

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 29TH DAY OF JULY 2022 / 7TH SRAVANA, 1944

WP(C) NO. 2608 OF 2016

PETITIONERS:

- 1 S.IBRAHIM
 AGED 62 YEARS
 S/O.S.A.SANTH MUHAMMED,
 METTUVALAVU, POONKODE,
 THATHAMANGALAM,
 CHITTOOR,
 PALAKKAD.
- 2 SAYED MUHAMMED KASSIM
 AGED 35 YEARS
 S/O.T.S.NOORUDHEEN,
 THENGODU HOUSE,
 INDIRA NAGAR,
 THATHAMANGALAM, PALAKKAD.
- 3 KAJA,
 AGED 55 YEARS
 S/O.KABEER,
 KABEER HOUSE,
 POONKODE,
 AMBATHPARAMBU,
 THATHAMANGALAM.

BY ADV SRI.P.M.HABEEB

RESPONDENTS:

- 1 STATE OF KERALA
 REPRESENTED BY THE SECRETARY,
 DEPARTMENT OF LOCAL SELF GOVERNMENT,
 STATE SECRETARIAT,
 THIRUVANANTHAPURAM.695 001.
- 2 THE DISTRICT COLLECTOR
 PALAKKAD.678 001.
- 3 THE CHAIRMAN OF THE DISTRICT TELECOM COMMITTEE
 PALAKKAD.678 001.

- 4 THE CHITTOOR-THATHAMANGALAM MUNICIPALITY
REPRESENTED BY ITS SECRETARY,
THATHAMANGALAM,
CHITTOOR,
PALAKKAD DISTRICT.678 102.
- 5 M/S.RELIANCE INFOCOMM LIMITED
32/0/252/C,
PK TOWER,
3RD FLOOR,
MAMANGALAM,
PALARIVATTOM,
KOCHI,
ERNAKULAM DISTRICT.682 025.

R1 TO R3 BY SMT.K.G.SAROJINNI, GOVERNMENT PLEADER
R4 BY ADVS. SRI.V.N.HARIDAS
SRI.K.P.VIJAYAN
R5 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
BY ADVS.SRI.P.BENNY THOMAS
SRI.P.GOPINATH
SRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY
HEARD ON 29.07.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

This writ petition is filed by a few residents within the limits of Chittur - Thathamangalam Municipality seeking to quash Ext.P1 building permit issued by the Secretary of the Municipality dated 16.04.2015 to M/s. Reliance InfoComm Ltd. Palarivattom, Ernakulam for installation of a tower in Survey No. 9/4 of Thathamangalam Village. The petitioners have also sought for the cancellation of approval granted by the District Telecom Committee, represented by its Chairman – the third respondent.

2. The paramount contention advanced by the

petitioners in the writ petition is that the proposed mobile tower is in a thickly populated area. According to the petitioners, the history of cell phones indicates that chronic exposure to cellular radiation can have adverse effects on human being. That apart, it is contended that none of the statutory authorities have applied their mind in granting permit/sanction to the fifth respondent to install the mobile tower. According to the petitioners, even though Ext.P3 representation was submitted by the petitioners before the District Collector, Palakkad – the second respondent, no action was initiated. That apart, it is submitted that Ext.P4 representation was

also submitted by the third petitioner before the Municipality, however, no action was initiated and therefore, according to the petitioners since the statutory authorities have not taken any action, interference is required from this Court so as to dissuade the illegal action of the respondents. The petitioners have also contended that as per a town planning scheme for the Chittur –Thathamangalam Municipality, mobile towers cannot be installed in the residential area in question; and therefore, by virtue of Rule 3A of the Kerala Municipality Building Rules (for short the ‘Rules, 1999’) which has precedence over the provisions of the Kerala

Municipality Act, 1994, the mobile tower in question cannot be constructed in a residential area.

When the writ petition was admitted to the files of this Court, an interim order was passed by this Court on 22.01.2016 permitting the installation of mobile tower, but the energization of the same was interdicted without taking orders from the Court, which order is still in force.

3. A detailed counter affidavit is filed by the fifth respondent refuting the allegations and claims and demands raised by the petitioners. In the counter affidavit, the locus standi of the petitioners to file the writ Petition is disputed apart from

disputing the factual circumstances pointed out by the petitioners. It is also submitted that even though petitioners have raised a contention with respect to applicability of a town planning scheme, the petitioners have not made any specific pleading with respect to the same and have also not relied upon any town planning scheme or have not produced copy of any scheme or have even furnished the details of the scheme in the writ petition so as to understand the situation and respond in accordance with law. With respect to the health hazard pointed out by the petitioner, it is submitted that the issue was considered by a Full Bench of this court in

Essar Telecom Infrastructure (P) Ltd. v. C.I. of Police, Angamaly [2010 (2) KLT 762 (FB)] and later by a Division Bench of this court in **Essar Telecom Infrastructure (P) Ltd. v. State of Kerala [2011 (2) KLT 516]** and held that there is no scientific evidence to substantiate that there are health issues consequent to the erection of a mobile tower and therefore, the construction of mobile towers cannot be obstructed on the grounds of health issues. That part, it is submitted that the Government of India has taken adequate and adept steps in order to control the radiation emanated from the mobile tower installations. Other contentions are

also raised and submit that petitioners have not made out any ground so as to interfere with the permit granted to the fifth respondent as per Ext.P1. It is also to be noted that the validity of Ext.P1 permit was only for a period of one year, from 16.04.2015 to 15.04.2016.

4. I have heard Adv. Sri. Habeeb P.M., the learned counsel for the petitioner, Adv. Sri. V.N. Haridas, learned counsel appearing for the Municipality, Adv. Sri. M. Gopikrishnan Nambiar and Adv. Sri. Jaymohan, the learned counsel appearing for the fifth respondent and Smt. K.G. Sarojini, the learned Government Pleader and

perused the pleadings and materials on record.

