



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 9488/2023

Reliance Jio Infocomm Ltd., 1st Floor, Anand Bhawan, Sansar Chandra Road, Jaipur (Raj.) through its Authorized Signatory Mr. Manoj Likhyani.

-----Petitioner

Versus

1. Dr.Harish Agrawal S/o Late Sh.Laxminarayan Agrawal, aged about 70 years, (Sr. Citizen) R/o Plot No.9, Sindhi Colony, Bani Park, Jaipur (Raj.)
2. Jaipur Development Authority, through Commissioner, Ramkishore Vyas Bhawan, Indira Circle, Jawahar Lal Nehru Marg, Jaipur- 302004 (Raj.)
3. Executive Engineer, R.R.P.-Second, Nodal Officer, O.F.C. Jaipur, Jaipur Development Authority, Ramkishore Vyas Bhawan, Indira Circle, Jawahar Lal Nehru Marg, Jaipur- 302004 (Raj.)
4. Director (Engineering-Fourth), Jaipur Development Authority, Ramkishore Vyas Bhawan, Indira Circle, Jawahar Lal Nehru Marg, Jaipur- 302004 (Raj.)

-----Respondents

For Petitioner(s)	:	Mr Anuroop Singhi and Mr.Arjun Parashar, Advocates.
For Respondent(s)	:	Mr.Shyam Sunder Sharma, Advocate for respondent No.1. Mr.Rajesh Maharishi, Addl. Advocate General.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

RESERVED ON	:	<u>08/01/2024</u>
PRONOUNCED ON	:	<u>25/01/2024</u>

Order

REPORTABLE

1. The issues involved in this petition are “(1) Whether the Permanent Lok Adalat has jurisdiction to adjudicate the dispute



regarding installation of mobile tower? & (2) Whether installation or removal of mobile tower is covered by the definition of "public utility service", as defined under Section 22A(b) of the Legal Services Authorities Act, 1987 (for short "the Act of 1987")?" It is in the above background, the issues involved in this petition are required to be considered by this Court.

FACTUAL MATRIX:

2. This petition has been filed by the petitioner to annul the impugned order dated 29.05.2023 passed by the Permanent Lok Adalat, Jaipur Metropolitan, Jaipur (for short "the PLA") by which a direction has been issued to the Deputy Commissioner and Enforcement Officer of the Jaipur Development Authority (for short "the JDA") to seize the mobile tower, installed at the site in question and dismantle the same within 15 days and recover the amount of expenses incurred in the above process from the petitioner and a further direction has been issued to the JDA to submit the compliance report of the order dated 29.05.2023 till 30.06.2023.

3. Feeling aggrieved by the aforesaid order and directions issued by the PLA, the petitioner has invoked the extraordinary jurisdiction of this Court by way of filing this petition within the following prayer:-

"It is, therefore, most respectfully prayed that this Hon'ble Court may most graciously be pleased to accept and allow the writ petition and further:

(i) By an appropriate writ, order or direction the impugned order dt. 29.05.2023, passed by Permanent



Lok Adalat, Jaipur in Complaint No.308/2022, may be quashed and set aside.

(ii) By an appropriate writ, order or direction, the preliminary objections and reply filed by the petitioner, may kindly be accepted and the application filed by the Respondent No.1. Application may kindly be dismissed as not maintainable;

(iii) By an appropriate writ order or direction the entire proceedings of Complaint No.308/2022 may be quashed and set aside.

(iv) Any other order which this Hon'ble Court deems just and proper in the facts and circumstances of the case may also be passed in favour of the petitioner.

(v) Cost of the writ petition may also be awarded in favour of the petitioner."

