
(2010) 08 AP CK 0062

In the Andhra Pradesh High Court

Case No : Writ Petition No. 10884 of 2010

M. Balaram

APPELLANT

Vs

Bharat Sanchar Nigam Limited and B. Lakshmama

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 121, 2(3), 99

Citation : (2010) 6 ALD 34 : (2010) 6 ALT 648

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

Bench : Single Bench

Advocate : Y. Sudhakar, for the Appellant; J.K. Anitha, for B. Devanand, for the Respondent

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a Mandamus to declare the action of Respondent Nos. 1 and 2 in proposing to install a cell tower over the land admeasuring Ac.0.15 cents in Sy. No. 753/1 of Karedu Village, Ulavapadu Mandal, Prakasam District, as illegal and arbitrary.

2. I have heard Sri Y. Sudhakar, learned Counsel for the Petitioner and perused the record.

3. The Petitioner is the owner of house bearing No. 2-45 of Karedu Village, Ulavapadu Mandal, Prakasam District. He averred that to the North of his house, K. Subba Reddy owned an extent of Ac.6.43 cents in Sy. No. 753/1, out of which Ac.0.15 cents was alienated to Respondent No. 4 for the purpose of erection of cell tower. The grievance of the Petitioner is that Respondent Nos. 1 and 2 are proposing to install a cell tower over the said land without obtaining permission from the Gram Panchayat of Karedu. The Petitioner averred that already a cell tower of Airtel company is in existence within a distance of about 20 meters of the proposed site and that in view of the close proximity of the proposed cell tower, he may be exposed to health hazards like headache, sleep disorders, poor

memory, mental excitation etc.

4. At the hearing, the learned Counsel for the Petitioner submitted that u/s 99 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, "the Act") it is incumbent upon Respondent Nos. 1 and 2 to obtain permission from Respondent No. 3 Gram Panchayat for erection of cell tower and that as no such permission has been obtained, they are not entitled to erect the same.

5. 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 relied 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, out-house, 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.

6. 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.

7. As regards the submission of the learned Counsel that erection of a cell tower causes health hazards, the learned Counsel has not filed any material which authoritatively established that operation of cell towers causes such health hazards. The plea of the Petitioner in this regard is merely based on his apprehension rather than on established fact. Therefore, this Court cannot accept such a plea in the absence of any proof in support thereof.

8. For the abovementioned reasons, I do not find any ground to interfere in the writ petition and the same is accordingly dismissed.

9. As a sequel to dismissal of the writ Petition, W.P.M.P. No. 1 3911 of 2010 filed by the Petitioner for interim relief is also dismissed.