

27.05.2013:-

The parties are present through their respective learned counsels. Today is fixed for passing order on petition No 512/12 filed under order 26 Rule IX of CPC.

Petitioner's case in brief is that it has filed a suit against the defendants for removal of mobile tower and generator set installed over the suit land. It is averred in the plaint that the noise created by the generator set creates great nuisance and have make the life of neighbors extremely difficult. It is stated that mobile tower ought to have situated at least 2000 metres away of human habitation. It is further stated that without observing any rules the tower was installed over the land of defendant no 4 just 1.5 metre away from plaintiff's residence that apart the generator is only 8 metres away from the residence of the plaintiff which causes immense noise pollution. It is also stated that the defendant have not obtained any permission from state pollution control board before installation of the tower. That the height of the tower as installed is not within the permissible limit of rules as stated in the zoning regulation of the Jorhat Development Authority. Plaintiff further stated that defendants have not observed the guidelines of Central Pollution Control Board. In view of the above facts and circumstances, plaintiff have prayed to appoint a commissioner in order to investigate the issues like location of installation of mobile tower and pollution level of generator set and the cover area in which the generator set is installed and other relevant & technical & govt. norms as required for installation of mobile tower.

Defendant no 1, 2 & 3 filed written objection denying and challenging the claims of the plaintiff/petitioner and stated that petition is filed by suppressing material facts and with the intention to delay the disposal of the suit. It is further stated that the defendants have installed the tower and the generator set after getting NOC from the concerned authority and after fulfillment all the formalities. In view of the above, the defendants have prayed for dismissal of the petition.

Plaintiff in support of his case filed part of some articles and materials in respect of guidelines for installation of Mobile Tower. It is stated that erection of mobile tower shall not be allowed within a radius of 100 M from residential building, school and hospital.

Perused the plaint, WS and available materials on record .Perusal of plaint reveals that suit was filed for declaration that installation of tower and the generator set over the schedule land is completely illegal, unauthorized an unlawful and also from directing the defendant from removing the tower and the generator set from the suit land. It is alleged in the plaint that the installation of tower of Vodafone ESSAR Spectral Ltd ,by defendant 1,2 & 3 over the land of defendant no 4 is not in accordance with the established rules. It is also alleged that defendant has installed the tower and the generator set at about 1.5 M and 8 M respectively from the plaintiff's residence and the same is not in accordance with the approved guidelines and also in contravention with the guidelines of Central Pollution Control Board.

After hearing both sides and after going through the materials on records in details, I am of the considered opinion that to ascertain the exact location of the mobile tower and the generator set and its distance from the residence of the plaintiff and also to ascertain the degree of nuisance created by the generator set, a commission is required to be issued in order to assist the court to come to just decision of the dispute.

Accordingly a commission is issued to ascertain the aforesaid facts . It is also directed that commissioner shall perform the commission in presence of JDA officials and technical experts i.e Engineer from Department of Telecommunication and Engineers from Pollution Control Board.

Petition is allowed. Plaintiff shall take necessary steps.

Fix.....for appointment of commission. Plaintiff shall bear the cost of commission.

(Achma Rahman)
Munsiff No 1, Jorhat.