
(2021) 01 KL CK 0208

In the High Court Of Kerala

Case No : Writ Petition (C) No. 25321 Of 2020

Indus Towers Limited

APPELLANT

Vs

District Police Chief And Ors

RESPONDENT

Date of Decision : 06-01-2021

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6
Constitution Of India, 1950 — Article 226

Citation : (2021) 01 KL CK 0208

Hon'ble Judges : Anil K. Narendran, J

Bench : Single Bench

Advocate : P. Sathisan, Krishna.G. Nath, Dona Augustine, Sreekala K.L, K. Amminikutty

Final Decision : Dismissed

Judgement

1. The petitioner, a telecom infrastructure provider, which has obtained Ext.P3 building permit dated 08.10.2020 issued by Tholicode Grama Panchayat in respect of property comprised in Survey Nos.1814/3-1, 1814/3-3. 1814/5-3, 1814/4, has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 1st respondent to extend adequate and effective police protection to the petitioner, its workers, men or agents for the construction and roll out for operation of telecom tower in the property covered by deemed building permit. The petitioner has also sought for a writ of mandamus commanding respondents 1 and 2 to comply with Ext.P4 letter issued by the 3rd respondent with immediate effect.

2. On 18.11.2020, when this writ petition came up for admission, the learned Government Pleader was directed to get instructions.

3. On 05.01.2020, the Registry was directed to get a list of writ petitions filed by the petitioner, seeking police protection without party respondents, i.e., without the affected persons in the party array, on the allegation that the obstruction to the construction of mobile tower is caused by a group of unidentifiable persons.

Registry has furnished a list, as per which, about 20 writ petitions have been filed before this Court seeking police protection without party respondents.

4. Heard the learned counsel for the petitioner, the learned Central Government Counsel appearing for the 3rd respondent and also the learned Senior Government Pleader appearing for respondents 1, 2 & 4.

5. The basis for this writ petition is Ext.P5 representation dated 06.11.2020 filed before the 2nd respondent Station House Officer. The said representation read thus;

"After initiation of preliminary works for putting up of telecommunication towers, we came to understand that, there is a probability of public protest against construction of mobile tower. Under those circumstances, we are unable to carry on with our work at the site, which we are legally entitled to do on the basis of the permit granted by the local authority vide reference cited 1st above.

This is a very critical site since, the coverage in and around the site area is low and on account of the same. Unless and until a telecom tower is constructed in that particular area, telecom coverage cannot be provided for that specific location and, as you are aware, that in the current pandemic situation telecom network is playing a vital role in enabling communication for all the segments like Work from Home, Online classes for schools and colleges etc."

6. In *Bharat Singh v. State of Haryana* [(1988) 4 SCC 534] the Apex Court held that, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit, as the case may be, the Court will not entertain the point. The Apex Court held further that there is a distinction between a pleading under the Code of Civil Procedure Code, 1908 and a writ petition or a counter affidavit. While in a pleading, i.e., a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it.

7. *M/s.Larsen and Toubro Ltd. v. State of Gujarat* [(1998) 4 SCC 387] the Apex Court was dealing with a case arising out of the proceedings initiated for the acquisition of land for M/s.Larsen and Toubro Ltd. under the provisions of the Land Acquisition Act, 1894. The Apex Court noticed that, in the absence of any allegation that Rule 3 the Land Acquisition (Companies) Rules, 1963 had not been complied and there being no particulars in respect of non compliance of Rule 4 also, it is difficult to see as to how the High Court could have reached the finding that statutory requirements contained in these Rules were not fulfilled before issuance of notification under Section 4 and declaration under Section 6 of the Land Acquisition Act. High Court did not give any reason as to how it reached

the conclusion that Rules 3 and 4 had not been complied in the face of the record of the case. Rather, it returned a finding which is unsustainable that it was "not possible on the basis of the material on record to hold that there was compliance with Rules 3 and 4". The Apex Court held that, it is not enough to allege that a particular Rule or any provision has not been complied. It is a requirement of good pleading to give details, i.e., particulars as to why it is alleged that there is non compliance with a statutory requirement. Ordinarily, no notice can be taken on such an allegation which is devoid of any particulars. No issue can be raised on a plea, the foundation of which is lacking. Even where rule nisi is issued, it is not always for the department to justify its action when the court finds that a plea has been advanced without any substance, though ordinarily department may have to place its full cards before the court. On the facts of the case, the Apex Court found that the State has more than justified its stand that there has been compliance not only with Rule 4 but with Rule 3 as well, though there was no challenge to Rule 3 and the averments regarding non compliance with Rule 4 were sketchy and without any particulars whatsoever. High Court was, therefore, not right in quashing the acquisition proceedings.

8. In *Narmada Bachao Andolan v. State of Madhya Pradesh* [(2011) 7 SCC 639] a Three-Judge Bench of the Apex Court held that, it is a settled proposition of law that a party has to plead its case and produce/adduce sufficient evidence to substantiate the averments made in the petition and in case the pleadings are not complete the Court is under no obligation to entertain the pleas. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question(s) in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that as a rule relief not founded on the pleadings should not be granted. Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. If any factual or legal issue, despite having merit, has not been raised by the parties, the court should not decide the same as the opposite counsel does not have a fair opportunity to answer the line of reasoning adopted in that regard. Such a judgment may be violative of the principles of natural justice.

