
(2021) 10 KL CK 0079

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19685 Of 2020

P.Radhakrishnan

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 13-10-2021

Acts Referred:

Kerala Municipal Building Rules, 1999 — Rule 11(1), 12, 56(3)(j)

Citation : (2021) 10 KL CK 0079

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : P.K.Babu, Syamanthak B.S., C.V.Manuvilsan, P.Sathisan, Krishna.G.Nath, Dona Augustine, Santhosh Mathew, Arun Thomas, Jennis Stephen, Vijay V. Paul, Karthika Maria, Veena Raveendran, Anil Sebastian Pulickel, Divya Sara

Final Decision : Dismissed

Judgement

N.Nagaresh, J

1. The petitioner, a resident of Choorakkad, Thekkumbhagam in Tripunithura, has filed this writ petition praying to quash Exts.P1, P2 and P4 and to direct the 2nd respondent not to implement any action pursuant to Exts.P1 and P2.

2. The petitioner states that more than 100 families are residing in the area at Thekkumbhagam where the petitioner resides, which is along the western side of Vaikom-Tripunithura Road. The 3rd respondent obtained permission from the District Collector to erect a Telecommunication Tower in the Area. The property where the Telecommunication Tower is proposed is owned by the 5th respondent and leased out to the 3rd respondent. The Ayurveda Medical College Hospital, Choorakkad Government UP School and an Eight storied Residential Complex are within 150 to 200 metres distance from the proposed Tower location. Against the grant of Building Permit for the Tower, the petitioner filed Appeal before the Tribunal for Local Self Government Institutions. The appeal was dismissed as per Ext.P4 Order.

3. The petitioner submits that though Ext.P6 Site Plan of the Tower shows 6 Cents plot area, the extent available is only 4.5 Cents, as would be disclosed by Ext.P8 Lease Deed. The petitioner produced another Ext.P10 Lease Deed for 6 Cents area along with the application. When the said Lease Deed was produced, an extent of 1.5 cents out of 6 Cents was already sold to one Mr. Francis as per Ext.P9. The 3rd respondent-Company has manipulated the records.

4. As per Ext.P5 Guidelines issued by the IT Department of the Government of Kerala, a Local Self Government Institution should confirm the property and ownership details. It should be ensured that the proposed Tower is not coming within 500 metres of Schools and Hospitals and that the Base Station Antenna is not in narrow lanes of width less than or equal to 5 metres. Safe Distance norms are also prescribed. The proposed Tower violates all these requirements and the Tribunal failed to appreciate the same in Ext.P4 order.

5. The learned counsel for the petitioner urged that the 3rd respondent has not obtained Fire and Safety Certificate for the Tower. The original Building Permit issued to the 3rd respondent expired on 21.10.2017. The Permit was thereafter renewed only in 2018. There was no application for renewal before 21.10.2018. Rules 11(1), 12 and 56(3)(j) of the Kerala Municipal Building Rules, 1999 are violated. In the circumstances, Ext.P4 order of the Tribunal cannot stand legal scrutiny, urged the learned counsel for the petitioner.

6. The learned counsel for the 4th respondent submitted that the name of the 3rd respondent-Idea Cellular Ltd. has been changed to ATC Infrastructure Services Private Ltd., who is the 4th respondent. Ext.P1 Permit was valid till 21.10.2017. Before the expiry of the Permit, the 4th respondent submitted application for renewal on 04.10.2017. The validity of the permit was actually extended only on 13.04.2018, for a period up to 21.10.2018. As the 4th respondent has applied for renewal before the expiry of the period and as the Municipality did not reject the application, the 4th respondent is entitled to the benefit of Deemed Licence also. At any rate, the 4th respondent cannot be blamed for the delay in renewal. Ext.R4(a) Occupancy Certificate was issued by the Municipality on 20.10.2018 finding that there is no Building Rules violation or violation of Permit conditions. The Government has issued Ext.R4(2) advisory guidelines which are in supersession of Ext.P5 Guidelines. The Telecommunication Tower satisfies the Safe Distance criteria laid down in Annexure-II to Ext.R4(2). Hence, the arguments of the petitioner based on Ext.P5 are without any force. The Antenna of the Tower is at a height of 40 metres and there is no building in front of the Antenna. Therefore, the writ petition is devoid of any merit and the same is liable to be dismissed, contended the counsel for the 4th respondent.

7. The learned counsel for the 3rd respondent pointed out that for redressal of grievances relating to Telecommunication Towers, in view of the judgment of the Division Bench of this Court in Indus Towers Ltd. v. The Sub Inspector of Police and others [2014 (4) KLT 296], the petitioner has to approach the District

Telecom Committee. The learned Standing Counsel for the 2nd respondent-Municipality stated that the District Telecom Committee has already given its assent to the Telecom Tower in issue.

8. Heard the learned counsel for the petitioner, the learned Government Pleader for the 1st respondent and the respective Standing Counsel representing respondents 2, 3 and 4.

9. Aggrieved by issuance of Ext.P1 Building Permit and the grant of its extension as per Ext.P2, the petitioner approached the Tribunal for Local Self Government Institutions filing Appeal No.691/18. The Tribunal considered the arguments of the petitioner against grant of Building Permit and its extension. The Tribunal considered the issues raised based on available materials. The Tribunal found that the 3rd respondent applied for renewal of Building Permit in time.

10. As regards the argument based on Government guidelines, the Tribunal noted that those Guidelines cannot override statutory rules. On the argument based on the extent of land on which the Tower is proposed, the Tribunal held that there is a clarification with respect to the extent of property made by the 4th respondent on production of rent deed, which is acceptable. The Occupancy Certificate was issued as the Municipality found no Building Rules violation. There is no allegation that the 4th respondent has violated any Building Rule. The Tribunal therefore concluded that there is no reason to set aside the Building Permit.

11. It is evident from the pleadings that the renewal of Building Permit was granted on the basis of an application submitted by the 4th respondent in time. The 4th respondent has constructed the Telecommunication Tower satisfying the requirements contained in Ext.R4(2) Advisory Guidelines which are in supersession of Ext.P5 Guidelines. The Telecommunication Tower satisfies the Safe Distance criteria laid down in Annexure-II to Ext.R4(2) Guidelines, which are issued subsequent to Ext.P5. In such circumstances, this Court do not find any illegality in Ext.P4 Order of the Tribunal.

The writ petition is therefore without any merit and hence it is dismissed. It is made clear that the petitioner is at liberty to approach the District Telecom Authority to redress any grievance arising subsequent to the energisation of the Telecommunication Tower.