

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE S. SIRI JAGAN

&

THE HONOURABLE MR. JUSTICE K. RAMAKRISHNAN

MONDAY, THE 15TH DAY OF JULY 2013/24TH ASHADHA, 1935

WP(C).No. 9026 of 2013 (C)

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PETITIONER(S):

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INDUS TOWERS LIMITED  
CIRCLE OFFICE AT VANKARATH TOWERS, 8TH FLOOR, NH-47  
PALARIVATTOM, KOCHI-24, REPRESENTED BY ITS HEAD LEGAL  
PREMAKRISHNAN NAIR.

BY ADV. SRI.V.PHILIP MATHEW

RESPONDENT(S):

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1. THE SUB INSPECTOR OF POLICE  
THIRUVALLA, PATHANAMTHITTA DISTRICT-689645
2. THE CIRCLE INSPECTOR OF POLICE  
THIRUVALLA, PATHANAMTHITTA DISTRICT-689645
3. THE DEPUTY SUPERINTENDENT OF POLICE  
THIRUVALLA, PATHANAMTHITTA DISTRICT-689645
4. THE DISTRICT POLICE CHIEF  
PATHANAMTHITTA-689645
5. THIRUVALLA MUNICIPALITY  
MUNICIPAL OFFICE, THIRUVALLA  
PATHANAMTHITTA DISTRICT-689103 REPRESENTED BY ITS SECRETARY.

6. SAJI

THADATHIL HOUSE, BETHEL JUNCTION, KUTTAPUZHA P.O.  
THIRUVALLA, PATHANAMTHITTA DISTRICT-689103

7. JOHNSON

THADATHIL HOUSE, BETHEL JUNCTION, KUTTAPUZHA P.O.  
THIRUVALLA, PATHANAMTHITTA DISTRICT-689103

8. SAJI

PALKOTTAL VALIYAPARAMBIL HOUSE, BETHEL JUNCTION  
KUTTAPUZHA P.O., THIRUVALLA  
PATHANAMTHITTA DISTRICT-689103

9. NAZAR @ KARUTHA ATHA

THAKADIYELVATTACHUVATTIL HOUSE, BETHEL JUNCTION  
KUTTAPUZHA P.O., THIRUVALLA  
PATHANAMTHITTA DISTRICT-689103

10. FRANCIS

PLAMCHUVATTIL HOUSE, VARIKKAD, BETHEL JUNCTION  
KUTTAPUZHA P.O., THIRUVALLA  
PATHANAMTHITTA DISTRICT-689103

11. BIJU

ERATTA PLAMCHUVATTIL HOUSE, VARIKKAD, BETHEL JUNCTION  
KUTTAPUZHA P.O., THIRUVALLA  
PATHANAMTHITTA DISTRICT-689103

12. SONY

PUTHUPARAMBIL, VARIKKAD, ANNAVATTAM  
BETHEL JUNCTION, KUTTAPUZHA P.O., THIRUVALLA  
PATHANAMTHITTA DISTRICT-689103

13. STATE OF KERALA

REPRESENTED BY ITS CHIEF SECRETARY  
KERALA GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

14. UNION OF INDIA

REPRESENTED BY ITS SECRETARY

MINISTRY OF COMMUNICATIONS AND IT  
DEPARTMENT OF TELE COMMUNICATIONS, SANCHAR BHAVAN, 20  
ASHOKA ROAD, NEW DELHI-110001.

15. ABRAHAM

S/O.KURIAN, KOCHIYIL BINU VILLA, KUTTAPUZHA P.O.  
THIRUVALLA, PATHANAMTHITTA DISTRICT-689103

R6-R9 BY ADV. SMT.KEERTHI SOLOMON

R6-R9 BY ADV. SMT.T.T.JAYANTHY

R3 BY ADV. SRI.S.SUBHASH CHAND

R14 BY ADV. SRI.P.PARAMESWARAN NAIR, ASG OF INDIA  
GOVERNMENT PLEADER SRI.MUHAMMED SHA.P.A

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 15-07-2013, THE  
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS  
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EXHIBIT P1: TRUE COPY OF THE CERTIFICATE OF INCORPORATION ISSUED BY THE ASSISTANT REGISTRAR OF COMPANIES, NATIONAL CAPITAL TERRITORY OF DELHI AND HARYANA

EXHIBIT P2: TRUE COPY OF THE CERTIFICATE FOR COMMENCEMENT OF BUSINESS ISSUED BY THE ASSISTANT REGISTRAR OF COMPANIES, NATIONAL CAPITAL TERRITORY OF DELHI AND HARYANA

EXHIBIT P3: TRUE COPY OF THE REGISTRATION CERTIFICATE NO.177/2008 DT.10-1-2008 ISSUED BY THE MINISTRY OF COMMUNICATIONS & IT, DEPARTMENT OF TELECOMMUNICATIONS

EXHIBIT P4: TRUE COPY OF THE FRESH CERTIFICATE OF INCORPORATION CONSEQUENT UPON CHANGE OF NAME ISSUED BY THE DEPUTY REGISTRAR OF COMPANIES, NATIONAL CAPITAL TERRITORY OF DELHI AND HARYANA

EXHIBIT P5: TRUE COPY OF THE COMMUNICATION SEND BY THE DIRECTOR (CS-III) OF THE MINISTRY OF COMMUNICATIONS & IT, DEPARTMENT OF TELECOMMUNICATIONS, NEW DELHI

EXHIBIT P6: TRUE COPY OF THE BUILDING PERMIT NO.BP668/12-13 DATED 11-3-2013 ISSUED BY R5

EXHIBIT P7: TRUE COPY OF THE REPRESENTATION DT.21-3-13 SEND BY THE PETITIONER TO R4

EXHIBIT P8: TRUE COPY OF THE POSTAL RECEIPTS.

