

# IN THE COURT OF JUDGE SMALL CAUSES SRINAGAR

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CNR No: JKSG020047692022

File No: 3112/2022

Date of Institution: 08.10.2022

Date of Order: 04.02.2025

In the case of:

Rafiq Ahmad

S/o Mohd Sultan

R/o Ziyarat Shreef Batamaloo

(Plaintiff)

Through: Adv. Abid Banday

**Versus**

1. Sheikh Zahid Aziz S/o Sheikh Abdul Aziz  
Resident of Firdous Abad Lane No.10
2. Manager Operation of Tele Communication  
Hari Singh Highstreet at Srinagar
3. Reliance Industries Limited (R.I.L) previously knew as  
Reliance Jio Infratel Limited (RJIL)  
Through its legal Head Junaid Nazir S/o Nazir Ahmad  
R/o Manchowa B.K Pora Budgam

Defendant no.1 through Adv. F.A Vaida

Defendant no.3 through Adv. Azra Fatima

**In the matter of:** Application for interim relief in suit for permanent prohibitory injunction.

**Coram: Junaid Imtiaz Mir**

**UID Code.JK00219**

## **ORDER**

1. By virtue of this I will dispose off the interim application in the above titled suit. In the suit it has been stated that the plaintiff being the owner of the path of land and the defendant is residing in the vicinity of the plaintiff's landed property. The plaintiff along with other neighbors had been enjoying the peaceful possession without any sort of disturbance or interference from any quarter. The plaintiff has every right to enjoy the property without the same being put to risk by the greed of any person including the defendant no.1. The defendant no. 1 has to be very careful and vigilant in putting his landed property to any such use which will be detrimental to the rights of the plaintiff attached with a property. The materialistic approach of defendant no 1 at the cost of life and safety of the plaintiff and his family will create irreparable injury to the plaintiff and his family and other neighbors' who are living in immediate vicinity of the plaintiff and defendant no. 1. The defendants are trespassing over the easementary rights of the plaintiff attached with the property and his creating serious interference by illegal installation of the mobile tower which will make the life of the plaintiff and his family vulnerably and suitable to chronic disease and hazards radiations. The plaintiff has every right to live obtain sufficient amount of air, light and also has right to live peacefully without being subjecting to continuous noise pollution and also being exposed to harmful and deadly radiations. The private defendant for his vested and monitory interest is putting to risk not only the easmentary rights attached to the property of plaintiff and other neighbors' but is also exposing the minors and old aged inhabitants and inmates of the vicinity to fatal radiations. The private defendant cannot allow capitalizing over the peace and comfort of the plaintiff and his family for the reason that the defendants are

contemplating to mint money at the cost of the easementary rights of the plaintiff. The plaintiff prays for injunctive relief for preservation of his easementary rights which easementary rights the plaintiff has been enjoying from more than three decades. The defendant no.1 has in connivance with defendant no. 2 devised a mischievous plot whereby the defendant no. 1 has shown to have tower installed at Lane no. 7 however, in reality the tower has been installed at lane no. 9. The plaintiff number of times requested the defendant no 1 to refrain from invading the easementary rights of the plaintiff which include also right to live in a peaceful and noiseless atmosphere for the reason that the area being a purely residential area and there is no scope for running any commercial activity in the area. The cause of action has accrued to the plaintiff against the defendants when the defendants have made all the arrangements for making the illegal tower and other allied noise generating machinery functional and in case the defendants are not stopped, the rights of the plaintiff cannot be restored by any mode or method and the cause is recurring one. Hence, prayed that interim application be allowed.

2. Defendants were put to summon. Ld. Counsel for defendant no.1 submitted written statement wherein it has been stated that the suit of the plaintiff is hit by Section 25 of National Green Tribunal Act 2005. The suit does not involve determination of any civil right or enforcement of any civil right is involved. The suit of the plaintiff is liable to be dismissed for non-joinder of necessary party i.e. Reliance Jio who is operating the cellular tower which forms subject matter of the suit as per Order 1 Rule 9 of Civil Procedure Code 1908 and it has not been specified who is manager telecommunication working for. The plaintiff has deliberately mentioned a hypothetical telecommunication manager in order to deceive the court because the actual necessary party that is reliance Jio telecommunications had already put a caveat