9. In *Bihar Eastern Gangetic Fishermen Cooperative Society Ltd. v. Sipahi Singh* [(1977) 4 SCC 145] a Three-Judge Bench of the Apex Court held that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction.

10. In *State of U.P. v. Harish Chandra* [(1996) 9 SCC 309] the Apex Court held that, under the Constitution a mandamus can be issued by the Court when the applicant establishes that he has a legal right to performance of legal duty by the party against whom the mandamus is sought and said right was subsisting on the date of the petition. The duty that may be enjoined by mandamus may be one imposed by the Constitution or a Statute or by Rules or orders having the force of law. But no mandamus can be issued to direct the Government to refrain from enforcing the provisions of law or to do something which is contrary to law.

11. In *Oriental Bank of Commerce v. Sunder Lal Jain* [(2008) 2 SCC 280] the Apex Court held that, in order that a writ of mandamus may be issued, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authorities. In the said decision, the Apex Court noticed the principles on which a writ of mandamus can be issued have been stated as under in 'The Law of Extraordinary Legal Remedies' by F. G. Ferris and F. G. Ferris, Jr. that, mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice.

12. In *Bhaskara Rao A.B. v. CBI* [(2011) 10 SCC 259] the Apex Court reiterated that, generally, no court has competence to issue a direction contrary to law nor can the court direct an authority to act in contravention of the statutory provisions. The courts are meant to enforce the rule of law and not to pass orders or directions which are contrary to what has been injected by law.

13. In order to seek police protection under Article 226 of the Constitution of India, the petitioner in a writ petition filed under Article 226 of the Constitution of India has to first approach the concerned Station House Officer with a proper complaint against those who are causing threat to the life and/or the property of the petitioner. Since a writ of mandamus can be granted only in a case where there is a failure on the part of that officer concerned to discharge the statutory obligation, in the complaint filed before the concerned Station House Officer, which is foundation upon which a writ petition seeking police protection has been built, the petitioner has to disclose his legal right to compel performance of a statutory duty cast upon that authority. The said complaint should contain necessary pleadings. In case there is any failure on the part of the officer concerned in discharging the statutory duty or obligation, the petitioner can approach this Court in a writ petition filed under Article 226 of the Constitution of India, seeking appropriate reliefs, in which the State of Kerala, the officer concerned and also those who are causing threat to the life and/or the property of the petitioner, as alleged in the said complaint, are to be arrayed as respondents.

14. Viewed in the light of the law laid down in the decisions referred to supra,

conclusion is irresistible that, in a writ petition seeking police protection, the petitioner has to make out a cause of action in the representation or complaint that has been filed before the concerned Station House Officer. Such a representation is the foundation of a writ petition seeking police protection, since, the entitlement to seek a writ of mandamus arises when there is failure on the part of the concerned Station House Officer in discharging his statutory obligations.

15. In the instant case, as already noticed, in Ext.P5 representation dated 06.11.2020 filed before the 2nd respondent Station House Officer, the petitioner has not made out a case to compel the 2nd respondent Station House Officer, the performance of a statutory duty. The only averment in that representation is that there is probability of public protest against the construction of mobile tower. Similarly worded representations are produced in other writ petitions seeking police protection for putting up telecommunication towers. In Ext.P2, the petitioner has absolutely no case that there is any obstruction to the construction of mobile tower of a group of unidentifiable persons, as alleged in the writ petition.

16. The document marked as Ext.P4 is a copy of communication dated 24.03.2020 issued by the Chairman, Kerala State Telecom Disaster Co-ordination Committee, addressed to District Collectors, Police Commissioners and Superintendents of Police in the State requesting that Telecom Service Providers, Internet Service Providers, their authorised vendors and Telecom Infrastructure Providers be given the support of State Police and Disaster Response Forces for smooth and seamless operation of telecom services in the State of Kerala. Therefore, in case there is any obstruction from the local residents to the construction and rolling out for operation of a telecommunication tower, the Telecom Infrastructure Provider can approach the concerned Station House Officer seeking police assistance with a proper complaint against those who are causing such obstruction. In case there is inaction on the part of the concerned Station House Officer, the Telecom Infrastructure Provider can approach the District Telecom Committee constituted by the State Government, which has been constituted for the purpose of redressing the grievances of stakeholders including public at large in all matters pertaining to mobile telecommunication towers.

17. In the above circumstances, the petitioner is not entitled to a writ of mandamus commanding the respondents 1 and 2 to extend police protection for the construction and roll out for operation of telecommunication tower in the property covered by Ext.P3 building permit.

18. In the result, this writ petition fails and the same is accordingly dismissed; however without prejudice to the right of the petitioner to approach the District Telecom Committee constituted by the State Government, in case there is any obstruction to the construction and roll out for operation of the telecommunication tower in the property covered by Ext.P3 building permit.

No order as to costs.