by the Division Bench in W.P.No.23228 of 2007 dated 31.12.2007.

6. The main grievance of the petitioner is that the respondents 3 and 4 have erected cell tower without obtaining any permission from the 2nd respondent Municipal

Corporation. But, as seen from the contents of the counter of the 2nd respondent Municipal Corporation, it appears that since the respondents 3 and 4 have complied with all the conditions stipulated for according permission, the 2nd respondent Municipal Corporation accorded permission for erecting cell tower vide its proceedings in Rc.No.883/2009/ACP-V/G2/Dt. 24.02.2010, and hence, there is no administrative lapses on the part of the 2nd respondent in according permission. As such, since the respondents 3 and 4 have complied with all the conditions as stipulated, and as there is no administrative lapses on the part of the 2nd respondent Corporation, this court is of the view that nothing remains for adjudication in the writ petition.

Accordingly, the writ petition is closed. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. SUJATHA, J

Date: 28.04.2022

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