EXHIBIT P9: TRUE COPY OF THE GUIDELINES ISSUED BY R14.

EXHIBIT P10: TRUE COPY OF THE ADVISORY DATED 9-8-2012 ISSUED BY THE MINISTRY OF ENVIRONMENT AND FORESTS

EXHIBIT P11: TRUE COPY OF THE COMMUNICATION DT.3-10-12 ISSUED BY THE DEPARTMENT OF TELECOMMUNICATIONS TO MINISTRY OF ENVIRONMENT AND FORESTS

RESPONDENT(S)' EXHIBITS  
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NIL

///TRUE COPY///

P.A. TO JUDGE

S.SIRI JAGAN & K.RAMAKRISHNAN, JJ.

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W.P. (C). No. 9026 of 2013

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Dated this the 15th day of July, 2013

**J U D G M E N T**

S. Siri Jagan, J.:

The petitioner is a company engaged in the business of providing telecommunication services to intending customers.

They obtained a permit for construction of a telecommunication tower for the purpose of their business. **The petitioner complains that respondents 6 to 12 are causing obstructions to the construction of the tower. It is under the above circumstances, the petitioner has filed this writ petition seeking the following reliefs:**

"i) Issue a writ of mandamus or other appropriate writ order or direction commanding respondents **1 to 4** to grant adequate and effective protection to the petitioner, their agents and their workers for constructing/erecting mobile transmission tower in the property situated in Survey No.264/10 of Kuttapuzha Village, Thiruvalla Taluk, Pathanamthitta District based on Exhibit P6, repair, upgrade, maintain and to energize the tower without any threat or obstruction from respondents 6 to 12 or any others under them.

ii) Issue a writ of mandamus or other appropriate writ order or direction commanding respondents 1 to 4 to grant adequate and effective police protection to the petitioner, their agents and their workers for sharing mobile transmission tower being constructed based on Exhibit P6 with other service without any threat or **obstruction from respondents 6 to 12 or any others** under them.

iii) Issue a writ of mandamus or other appropriate writ order or direction commanding respondents 1 to 4 to take appropriate action on Exhibit P7 within a time limit to be specified by this Hon'ble Court."

2. Respondents 6 to 9 appear through counsel and submit that they have not obstructed the construction of the tower and they have no intention to do so also. It is submitted that if anybody else is causing obstruction, respondents 6 to 9 are not responsible for the same. Respondents 10 to 12 have not chosen to enter appearance to contest the matter.

3. This Court passed an interim order on 22.5.2013, which reads thus:

"There will be an interim order directing respondents 1 to 4 to afford effective police protection for the construction of the mobile transmission tower in Survey No.264/10 of Kuttappuzha Village, Thiruvalla Taluk, Pathanamthitta District based on Ext.P6 by the petitioner as against respondents 6 to 12.

We make it clear that, the mobile tower shall not be operated except after getting orders from this Court.

It will be subject to further condition that no antenna shall be fixed except after getting permission from this Court.

We further make it clear that, no generator shall be installed without getting orders from this Court.

It will be subject to our decision on the question also regarding the effect of the Advisory issued by the Ministry of Environment and Forest on the one hand and the Advisory issued by the Ministry of Telecommunication on the other hand. We make it clear that the construction will be entirely at the risk of the petitioner.

**This order will remain in force for a period of one month. It will be subject to the result of the writ petition."**

4. Heard the parties.

5. Cellular phones are the order of the day. It has come to such a stage that it is impossible for us to live without a mobile phone.

In fact mobile phones have practically become extensions of our bodies. If there are to be mobile phone connections, there have to be telecommunication towers also.

Whether the same causes health hazards or not, we have to live with it for the rest of our lives. All what we can do is to ensure that the petitioner operates the telecommunication tower in accordance with the licences, permits and conditions for operating telecommunication towers.

Accordingly, if the petitioner operates the telecommunication tower in accordance with law, nobody has a right to obstruct them from doing so.

In the above circumstances, the petitioner is permitted to operate the telecommunication tower, which they have erected with the help of the interim order, provided they conform to the permits, licences and other provisions of law relating to the same.

If anybody obstructs the same, respondents 1 and 2 shall see that adequate police protection is afforded to the petitioner for operating the telecommunication tower without obstruction from anybody.

The writ petition is disposed of as above.

Sd/-

S.SIRI JAGAN, JUDGE

Sd/-

K.RAMAKRISHNAN, JUDGE

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///True copy///

P.A. To Judge.