RIVAL SUBMISSIONS:

4. By way of filing this petition, the petitioner has challenged the legality and validity of the order dated 29.05.2023 passed by the PLA. Counsel for the petitioner submits that a mobile tower was installed by the petitioner-company on the site in question way back in the year 2014 and after a lapse of more than 8 years, the respondent No.1 filed a complaint for removal of the same. Counsel submits that the application filed by the petitioner is time barred because the tower was installed in the year 2014 whereas the application for removal of tower was submitted in the year 2022. Counsel further submits that with regard to redressal of the aforesaid grievance, the respondent No.1 approached the District Telecom Committee as per the clause 15(4) of the order dated 06.02.2017 issued by the Department of Urban Development and Housing. Counsel submits that when the respondent No.1 already availed the alternative remedy, there was no reason and occasion available with him to file a complaint under Section 22C of the Act



of 1987. Counsel submits that the aforesaid complaint filed by the respondent No.1 was not maintainable before the PLA as the issue involved in the complaint does not fall within the purview of "public utility service", as defined under Section 22A(b) of the Act of 1987. Counsel submits that the matter was posted before the Lok Adalat for reconciliation proceedings and reconciliation in the matter was not possible, so on the fateful day, i.e. 12.04.2023, the petitioner sought time to lead evidence in support of his contentions. Counsel submits that without granting any opportunity to lead the evidence the complaint was decided on the very same day and a direction has been issued to the authorities to submit the compliance report within a period of 20 days i.e. on or before 03.05.2023. Lastly, learned counsel for the petitioner referred the letter dated 18.11.2016 and submitted that the Jaipur Development Authority (for short, "JDA") finds the location of the tower in question as correct latitude and longitude given in the application. Counsel submits that without any jurisdiction to pass the order impugned, the complaint filed by the respondent No.1 was entertained and in support of his contention, he has placed reliance upon the following judgments:-

- 1) M/s Ascend Telecom Infrastructure Private Limited Vs. Ajay Kumar and Ors. [CWJC No.1689/2019] decided by the Patna High Court.
- 2) Vasu Ram and Ors. Vs State of Rajasthan S.B. Civil Writ Petition No.3159/2018 decided by this Court on 13.12.2012.





3) Raj Kumar and Ors. Vs. State of Rajasthan and Ors. in S.B. Civil Writ Petition No.566/2020 decided by this Court on 22.01.2020.

4) Rohitash Khatana Vs State of Rajasthan and Ors. in S.B. Civil Writ Petition No.12035/2020 dated 02.01.2024.

5. Counsel submits that in view of the above, the impugned order dated 29.05.2023 passed by the PLA be quashed and set aside and the complaint filed by the respondent No.1 is liable to be rejected.

6. Per contra, learned counsel for the respondent No.1 as well as the counsel for the State-respondents opposed the arguments raised by the counsel for the petitioner and submitted that no permission was granted to the petitioner by JDA to install the tower in question on the land of the respondent No.1. Counsel submits that the permission was granted to the petitioner by JDA on 24.06.2014 for installation of the mobile tower at the site of Near Shanti Marriage Garden, 80 ft. Road, Brijmandal Colony, Jhotwara, Jaipur. Counsel submits that while issuing No Objection Certificate in this regard a specific condition was put that if any, complaint or any adverse situation is found then the JDA would take a decision in regard to removal of mobile tower with the expenditure chargeable to petitioner. Counsel submits that a complaint was filed by the respondent No.1 before the District Telecom Committee as per clause 15(4) of the order dated 06.02.2017, but the authority concerned was sitting over the matter hence, the respondent No.1 approached the PLA for redressal of his



grievances. Counsel submits that immediately after receipt of the complaint, the JDA issued a notice to the petitioner indicating therein that there was violation of the terms and conditions of No Objection Certificate and till date no reply of the said notice has been submitted by the petitioner. Counsel submits that all these facts were narrated in the complaint filed by the respondent No.1 and there was no concealment on his part. Counsel submits that considering the overall facts and circumstances of this case, the PLA has rightly exercised its jurisdiction contained under Section 22 of the Act of 1987 and the PLA has passed a justified and valid order which needs no interference of this Court. In support of his contentions, counsel for the respondent has placed reliance upon the judgment passed by the Orissa High Court in the case of **Divisional Office Vs. Debaraj Behera & Ors. [W.P. (C) No.18356/2016]** decided on 11.09.2023.

