
(2010) 12 AP CK 0090
In the Andhra Pradesh High Court
Case No : Writ Petition No. 24252 of 2010

GTL Infrastructure Limited	Vs	APPELLANT
Gram Panchayat and Others		RESPONDENT

Date of Decision : 22-12-2010

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 120, 121, 2(3), 99
Factories Act, 1948 — Section 2(14)

Citation : (2011) 1 ALT 661

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Ghanta Rama Rao, for the Appellant; G. Elisha, SC for Gram Panchayat for Respondent No. 1, A.G.P. for Panchayat Raj for Respondent No. 2 and Subba Reddy, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—At the interlocutory stage, the writ petition is taken up for hearing and disposal with the consent of the learned Counsel for the parties.

2. This writ petition is filed for a mandamus to declare the action of Respondent No. 2 in not allowing the Petitioner to complete the erection of cell tower in Survey Nos. 150/1 and 150/2 of Nadakuduru Village, Karapa Mandal, East Godavari District, as illegal and arbitrary.

3. At the hearing, Sri Ghanta Rama Rao, learned Counsel for the Petitioner, placed reliance on the order of this Court in M. Balaram Vs. Bharat Sanchar Nigam Limited and B. Lakshmama, wherein it is inter alia held as under:

I have carefully examined the provisions of Section 99 and I am of the view that the said provision is attracted only where the owner or occupier of any building proposes to put up verandahs, balconies, sunshades, weather frames and the like to project over a public road vested in such Gram Panchayat. The learned Counsel also relief on Section 121 of the Act in this regard. The said provision is not attracted either, because it pertains to the requirement of permission to be

obtained from the Gram Panchayat for construction of a building. Section 2(3) of the Act defined "building" as including a house, outhouse, shop, stable, latrine, shed (other than a cattle shed in an agricultural land), hut, wall and any other such structure whether of masonry, bricks, wood, mud, metal or other material whatsoever.

In my opinion, a metallic structure, which does not have any characteristic of house, out-house, shop, stable etc., does not fall within the definition of building. The words "whether of masonry, bricks, wood, mud, metal or other material" used in the said definition were preceded by the words "such structure" which necessarily means the structures such as house, out-house, shop, stable, latrine, shed etc., as mentioned in the earlier part of the definition. Therefore, this contention of the learned Counsel is rejected.

4. Sri S. Subba Reddy, learned Counsel for Respondent Nos. 3 to 7, has, however, submitted that in the above order, the provisions of Section 120 of the A.P. Panchayat Raj Act, 1994 (for short "the Act") have not been considered.

5. The said provision, contends the learned Counsel, makes a provision for applications to be made to the Gram Panchayat concerned for permission for construction, establishment or installation of factory, workshop or work-place in which steam or other power is to be employed. The learned Counsel invited my attention to Section 2(14) of the Act, which defined factory as a factory defined in the Factories Act, 1948 and includes any premises including the precincts whereof any industrial, manufacturing or trade process is carried on with the aid of steam, water, oil, gas, electrical or any other form of power which is mechanically transmitted and is not generated by human or animal agency.

6. In my opinion, even taking the very broad view of the above phrases, the cell tower will not fall within the above definition as in the precincts where the tower is located, it cannot be said that any industrial or trade process is carried on. Therefore, I do not find any merit in the submission of the learned Counsel for Respondent Nos. 3 to 7.

7. For the above-mentioned reasons, the writ petition is allowed.

8. As a sequel to disposal of the writ petition, the interim order, dated 29.09.2010, granted by this Court, in W.P.M.P. No. 31028 of 2010, shall stand vacated and W.P.M.P. No. 31028 of 2010 is disposed of as infructuous.