

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 10.8.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P. No.24485 of 2015

Tower Vision India Pvt. Ltd.
Office: C-56 Neeti Bagh
New Delhi repd.
by its Regional Head
Krishna Kishore Block
1 1 & 2 (NP) JawaharlalNehru Road
Ekkaduthangal Chennai-32.petitioner

Vs

- 1 Government of Puducherry
Repd. by the Chief Secretary Chief
Secretery 1 Beach Road
Puducherry.
- 2 Puducherry Planning Authority
Repd. by Member Secretary
Jawahar Nagar
Boomianpet Puducherry. respondents

Writ Petition filed under Art.226 of the Constitution of India
praying for a Writ of Certiorari to call for the records on the file
of the 2nd respondent in proceedings No.2144/PPA/Z(P-Tower)/2015/4096
dated 28.07.2015 and quash the same as illegal incompetent and
without jurisdiction.

For petitioner : Mrs.R. Poornima
For Respondents : Mrs.N.Mala, A.G.P.
(Puducherry)

ORDER
(made by K.K.SASIDHARAN, J.)

This Writ Petition is directed against the notice dated 28 July 2015, whereby and whereunder the Puducherry Planning Authority directed the petitioner to remove the unauthorized cell phone tower, within a period of 14 days, failing which, it was indicated that further action would be taken by invoking the provisions of Puducherry Building Bye-Laws and Zoning Regulations, 2012 and Pondicherry Town and Country Planning Act, 1969.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader, Puducherry, on behalf of the respondents.

3. The petitioner is stated to be a tower management company specializing in providing infrastructure to the wireless telecommunications industry, which is then shared among multiple operators.

4. The petitioner took lease of the property situate in R.S.No.239pt, Mahatma Gandhi Street, Ward C, Puducherry, for erecting the cell phone tower, to be used as a cellular mobile service provider. The petitioner erected the cell phone tower pursuant to the lease agreement, without taking permission from the statutory authorities. According to the petitioner, the mobile tower was erected prior to the commencement of the Puducherry Building Bye Laws and Zoning Regulations, 2012, requiring permission to erect cell tower and as such, the second respondent was not correct in initiating proceeding to remove the tower.

5. The factual matrix indicates that the petitioner erected the cell tower on a four storied building at T.S.No.128, 129 and 130, Block No.15, D.Nos.151, 153 and 155, M.G. Road, Puducherry. The petitioner after erection of tower, submitted an application on 3 October 2013, requesting the planning authority to grant license. The Planning Authority by communication dated 8 November 2013, called upon the petitioner to produce as many as 9 documents for taking further action. The petitioner failed to comply with the direction issued by the statutory authority.

6. The Pondicherry Planning Authority issued a notice on 16 February 2015, calling upon the petitioner to explain as to why action should not be taken for the unauthorized erection of cell phone tower. In the said notice, it was indicated that a fire accident occurred at the premises of the petitioner and it was widely reported in newspapers on 14 February 2015. The general public expressed fear and insecurity on account of the functioning of unauthorized cell tower.

7. The petitioner submitted a reply on 2 March 2015. The petitioner pleaded helplessness to produce the documents as indicated in the show cause notices dated 8 November 2013 and 16 February 2015. It was only thereafter, the second respondent issued the impugned notice.

8. There is no dispute that the petitioner erected the cell tower in question without taking planning permission. Though the site in question would come within the jurisdiction of Puducherry Municipality, license was not obtained from the local body also. There are three operators functioning, by making use of the mobile tower erected by the petitioner. The reply dated 2 March 2015 shows that Airtel, Vodafone and Aircel are operating as licensees under the

petitioner. It is also not in dispute that a fire accident occurred and the local people have expressed their serious concern with regard to the erection of cell tower in the midst of a busy locality.

9. The petitioner is not willing to comply with the statutory requirements. Even though Puducherry Planning Authority called upon the petitioner to furnish relevant documents, the petitioner has taken an adamant attitude that they are not in a position to comply with the direction.