ANALYSIS AND REASONING:

7. Heard and considered the submissions made at Bar and perused the material available on the record.

8. The respondent No.1/complainant (hereinafter referred to as "the complainant") submitted a complaint under Section 22C of the Act of 1987 before the PLA indicating therein that the petitioner M/s.Reliance Jio Infocomm Ltd. (for short "the JIO") was granted permission to install a mobile tower (Ground Based Mast) for 4G services on government land in the JDA Area and this permission was granted to JIO for installation of tower at site ID JPUR-RIL-0297 i.e. Near Shanti Marriage Garden, 80 ft. Road,



Brijmandal Colony, Jhotwara, Jaipur but violating the terms and conditions of above permission, the JIO has installed a mobile tower over the plot of the complainant i.e. Bhomia Nagar, Ward No.36. The JDA was not supposed to allow the JIO to change the location of site and install the tower near the plot of the complainant. A prayer was made in the complaint for issuing direction to the petitioner-JIO as well as the JDA to remove the tower and pay rent of Rs.40,000/- per month w.e.f. 24.06.2014 to 24.09.2022 as well as compensation and cost of Rs.1,00,000/- each.

9. The petitioner submitted reply to the complaint and denied the averments made in the complaint and submitted that the tower was installed after getting the requisite permission and the complainant has submitted similar complaint before the District Telecom Committee as well. Hence, the PLA has no jurisdiction to entertain the complaint, as the issue raised was not falling within the meaning of "public utility service". A prayer was made for rejecting the complaint on the ground of lack of jurisdiction.

10. After completion of pleadings of the parties, the matter was kept for conciliation to explore the possibility of settlement between both the parties, but the conciliation proceedings failed and the order impugned has been passed.

11. Now the question which remains before this Court is "When the matter was sub-judice before the District Telecom Committee, upon the complaint submitted by the complainant, whether the PLA was having jurisdiction to entertain the similar complaint



submitted by the complainant” and “Whether grievance of shifting/removal of tower falls within the definition and purview of the definition “public utility service”, as defined under Section 22A(b) of the Act of 1987. For the sake of convenience, the definition of “public utility service”, as defined under Section 22A(b) of the Act of 1987 is quoted as under:-

“22A. Definitions.—In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,—

(a) **“Permanent Lok Adalat”** XX XX XX

(b) **“public utility service”** means any—

- (i) transport service for the carriage of passengers or goods by air, road or water; or
- (ii) postal, telegraph or telephone service; or
- (iii) supply of power, light or water to the public by any establishment; or
- (iv) system of public conservancy or sanitation; or
- (v) service in hospital or dispensary; or
- (vi) insurance service,

and includes any service which the Central Government or the State Government, as the case may be, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.

12. According to Section 22A(a) of the Act of 1987 “Permanent Lok Adalat” means a Permanent Lok Adalat established under sub-section (1) of Section 22B. Section 22B(1) of the Act of 1987 provides for establishment of Permanent Lok Adalat, in the following terms:-

“22B. Establishment of Permanent Lok Adalats.—

(1) Notwithstanding anything contained in Section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.”

13. Perusal of the aforesaid provision clearly indicates that PLAs established under Section 22B(1) of the Act of 1987 are to





exercise the jurisdiction, with respect of "public utility service" only. The dispute with regard to installation of mobile tower is not covered under the definitions of "public utility service".

14. The documents annexed with the reply by the respondents indicate that the JDA vide its order/letter dated 24.06.2014 granted No Objection Certificate to the petitioner for erection of Ground Based Mast (for short "GBM") for 4G services on the government land in JDA area and the petitioner was permitted to install the mobile tower at the Site ID JPUR-RIL-0297 i.e. near Shanti Marriage Garden, 80 ft. Road, Brijmandal Colony, Jhotwara, Jaipur. While issuing the aforesaid NOC to the petitioner, a condition was put in the NOC itself that "on the complaint or any other reverse information, the right to take decision to remove the tower will be with JDA. In case service provider M/s.Rliance Jio Infocomm fails to comply, the JDA will be empowered to remove the structure with the expenditure chargeable to the M/s.Rliance Jio Infocomm. The Reliance Jio Infocomm will have to remove the structure within 15 days of the notice."