5. The basic contention advanced by the petitioners against the installation of the tower is health issue. However, apart from the submissions made in the writ petition, no other documents are produced by the petitioners before this Court to establish that there is scientifically proven evidence to show that due to the radiation health hazards are caused to human beings. It is true, the petitioners have submitted representations before the District Collector as well as the Municipality. The building permit for the installation of the tower is granted as per Chapter XIX of the Rules, 1999 which deals

with telecommunication towers. No doubt, a permit is required as per Rule 130 of the Rules, 1999 for the construction of a mobile tower from the Secretary. Rule 131 of the Rules, 1999 deals with distance from road and boundaries and Rule 132 of the Rules, 1999 deals with provisions regarding F.A.R. and height. Other protective measures are provided under the Rules such as Accessory Rooms, Electrical line clearance, Protective wall, Protection from lightning, Warning lights and color specifications etc. It is also clearly specified under Rule 139 of the Rules, 1999 that erection of any telecommunication tower or pole structures or

accessory rooms shall be permitted only over authorised buildings. Sub-rule (2) of Rule 140A of the Rules, 1999 makes it explicit that telecommunication towers or pole structures or accessory rooms shall be permitted in any zone or over any building irrespective of its occupancy; which thus means a telecommunication tower etc., can be constructed in a residential area also. Moreover, the contention with respect to health hazards is not supported by any evidence and therefore, the issue is settled by the judgments of this court referred to supra. However, a blunt contention is raised by the petitioners that a town

planning scheme is prevailing in the area without pointing out specifically the town planning scheme that applies to the particular area. In my view, such a contention might have been raised to take advantage of Rule 3A of the Rules, 1999 which specifies that ‘notwithstanding anything contained in these rules, provisions or regulations in any Town Planning Scheme in force under Town Planning Acts shall prevail over the respective provisions of these rules wherever such schemes exist’. As pointed out above, during the course of arguments also the petitioners could not point out any specific town planning scheme that applies to the area in question

so as to subdue the provisions of the Building Rules by virtue of the imperative conditions contained under the Rule 3A of the Rules, 1999. Moreover, the Kerala Municipality Building Rules, 1999 is now replaced by the Kerala Municipality Building Rules, 2019. Chapter XVIII of the Kerala Municipality Building Rules, 2019 (for short, the 'Rules, 2019') deals with telecommunication towers. Among other provisions Rule 86 of the Rules, 2019 deals with site approval. Sub-rule (1) of Rule 86 of the Rules, 2019 clearly specifies that no site approval is necessary for construction of telecommunication towers, telecommunication pole structures and accessory

rooms essential for such service. It is important to note that Sub-rule (2) of Rule 86 of the Rules, 2019 specifies that telecommunication towers or pole structures or accessory rooms shall be permitted in any zone of Master Plan/Detailed Town Planning Scheme/Interim Development Order in force under the Kerala Town and Country Planning Act, 2016, if any, or over any building irrespective of its occupancy.

6. Considering the above said vital aspects, it can be seen that there is no basis or foundation for the contentions advanced by the petitioners especially in view of the change in circumstances as

per the provisions of the Kerala Municipality Building Rules, 2019. During the course of arguments, the learned counsel for the fifth respondent submitted that consequent to the interim order passed by this Court, the telecom company has not constructed the tower. Moreover, Ext.P1 building permit was only for a period of one year expiring on 15.04.2016. Therefore, if at all any construction is to be done, in the absence of any valid permit issued by the Municipality in force, the provisions of the Kerala Municipality Building Rules, 2019 would apply.

Upshot of the above discussion is that the

petitioners have not made out any case of illegality or other legal infirmities justifiable to be interfered with exercising the power of judicial discretion conferred under article 226 of the Constitution of India.

The writ petition fails, accordingly, it is dismissed.

Sd/-

SHAJI P. CHALY

JUDGE

APPENDIX

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE BUILDING PERMIT
GRANTED BY THE CHITTOOR-THATHAMANGALAM
MUNICIPALITY TO THE 5TH RESPONDENT FOR
ERECTION OF A MOBILE TOWER DATED
17.04.2015.
- EXHIBIT P2 TRUE COPY OF THE TYPED COPY OF THE
MINUTES OF THE DISTRICT TELECOM
AUTHORITY, PALAKKAD DATED 17.12.2015.
- EXHIBIT P3 TRUE COPY OF THE REPRESENTATION
SUBMITTED BY THE 3RD PETITIONER TO THE
2ND RESPONDENT.
- EXHIBIT P4 TRUE COPY OF THE REPRESENTATION
SUBMITTED BY THE 3RD PETITIONER BEFORE
THE SECRETARY OF CHITTOOR-
THATHAMANGALAM MUNICIPALITY.
- EXHIBIT P5 TRUE COPY OF THE RECEIPT OF THE
PETITION SUBMITTED BY THEM AND ISSUED
BY THE CHITTOOR POLICE STATION.
- EXHIBIT P6 TRUE COPY OF THE COMPLAINT SUBMITTED BY
THE 2ND PETITIONER BEFORE THE DISTRICT
COLLECTOR, PALAKKAD DATED 09/01/2015.

RESPONDENT EXHIBITS

- Exhibit R5(A) TRUE COPY OF THE JUDGMENT DATED
18/09/2015 IN W.P(C) 28474/2015
- Exhibit R5(B) TRUE COPY OF THE G.O DATED 19/06/2015
ISSUED BY THE LOCAL SELF GOVERNMENT
DEPARTMENT, GOVERNMENT OF KERALA