application. The court has been deceived by the plaintiff by bypassing the caveat application of the actual defendants in order to achieve this interim status quo. The answering actual necessary party who have not been made defendants being license holder duly granted by Department of telecommunication of India and an entity duly authorized by Telecom Regulatory authority of India is well within its rights to erect the tower anywhere in the Country which includes Srinagar as well. The Answering Defendants had installed the cellular tower absolutely in consonance with the provisions of law after laying proper gaps as per the Norms and Rules applicable and observing checks and balances. No objection were raised by any person at any point of time with regard to the erection or construction of cellular tower. The cellular tower was installed at the site after obtaining all the requisite permissions from all the concerned authorities governing the subject matter. The Installation of Cellular tower with the Union Territory is governed by the Jammu and Kashmir Communication and Connectivity Infrastructure Policy 2020 read with Indian Telegraph Right of Way (Amendment) Rules 2022, and as per the clause 14-B of the policy no permission is required to install the Cellular Tower. However an intimation is required which was already complied by the reliance telecom who have not been made Defendants. There is no law, rule or judgment which will be suggestive that the cellular tower is harmful to the life of any living being or creature. There are various Judgments by various Hon'ble high courts of the Country wherein it was observed that the Radiation rays are in no way harmful to the Living beings Including Human beings. Answering Defendants have installed the cellular tower in compliance with the law governing the subject matter. The intimation was approved by the competent authority as per the law governing the subject matter. No cause of action has accrued to the plaintiff against the answering defendants as

the Answering Defendant is a license holder duly granted by Department of telecommunication of India as such is well within its rights to erect the tower anywhere in the Country.

3. This court had on 12.03.2024, arrayed Reliance industries limited as defendant in the suit who had also filed their written statement stating therein that Defendant No. 2 has installed a cellular tower at Firdousabad over a patch of land owned by defendant No. 1 way back in the year 2018 by virtue of leave and license agreement executed between Defendant No. 1 and 2. Prior to the construction of the cellular tower, defendant No. 2 has obtained all the Permissions, sanctions and N.O.C's governing the field. The construction of the said tower was completed way back in the year 2018 in all aspects, posterior to which when the answering defendant was about to install the cellular cells over the cellular cells over the tower structure, few neighbors has filed a suit against the said tower which was transferred to the court of Municipal Magistrate titled "Ashiq Hussain Wani & Ors Vs. Abdul Aziz Sheikh & Ors: bearing CNR. No. JKGS020026232019 wherein the Hon'ble court of Municipal Magistrate was pleased to grant ad-interim order, the same order came to be vacated by the Hon'ble Court of Municipal Magistrate vide order dated 07.06.2024. Be that as it may one case pertaining to the same subject matter was also filed by other neighbor which was transferred to the Ld. court of City Munsiff titled Javaid Ahmad Mir V/s Regional Engineer Reliance Jio bearing CNR No. JKSG020028552022. At the time of institution of this suit the answering defendant had already filed a caveat as such the interim in the matter was not granted. In both the above mentioned suits as well as in the instant suit the counsel for the plaintiffs are same. However at time of filing of the instant suit on 08.10.2022, answering defendant was already on caveat which was filed on 08.09.2022, the said caveat came to be discharged with the institution

of the suit titled Bashir Ahmad Dar Vs Reliance Jio on 23.11.2022, Plaintiff in order to avoid the caveat has filed the instant suit against a fictitious entity which is no-existing so as to get the order from this court unjustly. The issue in the previously instituted suit and the present matter is same. Further, the cellular tower was constructed at the site after obtaining all the requisite permissions from all the concerned authorities governing the subject matter. The plaintiff in the paragraphs under reply is crisscrossing beyond the locus as the suit is filed in an individual capacity but the plaintiff in the paragraphs under reply of plaint is agitating the rights of public, had the plaintiff ought to do the same the plaint would have been filed in compliance with order 1 rule 8 read with order 7 rule 4 or Section 91 of the Civil procedure Code 1908. In case the plaintiff is aggrieved of the pollution as asserted by him, then the jurisdiction of the court is barred keeping in view the bar imposed under Section 29 of National Green Tribunal Act 2010. In case, the plaintiff is of the opinion that the radiation rays are harmful to the human beings let him first surrender his mobile phone. The relief as claimed by the plaintiff is barred as enshrined under Section 41 (ha) of specific relief Act 1963 as amended by 2018 amendment. The answering defendant has obtained the permission from the concerned authorities in absolute consonance with the law. The process for installation of cellular tower is not as simple as that of constructing a building, the process is regulated by TRAI Regulations, Telecommunication Act 2024 (Indian telegraph Act) now repealed, JKCCIP 2020. However answering defendant deems it appropriate to mention that the cellular tower was installed at the site after obtaining all the requisite permissions from all the concerned authorities governing the subject matter. The Installation of Cellular tower with the Union Territory is governed by the Jammu and Kashmir Communication and Connectivity Infrastructure Policy 2020 read with

