

IN THE COURT OF MUNSIFF, THIRUVALLA

Present:-Sri. Aravind S.J, Munsiff.

Wednesday the 11<sup>th</sup> day of December 2024/ 20<sup>th</sup> day of Agrahayana 1946 SE.

**IA 1/24 in OS 288/2024.**

BETWEEN

1. Stephen Jobe, aged 51, S/o Chacko Job, Malipurathu House, Kavumbhagom P.O & Village, Thiruvalla Taluk.
2. Jacob Thampi, aged 64, Kailath House, Kavumbhagaom P.O & Village, Thiruvalla Taluk.

(Adv. Jacob Thomas)

Petitioners  
Plaintiffs

AND

1. M/s ATC (American Power Corporation) Telecom Tower Corporation PVT. Ltd., 36/2624, First floor, Cheramangalath House, Shenoy Road, Cochin-682017 rep. By its Manager.
2. Ramesh Elamon Namboothiri, aged 68, Elamon Mana, Peringara P.O & Village, Thiruvalla Taluk.

(Adv. Abdul Raoof.P, Adv. Abdul Rasac.C.H & Adv. Krishnapriya.R for D1 and Adv. Shijimol.M.Mathew for D2)

Counter petitioners  
Respondents

This petition is filed under order 39 Rule 1 of Civil Procedure Code.

This petition having been finally heard on 10.12.2024 and stood over for consideration on 11.12.2024 and on the same day the court passed the following:-

**ORDER**

The afore numbered application is filed by the plaintiff/petitioner in this suit under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908.

2. Petition averments in brief are stated as follows:- The plaint schedule item No.1 property having total extent of 6.7 Ares in resurvey No. 11/3 of Kavumbhagam Village belongs to the 1<sup>st</sup> plaintiff. There is a residential building situated in the item No. 1 property wherein the 1<sup>st</sup> plaintiff resides. The plaint schedule item No. 2 property belongs to the 2<sup>nd</sup> plaintiff and there is an old residential building in the item No. 2 property wherein second plaintiff resides. The 1<sup>st</sup> defendant is a Telecom infrastructure provider, engaged in the business of Operation and Maintenance of Mobile phone towers across Kerala for all the mobile phone operator's / service providers providing broadband internet services and other allied services. For the said purposes, cell phone tower is being erected at different feasible location. One such tower is proposed to be installed within the property of the 2<sup>nd</sup> defendant scheduled hereunder as plaint scheduled item No. 3 property. The plaintiffs has received reliable information that the first defendant had entered into a lease agreement with the 2<sup>nd</sup> defendant and plans to take steps to install a mobile tower in close proximity to the plaint schedule item No 1 and 2 properties. Furthermore, the 1<sup>st</sup> defendant proposes to construct a ground based telecommunications tower on the second defendant's property with a height ranging from 50 to 200 meters and an average land area of 3,000/- sq. feet, located in Kavumbhagam Village, Ward No. 28, Thiruvalla Taluk. The proposed tower will be built with advanced technologies such as 4G and 5G utilizing modern equipment that will emit significant levels of radio frequency radiation, potentially posing serious health risks to the plaintiffs and local residents. The residential building in item No. 1 and 2 properties and the proposed site in item No. 3 are very close and has a distance of 15 feet only. The average piling depth is 30 feet supported by four concrete beam foundations. The piling work generates vibrations in the ground that may impact nearby residential buildings and structures, including item Nos. 1 and 2 properties. The proposed plan by the first defendant to erect the mobile tower poses hazards to humans within a close radius particularly affecting the plaintiff's and nearby local residents. The proposed tower will increase the use of radio frequency (RF) fields above 6 GHz, especially for the 5G mobile phone network,

raising public concern including among the plaintiffs, about potential adverse health effects. The defendants have violated the applicable procedures under the Indian Wireless Telegraph Act, the Telecom Regulatory Authority of India Act, 1997 and the Department of Telecommunications Rules in erecting the mobile tower and addressing radiation issues. The BSNL tower was installed over 20 years ago on the plaint schedule item no 3 property and it has not been upgraded due to strong protests from local residents. The 1<sup>st</sup> defendant infrastructure includes active electronic and non electronic infrastructure includes base tower station, microwave radio equipment, switches, antennas, transceivers for processing and transmission, also at the base includes diesel generator, battery, shelter, air conditioning equipment's etc causes noise pollution and active electronic infrastructures caused hazardous radiation also. On September 25, 2024, the 1<sup>st</sup> defendant began leveling work in item No. 3 property to construct the proposed tower with the consent of the 2<sup>nd</sup> defendant. However, due to heavy protests from the plaintiffs and local residents, the 1<sup>st</sup> defendant ceased the work. The petitioners have a prima facie case. Balance of convenience is in their favour. Hence the petition.