15. It appears that the petitioner has shifted the location of the tower and installed the same somewhere else than the place for which NOC was granted. In response to the complaint submitted by the respondent No.1 on Rajasthan Sampark Portal dated 24.03.2015, the JDA informed him that the tower has been installed by the petitioner, as per the Government order dated 15.09.2016 and the same has been installed as per longitude/latitude.



16. Again a complaint ID No.122138311584063 was submitted on Jan Sampark Portal and the JDA vide its letter dated 30.05.2022 wrote to the petitioner that NOC was granted to it for the location near Shanti Marriage Garden but the tower was installed elsewhere against the terms and conditions of the NOC and accordingly, the petitioner was directed to submit its explanation within seven days, but no response of this letter was given by the petitioner. Hence, on 20.06.2022, the JDA directed the petitioner to remove the tower in question from the subject land. But, in spite of the above proceedings, the tower in question was neither removed by the petitioner nor by the JDA.

17. Under these circumstance, the respondent No.1 submitted a complaint against the petitioner before the District Telecom Committee (for short "the DTC"), as per clause 15(4) of the order dated 06.02.2017, issued by the Department of Telecommunication but the said complaint has not been decided till date, for the reasons best known to the DTC.

18. During pendency of the above proceedings before the DTC, the respondent No.1 submitted a similar complaint against the petitioner with regard to redressal of his grievance before the PLA, by way of filing a complaint under Section 22C of the Act of 1987 and the same has been allowed by the PLA vide impugned order dated 29.05.2023 with direction to the JDA to seize the tower in question and dismantle the same and recover the expenses from the petitioner.



19. The Patna High Court in the case of **M/s.Ascend Telecom Infrastructure Pvt.Ltd. Vs. Ajay Kumar & Ors.** reported in **AIR 2022 Patna 179** has held that dispute regarding installation of a mobile tower is not covered by the definition of public utility service, as defined under Section 22A(b) of the Act of 1987 and it has been held in paragraph No.6 of the judgment as under:-

"6. I have heard the learned counsel for the petitioner and I find that though the Permanent Lok Adalat has the jurisdiction to finally adjudicate the lis brought before it, however, it has to first resort to mandatory conciliation proceedings in between the parties and secondly, it can adjudicate disputes only in respect of public utility services, as defined in Section 22A(b) of the Act, 1987, however, this Court finds that as far as dispute regarding installation of a mobile tower is concerned, the same is not covered by the definition of public utility services, as stipulated under Section 22A(b) of the Act, 1987, hence, this Court is of the view that the Permanent Lok Adalat, Patna could not have adjudicated the lis in hand."

20. Similarly, the Punjab and Haryana High Court in the case of **Phool Kaur Vs. Permanent Lok Adalat, Gurgaon, Haryana & Ors.** reported in **2011 SCC OnLine P&H 9547** has decided the issue of jurisdiction of PLA in paragraphs 4 and 5 of the judgment, as under:-

"4. Section 22-C which refers to cognizance of cases to Permanent Lok Adalat sets out that a party to a dispute may make an application to Permanent Lok Adalat for settlement of a dispute. This Section contains some exceptions which specifically enumerate certain classes of cases which shall not be taken up by the Permanent Lok Adalat. Section 22-D provides a procedure for Permanent Lok Adalat that includes a jurisdiction to conduct conciliation and Section 22-E provides for an award for Permanent Lok Adalat to be final. The fulcrum on which the entire missionary can revolve would be Section 22 (b) and (c) and that literally exhaust all types of cases that the Lok Adalat could dealt with.



5. A declaration and injunction in relation to immovable property is neither a relief that a Permanent Lok Adalat can grant nor the subject matter that it can entertain. The award passed by the Permanent Lok Adalat is nonest and outside its jurisdiction and it is accordingly quashed. It is stated that the petitioner has already a suit to set aside the award and the same is pending. Since the matter relates to an issue of jurisdiction and competence of a Public Authority, I would hold that the Civil Court will dispose of the said suit in the line of what had been decided through this writ petition."