Indian Telegraph Right of Way (Amendment) Rules 2022 and as per the mandate of the said policy the cellular towers can be installed at any place. No cause of action has accrued to the plaintiff against the answering defendant as the answering defendant is a license holders duly granted by Department of telecommunication of India as such is well within its rights to erect the tower anywhere in the Country. Hence the suit is liable to be rejected at its threshold.

4. Heard Ld. Counsel for the parties and perused the plaint as well as objections.
5. The interim relief application was kept for arguments on many dates of hearing and on previous date although the plaintiff was granted last opportunity to put forth their arguments choose to remain absent. It being a deliberate act on part of the plaintiff to delay the proceedings, this court was constrained to hear the arguments in the interim relief application in absence of the plaintiff. However, it was specifically mentioned in the order that while deciding the application, the plaint and the annexed documents will be given due consideration. Briefly the arguments of the ld. Counsel for the plaintiff is that the defendants are raising a mobile tower in the vicinity of their property which will make his property inhabitable and useless. That the construction will be at the cost of life and safety of the plaintiff and his family and will cause irreparable injury to the plaintiff, his family and other neighbors living in the vicinity. Further their right to light will be affected and the radiation omitted from the tower will cause health hazards to them. On these grounds specifically the plaintiff sought restrained order against the defendants from raising the tower. On behalf of the defendants in the written statement as well as in the arguments put forth it was specifically mentioned by the defendants that the plaint of the plaintiff is devoid of merit and there are scientific data's and previous judgment of Hon'ble Superior courts which have established

the fact that the cellular towers are not harmful and do not possess any threat to human health. Further that all the requisite permission have been taken by the defendants before going ahead with raising the construction of the tower. That cellular towers are being installed in full compliance with the provisions of law after laying proper gap as per the norms and rules applicable. That the rules for installing the cellular towers applicable provide that there is no need of permission to install the cellular tower however, only intimation is required which has been already complied by reliance telecom.

6. I have gone through the file and have perused the complaint as well as documents annexed by the Ld. Counsels. The basic plea of the plaintiff is that raising of mobile tower by the defendants is going to cause health hazards to the plaintiff and his families. However, it was held by the Hon'ble High Court of J&K in case titled Ujagar Singh Vs State of J&K A IR 2011(49)" "That the grievance of the petitioner is that while installation of tower their lives would be affected. However, this plea is not supported by any expert opinion to say that the installation of cellular towers will be hazardous." Further in another judgment titled Reliance Infocom Ltd. Vs Chemenchery Grama Panchayat AIR 2007 Kerala 33 in which it was held as;

*"We have already found that RF exposures from mobile base stations are much less than from radio, FM radio and television transmission and that the consensus of scientific community is that the radiation from mobile phone base station is far too low to produce health hazards if people are kept away from direct access to the antenna and the overall evidence indicates that they are unlikely to pose a risk to health."*

7. The defendants have also submitted documents wherein all the requisite documentation before going ahead with the construction of the tower has been fulfilled. The plaintiffs claim is based on no

scientific data neither any such document has been submitted by him which could make a prima facie case in his favour. There are 100's of mobile towers that have been raised in cities very rarely petitions are filed in the courts seeking restraining against them. It was for the plaintiff to make out a case based on any proof of what he has claimed in the plaint. Making claim without substantiating the same is insufficient to restrain a company that has been installing tower across the country for providing mobile and internet service to the general public. Therefore, in view of the authorities mentioned supra and also the documents annexed by the defendants in support of their case, this court believes that plaintiff has no prima facie case made out for relief. Since, no prima facie case is made out it can be said that other two ingredients of irreparable loss and balance of convenience are also not made out in favour of the plaintiff. For these reasons, this court rejects the application of the plaintiff and vacates the order dated 08.10.2022. Application is disposed off, be made part of the main file.

Announced:

04.02.2025

(Junaid Imtiaz Mir)  
Judge Small Causes  
Srinagar