
(2017) 01 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 8851 of 2014

Mohalla Sudhar Committee

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 RCRCivil 308

Hon'ble Judges : Amit Rawal, J.

Bench : Single Bench

Advocate : Inderjeet Sharma, Advocate, for the Petitioner; Yatinder Sharma, Addl. A.G. Punjab, for the Respondent; Praveen Chander Goyal, Advocate for M.C., Bathinda, for the Respondent; Aashish Chopra, Advocate, for the Respondent No. 3; Ms. Mansi Bansal, Advocate, for the Respondent No. 4

Final Decision : Dismissed

Judgement

Amit Rawal, J. (Oral)—The petitioner purported to be the resident of Aggarwal Street Back Side Sirki Bazar Bhatinda has invoked the extra ordinary writ jurisdiction under Article 226/227 of Constitution of India challenging Annexure P-1 i.e. permission granted by Municipal Corporation, Bathinda granting the permission to respondent No.3 for erecting the mobile tower on the premise that it is against the following guidelines:-

"(i) First preference shall be given to the location of tower in the Forest areas.

(ii) Second preference shall be given to the location of tower in the open or public areas away from residential locations.

(iii) Where it is not possible to avoid the location of the tower in residential area the same shall be located in open space or park with prior consent of owners of adjoining residential houses.

(iv) Erection of tower shall not be allowed within a radius of 100 meter from residential building school and hospital.

(v) Installation of Base Station Antennas within the premises of schools and hospitals may be avoided because children and patients are more susceptible to Electro Magnetic Field.

(vi) Installation of Base Station Antennas in narrow lanes should be avoided in order to reduce the risks caused by any earth quake or wind related disaster.

(vii) The Base Station Antennas should be at least 3 m away from the nearby building and antennas should not directly face the building. Further the lower end of the antenna should be at least 3 meter above the ground or roof."

2. Contention of Mr. Inderjeet Sharma, learned counsel appearing on behalf of petitioner is that installation of the tower in residential colony will be health hazard for all the residence and as well as the children. Representation had been made to the Deputy Commissioner but same has not been decided. Mohalla Sudhar Committee had also passed the resolution against the installation of the tower. Permission has been granted without doing any spot inspection, therefore, action of the Municipal Corporation is totally illegal, repungant and perverse.

3. Per Contra, Mr. Ashish Chopra, learned counsel appearing on behalf of respondent No.3 has drawn the attention of this Court to the written statement by submitting that the respondent-company has obtained the licence under the Broadband Wireless Access (BWA) 2010 to provide 4G and broadband services in the Circles/States Pan-India including the State of Punjab. Application dated 06.12.2013 for installation of the communication tower was submitted to the Municipal Commissioners in consonance with the advisory guidelines (Annexure R-3/1) and also guidelines issued by the State of Punjab as Annexure R-3/2 and after taking into consideration the guidelines, permission was granted. He also drawn the attention of this Court to site plan annexed with the petition to point out that tower is being erected on the commercial area i.e. on the shop and not on the residential area.

He further submits that in various judgments passed by Hon"ble High Courts in India, it has been held that radiation from Cell Phone Towers does not cause any health problem to persons residing or working in the locality and referred to the judgment passed by Coordinate Bench of this Court in Dhup Singh and others v. Union of India and another, 2014(4) PLR 564, wherein by taking into consideration all the factors, writ petition of identical nature, has been dismissed.

4. Mr. Praveen Chander Goyal, learned counsel appearing on behalf of respondent No.2-Municipal Corporation, Bathinda submits that writ petition is liable to be dismissed for want of impleadment of the proper and necessary party and since permission has been granted by the Municipal Corporation yet there is no impleadment. However, he has rendered assistance to the Court by saying that petition is liable to be dismissed on lack of particulars as no proof of residence of that area has been attached. Particulars of the community is registered or not is also wanting.

5. I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. Inderjeet Sharma, Advocate for the petitioner. Identical occasion arose before this Court in the judgment cited (Supra), wherein this Court in para No.17 of the judgment, while relying upon ratio decidendi culled out by Kerala High Court in a case of Essar Telecom In fracture (P) Ltd. v. The Circle Inspector of Police and others, 2008 (3) KLJ 672 held that electromagnetic field up to 300 G.Hz will not have any adverse health effect on the person on exposure. The permission has been granted by Municipal Corporation after taking into consideration the advisory guidelines (Annexure R-3/1) and also guidelines issued by the State of Punjab as Annexure R-3/2 which has not been disputed or denied by the petitioner, in essence, guidelines are still holding its feet. It is prerogative of the Municipal Corporation to grant licence after examining the guidelines. No third party can be permitted to challenge the same. I have also seen the site plan. The tower is being erected on the commercial area i.e. above the shop.

6. In my view, writ petition is nothing but is an arm twisting tactics. Municipal Corporation was required to be impleaded as a party. Moreover, no proof of their being residence of that area has been attached. Writ petition is lacking material particulars which is essential requirement for the purpose of scope of interference or judicial review.

7. There is no merit in the writ petition and is devoid of merits. Resultantly, the same is dismissed.