3. The 1<sup>st</sup> respondent filed objection contending as follows: The suit and petition is not maintainable either under law or on facts. The name of the 1<sup>st</sup> respondent is now changed as Elevar Digital infrastructure Pvt. Ltd. The company M/s ATC Telecom infrastructure Pvt. Ltd has been taken over by Elevar and except the name change all other aspects remains unchanged. The petitioners have no locus standi to file a suit or the present petition. The grievance of the petitioner regarding the erection of tower is already been escalated to District Telecom Committee / District Collector who is the authorized officer in the district to deal with the issue related to construction of tower. The DTC has already passed an order in favour of the respondent. If the petitioners are aggrieved by the same they have to approach the higher authority. The local body has issued a valid permit for construction of tower. This respondent is constructing the tower in accordance with the valid permit and plan and in accordance with law. The petitioners have not challenged the same also. The petitioners have come before the

court suppressing material facts within their knowledge with unclean hands. The respondent is a Private Limited Company incorporated under the Companies Act 1956. This respondent company has been registered as an infrastructure provider category – I (IP-I) under the Department of Telecommunications, Government of India to establish and maintain infrastructure for the purpose to grant on lease / rent / sale basis to the licensees of telecommunication services, licensed under S. 4 of the Indian Telegraph Act. 1885. The 1<sup>st</sup> respondent company during the course of its business has to give intimation regarding the construction of tower to the local body. As per Rule 83 of Kerala Municipal Building amendment rules, 2023, in case of Telecom Towers, building permit is not necessary. Telecom Companies need only to submit intimation. This is to be submitted via KSMART Portal of Kerala Government. The 1<sup>st</sup> respondent has done so and obtained a receipt dated 23-05-2024 for the same with a view to construct a telecommunication tower in the property belong to the 2<sup>nd</sup> respondent. When the 1<sup>st</sup> respondent started construction of a tower as per the above intimation, some local residents including the petitioners in that area has raised certain objections stating untenable contentions and encroached into the tower construction site and physically obstructed the work. They are actually complaining of the radiation that may emanate while the tower is operational. The petitioner has obtained certification for radiation compliance from the department concerned. The matter was considered by the District Collector, Pathanamthitta who is the Chairman of District Telecom Committee (DTC) who after hearing has passed an order dated 12-09-2024 permitting this respondent for completing the construction of the tower. A perusal of the said order shows that the District Telecom Committee/ District Collector has sought the report from the Tahasildar as to the grievance of the petitioners regarding the distance. Hence considering the contention raised by the people of the locality including the petitioners, this respondent and various experts in the field, the DTC has granted permission to erect the tower. Based on the above order of DTC, this respondent has already commenced the construction and the construction is nearing completion. It is admitted that the ward member and affected individuals submitted a complaint to the

District Collector concerning the installation of the tower but it not correct to say that there was no response from the authorities. The further allegation regarding the noise pollution and health issues narrated in petition is also false. The petitioners have no prima facie case. Balance of convenience is also not in their favour. Hence the petition is liable to be dismissed.

4. Heard both sides in detail.

5. Points that arose for consideration are: -

1. Whether there exists a prima facie case in favour of the petitioner?
2. Whether balance of convenience tilts in favour of the petitioner?
3. Whether refusal to grant injunction would cause irreparable injury to the petitioner?
4. What is the order as to costs?

6. On the side of the petitioners, Ext. A1 to A5 were marked for the purpose of this petition. On the side of the respondents, Ext B1 to B4 were marked.

7. **Point No.1 to 3:-** To avoid repetition and for brevity, these points are considered together. The specific case of the petitioners is that the plaint schedule item no 1 and 2 properties belongs to them and item no 3 property belongs to the 2<sup>nd</sup> defendant and that the 1<sup>st</sup> defendant telecom infrastructure provider has begun construction of a telecommunication tower in the plaint schedule item no 3 property thereby causing severe hazard to the plaintiffs and the people in the locality. Per contra, the 1<sup>st</sup> respondent contends that the telecommunication tower is being erected after obtaining all necessary sanctions and that the petitioners had already approached the District Telecom Committee and an order was passed in favour of the respondents. It is further contended that no harm would be caused to the neighbors if the telecommunication tower is installed.

8. There is no serious dispute to the fact that the plaint schedule item No 1 and 2 properties belongs to the petitioners herein. Ext A1 is the tax receipt in favour of the 1<sup>st</sup> petitioner with respect to the plaint schedule item No 1 property and Ext A2 is the tax receipt in favour of the 2<sup>nd</sup> petitioner with respect to item No 2 property. The dispute pertains to the erection of mobile tower in item No 3 property. The Advocate commissioner appointed in the case filed Ext C1 report and C1(a) rough sketch. It is reported that plaint schedule item No 1 and 2 properties are situated at a distance of only 2 meter from the boundary of item No 3 property and that a portion of item No 3 portion is made suitable for erecting the tower. It is also not in dispute that the 1<sup>st</sup> respondent intends to erect a telecommunication tower in item No 3 property.

