



W.P. No.22814 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2023

Pronounced on : 15.09.2023

CORAM: JUSTICE N.SESHASAYEE

W.P. No.22814 of 2023 and
W.M.P. Nos.22277 to 22279 of 2023

S.Anwar Basha
S/o.Sheik Abdul Kadar
Ex.President
Arab Sahib Mosque Nikkah Committee
1/11, Pettai Road, Muthupettai
Thiruvarur District

... Petitioner

Vs.

1.The District Collector
District Collectorate Office
Tiruvarur District

2.The Tasildhar
Muthupettai Taluk Office
Tiruvarur District

3.The Executive Officer
Muthupet Town Panchayat
Muthupet - 614 704.



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4.The Superintendent of Police
Office of Deputy Superintendent of Police
District Police Office
Tiruvarur.

5.The Deputy Superintendent of Police
Office of Deputy Superintendent of Police
Muthupet Sub Division
Tiruvarur District

6.The Inspector of Police
Muthupet Police Station
Tiruvarur District.

7.M/s.Assend Telecom Infrastructure Pvt Ltd.
45/33, SH 55, Sripuram Colony
St. Thomas Mount
Chennai - 16.

8.Arab Sahib Mosque Committee
Rep by its President
South Street (Therku Theru)
Muthupet - 614 704
Tiruvarur District.

... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus to call for the records of 1st respondent proceedings in Na.Ka. No.4666/2020/Oo4 dated 12.07.2023 and quash the same as illegal, arbitrary, non-est in law and also forbear the respondents from erecting cell phone tower in Tiruvarur District, Muthupettai, Thimil Nagar, S. No.282/1A&5.



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For Petitioner : Ms.Dakshayani Reddy, Senior Advocate
Assisted by G.Mohammed Aseef

For Respondents : Mr.S.J.Mohammed Sathik,
Government Advocate for R1 & R2

Mr.V.Manoharan
Additional Government Pleader for R3

Mr.N.Muthuvel
Govt. Advocate (Crl.Side) for R4 to R6

Ms.M.Karpagam for R7

ORDER

1.1 A plot of land in Sy.No:282/1A and 282/5 measuring about 49.5 cents belonged to Arab Sahib Mosque, whose affairs are managed by the 8th respondent herein, who is now represented in this proceedings by its President. Petitioner is a member of the said mosque and in this proceeding he challenges the impugned proceedings of the first respondent, dated 12.07.2023, by which permission has been granted to the 7th respondent to erect a cellphone tower in the said property. According to the petitioner as per a resolution of the General Body of the mosque, this property was



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earmarked for the construction of a marriage hall.

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1.2 While so on 22.07.2023, the 7th respondent along with police, arrived at the said property, with the view to erect a cellphone tower, and it was informed that the District Collector, the 1st respondent herein has granted permission to erect it vide the impugned proceedings dated, 12.07.2023. This permission to erect a cellphone tower in the said land belonging to the mosque was issued without obtaining the consent from the land owner, namely the mosque, in terms of G.O.(Ms) 2, dated 01.04.2002.

2. This is countered by the learned advocates of the respondents on the ground that the President of the 8th respondent indeed had given his consent for the erection of the cellphone tower by the 7th respondent, and hence the permission was granted only after ensuring that the President of the mosque committee has conveyed his consent for it.

3. Both sides made their submissions along the lines indicated. It was argued by the respondents that the 8th respondent Committee, represented by its President Haja Alawdeen had executed a licence deed in favour of the



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7th respondent, and also a consent letter, both dated 13.01.2023, for the erection of the cellphone tower. They also brought to the notice of this court that a certain Ayub Khan, claiming himself to be a member of the mosque, had earlier filed W.P. No.13026 of 2023 to restrain the present 8th respondent, (7th respondent in that petition) for a writ of mandamus to forbear the District Collector to put up a cellphone tower in the aforesaid property of the mosque, and the First Bench of this Court, vide its Order dated 28.04.2023, directed the first respondent, the District Collector to consider the representation which the petitioner in that case had filed in this regard. Now, the present petition was not filed by Ayub Khan, but by a stranger and he has approached this court under the garb of one of the members of Arab Sahib Palli Vasal. This apart, when the 7th respondent herein attempted to erect the cellphone tower, few in the locality with vested interest tried to stop it on the ground that that cellphone tower emit hazardous radiations. The 7th respondent was therefore constrained to institute W.P.11401 of 2023 to provide adequate police protection to it for erecting the cellphone tower, which this Court, vide its Order dated 13.04.2023 has allowed.



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4. The learned senior counsel appearing for the petitioner would now submit that since the execution of the said licence deed, a new Committee had taken over, and vide its proceedings it had cancelled the licence given by the said Palli Vasal to the 8th respondent on the ground that Haja Alawdeen did not have any authority to execute the licence deed.

5. The cause of action for the petitioner to institute this petition is founded on the allegation that the 1st respondent had not ascertained whether the 7th respondent's consent as a land owner was obtained, before granting permission vide his impugned proceedings for erecting the cellphone tower.

6. Now, with the respondents informing this Court about the licence agreement, consent letter and also a declaration form executed by the then President of 8th respondent, all dated 13.01.2023, the petitioner apparently has changed gears, and now attacks the authority or rather the competency of the then President of the 8th respondent who had executed these documents. Inasmuch as the availability of these documents have come to be accepted, it cannot be said that the first respondent, the District Collector, has acted malafide when he granted permission for erection of



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the cellphone tower.

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7. Turning to the improvised contention of the petitioner that the then President of the Committee did not have the authority to execute the said documents of consent, this issue falls well beyond the scope of the present writ petition. In other words, if the petitioner is keen to establish that the former President of the 8th respondent had no authority to execute those documents which the District Collector has relied on for granting permission, then he has to challenge the validity and legality of these documents of the 8th respondent, in an appropriate forum, since it involves a mixed question of law and fact. This cannot be conveniently decided in a writ proceedings.

8. In conclusion, this Court does not find any merit in this petition, and hence dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Speaking/Non-speaking order



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Asr/ds

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N.SESHASAYEE, J.

Asr/ds

Pre-delivery order in
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