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Court : Karnataka

Decided On : Nov-07-2016

Judge : The Honourable Dr. Justice Vineet Kothari

Appeal No. : Writ Petition Nos. 56904-908 & 57124 (LB-BMP) of 2016

Appellant : R. Shanmugham and Others

Respondent : The State of Karnataka represented by its Principal Secretary, Urban Development Department and Others

Judgement :

(Prayer: These Writ Petitions are filed under Articles 226 and 227 of the constitution of India Praying to issue writ of mandamus or direction or order to consider representation as per Annexures-A and B dated 04/06-08-2016 by R-2 and 3 and to remove tower put up on the third floor of the schedule building illegally put up by R-5.)

Mr. G.R. Mohan, Adv. for Petitioners.

Mr. V. Sreenidhi, AGA for Respondent No. 1.

1. Heard the learned counsel for the petitioners.

2. The petitioners are the local residents aggrieved by the putting up of a Mobile Tower, by the respondent No.4-M/s Indus Towers Limited on the property owned and possessed by respondent No.5-Mr.Basavaraju B.

3. The grievance raised in the present writ petition is that despite representations made by the petitioners vide Annexure-A dated 04.08.2016 on behalf of Sree Kodandarama Vyama Shala and a legal notice served by the Advocate vide Annexure-E just a week thereafter on 11.08.2016, no appropriate action is being taken by the respondent-authorities of BBMP. Therefore, a mandamus writ is prayed for.

4. Mr.G.R.Mohan, learned counsel for the petitioners has also relied upon an order passed by the cognate Bench of the Court in W.P.Nos.31193-197/2013 C/w W.P.No.34973/2013 decided on 02.07.2014 in which inter alia the Court had directed the respondent-authorities to examine and verify as to whether the stilt floor is kept open only for parking space and stair case is as per the sanction plan or not, within three weeks from the date of receipt of the said order.

He has urged before the Court that the respondent-BBMP should be directed to consider the objections of the petitioners in accordance with the relevant Government Guidelines with regard to setting up of the said impugned Mobile Tower.

5. Having heard learned counsel for the petitioners, this Court is not inclined to invoke its extra jurisdiction under Article 226 of the Constitution of India in the present case for the following reasons:

i. The case apparently involves determination of certain question of facts as to whether the Mobile Tower in question is authorized or not and whether it is practically and legally permissible to exist there or not.

ii. The writ petitions also appear to be pre-mature and uncalled for and it appears that the petitioners have approached this Court in a hot haste just after approaching the concerned authorities of the BBMP vide representation Annexure-A dated 04.08.2016 in the first instance, followed in quick succession by a legal

notice Annexure-E dated 11.08.2016 and thereafter, these writ petitions are filed in the Court on 03.11.2016 that the respondent authorities to consider the objections of the petitioners is not narrated.

iii. Exercise of mandamus directions in such matters to direct the public authorities to do, what they are otherwise also excepted in law to do, is an exercise in futility. It unnecessarily interferes with the discretion, public duty and obligation on the part of the public authorities to discharge their function in normal course.

iv. There is no justification for this Court to presume that the public authorities like BBMP or its Commissioners would not abide by the extant Government Circulars and Guidelines. No such case of violation or deliberate deviation from such guidelines has been made out in the present case.

v. The judgment relied upon by the learned counsel for the petitioners was rendered in different facts and circumstances of the case and the same cannot be relied upon as a precedent in these type of cases.

vi. A direction to consider the presentation of the petitioners by the authority even though could be issued in such cases, but as already observed above, it is not necessary not desirable to do so every now and then in all such individual cases of representations and objections.

vii. Entertaining there kind of writ petitions in extra-ordinary jurisdiction of the Court under Article 226 of the Constitution of India would unnecessarily flood the dockets of this Court and the normal functioning of the public bodies like BBMP, BDA etc., is likely to be hampered and interfered with.

6. Without any proper mechanism in place, constantly monitoring and implementing these kind of mandamus directions, the Court should be slow and loath to issue such directions, which it cannot monitor effectively.

7. In view of the facts stated above, it is expected from the petitioners to pursue their grievances/representations before the concerned authorities of the BBMP only with the expectation that the respondent authorities will consider their grievances/representations in accordance with law, at their own end.

With these observations, the writ petitions are disposed of. No costs.

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