10. The petitioner has taken up a contention that tower was erected before notifying the planning regulation. Even if the said contention is correct, still within a reasonable period, the petitioner should obtain license/ permission from the statutory authority.

11. Building regulations are intended for compliance and not for non compliance. In case the petitioner wanted to erect a tower, they should take permission from the statutory authority. Even though the petitioner discontinued the operation of the cell tower, recently, they have erected a new generator on the terrace of the four storied building. The very fact that the petitioner erected generator shows that it was only to avoid action by the Electricity Department, they are using the energy generated by generator.

12. The petitioner appears to have no regard to the law of the land. Such parties are not entitled to an equitable remedy from the writ Court.

13. We do not find any error or illegality in the action taken by the Puducherry Planning Authority.

14. The petitioner is given time till 21 August 2015 to remove the cell tower. In case the petitioner fails to comply with the direction given by the second respondent within the time permitted by this Court, necessarily, the cell tower should be removed by the second respondent immediately thereafter. The second respondent is given liberty to claim the cost of such removal from the petitioner.

15. In the upshot, we dismiss the Writ Petition. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

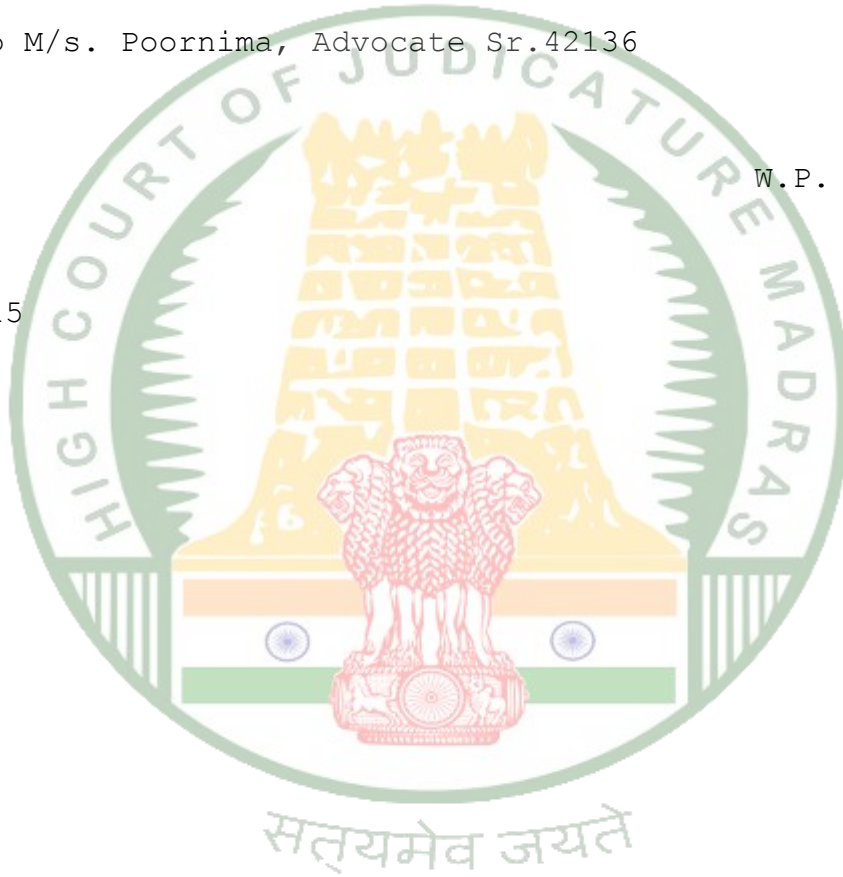
1 The Chief Secretary,
Government of Puducherry,
1 Beach Road Puducherry.

2. Member Secretary , Jawahar Nagar
Puducherry Planning Authority
Boomianpet Puducherry.

+ 1 cc to M/s. Poornima, Advocate Sr.42136

W.P. No.24485 of 2015

KSJ(CO)
Eu 26.08.15



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