21. The above judgment in the case of **Smt.Phool Kaur (supra)** was relied upon and followed by the Punjab and Haryana High Court in the case of **M/s.Bharti Infrastructure Ventures Ltd. & Anr. Vs. Permanent Lok Adalat & Anr. [CWP No.14658/2013]** decided on 19.09.2015 and it has been held as under:-

"The matter is squarely covered by a judgment of this Court, **Smt. Phool Kaur Vs. Permanent Lok Adalat, Gurgaon, Haryana and others, 2012(5) RCR(Civil) 124**. This is an inter se dispute between the parties based on a contract which cannot be adjudicated by the Permanent Lok Adalat. In **Smt. Phool Kaur's case(supra)**, so has been held.

In view of this, the impugned award dated 20.02.2013 (Annexure P-5) is hereby set-aside. However, the respondents will be at liberty to avail the remedies available to them in accordance with law."

22. After perusal of the definition clause of "public utility service" and the judgments of Patna High Court and Punjab and Haryana High Court, this Court is of the considered opinion that the dispute related to installation of mobile tower is not covered by the definition of "public utility service", as defined under Section 22A(b) of the Act of 1987, therefore, the PLA has no jurisdiction to adjudicate such matters and the PLA cannot entertain such



complaints. Hence, under these circumstances, the impugned order passed by the PLA is not sustainable in the eye of law. The judgment, relied upon by the complainant, in the case of **Debaraj Behera (supra)** is not applicable in the facts of the present case.

23. For the reasons stated above, the impugned order passed by the PLA dated 29.05.2023 is liable to be set aside.

24. Now, the next question before this Court is when the PLA has no jurisdiction to entertain the complaints pertaining to installation and erection of mobile towers, then what would be the appropriate alternative remedy available to such complainants for redressal of their grievances?

25. Looking to the clause 15(4) of the Government order dated 06.02.2017 and following the two orders passed by the coordinate Benches of this Court at the Principal Seat at Jodhpur in the case of **Raj Kumar & Ors. Vs. State of Rajasthan & Others [S.B.Civil Writ Petition No.566/2020]** decided on 22.01.2020 and in the case of **Vasu Ram & Ors. Vs. State of Rajasthan & Ors. [S.B.Civil Writ Petition No.3159/2018]** decided on 13.12.2021, this Court has taken the following view, in the case of **Rohitash Khatana Vs. State of Rajasthan & Ors. [S.B.Civil Writ Petition No.12035/2020]** decided on 02.01.2024, in paragraph Nos.3 & 4, which reads as under:-

"3. Having gone through the averments made in the writ petition as well as the reply filed on behalf of the respondents, this Court is of the opinion that installation of a mobile tower is governed by the order dated 06.02.2017 issued by the State Government. In the said order dated 06.02.2017, Clause 15(4) clearly provides that the District Telecom Committee under



the Chairmanship of District Collector concerned shall deal with the issue related to telecom infrastructure including public grievances for installation of tower etc.

4. In such circumstances, this Court is of the view that the petitioner is supposed to avail appropriate remedy available as per Clause 15(4) of the Order dated 06.02.2017. It is ordered that if the petitioner approaches the District Telecom Committee within a period of one week from today, the District Telecom Committee shall consider the grievances of the petitioner and decide the same strictly in accordance with law expeditiously within ten days thereafter."

CONCLUSION:

26. Following the above judgments, passed by this Court and maintaining parity in the matter, this petition is disposed of with direction to the District Telecom Committee under the chairmanship of the District Collector, Jaipur to look into the matter, as per clause 15(4) of the Government order dated 06.02.2017 and decide the complaint of the complainant, keeping in view the NOC letter dated 24.06.2014 and the letters dated 18.11.2015, 30.05.2022 and 20.06.2022 issued by the JDA and pass appropriate orders, after affording proper opportunity of hearing to both the parties, strictly in accordance with law and without being influenced by any of the observations made by this Court.

27. Accordingly, with the aforesaid observations and directions, the writ petition stands disposed of. The impugned order dated 29.05.2023 stands quashed and set aside.

28. The stay application and all the applications (pending, if any) stands disposed of.



29. It goes without saying that the needful exercise would be done by the District Telecom Committee expeditiously as early as possible, preferably within a period of three months from the date of receipt of this order.

30. No costs.

(ANOOP KUMAR DHAND),J

Solanki DS, PS