9. The 1<sup>st</sup> respondent had contended that the said company was taken over by Elevar Digital Infrastructure Private Ltd and the construction is being done by the said company and that all other things remain unchanged. Ext B1 is the certificate of Incorporation pursuant to change of name issued by the Ministry of Corporate Affairs, Government of India evidencing the said fact. It is their case that they have obtained all necessary permissions from the authorities concerned and that only intimation is required to be given to the Secretary as per amended Rule 83 of the Kerala Municipalities Building Rules, 2019 and that they have complied with the said criterion. Ext B4 is the gazette notification no. 2691 dated 08-11-2019 regarding the said provision. It is stated in Rule 83 that “*No person shall erect or re-erect any non-governmental telecommunication tower of telecommunication post structures or accessory rooms or make alteration or cause the same to be done without first submitting an intimation in Appendix A5 along with the required documents and fees to the Secretary for each such tower or telecommunication pole structures*”. Therefore, all that is required is that intimation is to be given to the local self authority concerned. Ext B2 is the receipt issued by the Thiruvalla Municipality evidencing receipt of payment of fees for construction of buildings. Ext B3 is the order of the District Telecom Authority who is the District Collector. The said document was produced by the defendant and was marked as Ext A4.

10. Ext A3 is the letter issued by the Ward Councillor to the District Collector dated 02-07-2024 seeking to take proper action to prevent the installation of the proposed tower. Ext A4/B3 would show that that the District Telecom Authority had enquired into the matter and had obtained report from the Tahasildar and had come to a conclusion that the tower is being erected within the limits prescribed under the Kerala Municipal Building Rules and that the said construction is made in a legal manner. It is also stated that the first respondent can proceed with the construction of the aforesaid communication tower. Therefore prima facie it could be seen that the erection of the telecommunication tower in the plaint schedule item No. 3 property is within the four corners of law and the same is not constructed in any illegal manner. The petitioner has contended that the said construction is made adjacent to the plaint schedule item No. 1 and 2 properties. As already stated, the plaint schedule item No. 1 and 2 properties are situated at a distance of 2 meters from the southern boundary of the plaint schedule item No. 3 property. The said telecommunication construction is made at the middle portion of item No. 3 property and definitely the distance between the tower and the plaint schedule item No. 1 and 2 properties will be above 2 meters. Rule 84 (iii) of the Kerala Municipality Building (Amendment Rule) 2023 stipulates that the distance from other boundaries of the plot to the base of the telecommunication tower or pole or structure or accessory room shall be minimum 1.20 meters. Therefore the present construction would satisfy the aforesaid requirement.

11. At this juncture it is necessary to consider S. 20(A) of the Specific Relief Act which states that no injunction shall be granted by a court in a suit under this Act involving a contract relating to an infrastructure project specified in the schedule, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project. The schedule appended to the Specific Relief Act would show that telecommunications towers would also come within the ambit of infrastructure project. S. 41 (ha) of the Specific Relief Act stipulates that an injunction cannot be granted if it would implead or delay the progress or completion of

an infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project. Therefore there is a clear bar for this court to entertain the present petition of permanent injunction. Ext. B3 order was made on 12-09-2024 and the present suit is filed on 27-09-2024. The petitioners have no case that the said order was passed in violation of the fundamental principles of judicial procedure or is against the principles of Natural Justice. If that be so, this court cannot grant any order of temporary injunction as sought for by the petitioners. Therefore this court is of the opinion that the petitioner has no prima facie case. Balance of convenience is also not in their favour. Irreparable loss and injury would not be caused to the petitioners even if an order of temporary injunction is not passed. Thus, point No. 1 to 3 are found against the petitioner.

12. **Point No.4:-** There is no order as to costs.

**In the result, this application is dismissed. There is no order as to costs.**

Dictated to the Confidential Assistant, typed by her, corrected and pronounced by me in open court, this the 11<sup>th</sup> day of December, 2024.

*Sd/-*

ARAVIND S.J  
MUNSIFF.

<u>APPENDIX</u>		
<u>I. Exhibits marked for petitioner</u>		
A1	-	Tax receipt No. KL03050402032/2024 dated 02.05.2024 issued by Kavumbhagom Village Office.
A2	-	Tax receipt No. KL03050405089/2024 dated 26.09.2024 issued by Kavumbhagom Village Office.
A3	-	Copy of letter dated 02.07.2024 issued by ward member to the District Collector.
A4	-	Copy of order dated 12.09.2024 of District Collector, Pathanamthitta.
A5	-	Copy of Government order No. GO(Ms) 21/2013/ITD dated 21.08.2013 of Information Technology (c) Department.
<u>II. Exhibits marked for Respondent</u>		
B1	-	Copy of certificate of incorporation pursuant to change of name issued by Ministry of Corporate affairs Government of India.

B2	-	Receipt issued by Thiruvalla Municipality dated 23.05.2024 regarding the payment fees for Construction of Buildings.
B3	-	Copy of order dated 12.09.2024 of District Collector, Pathanamthitta.
B4	-	Copy of Gazette notification.
<u>III. Court Exhibits:</u>		
C1 & C1(a)	-	Commission report and rough sketch filed by Advocate Commissioner.

Id/-  
MUNSIFF

Fair/Copy of Order in I.A.01/2024  
In O.S.288/2024  
Dated: 11.12.2024