

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2016

C O R A M

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.37348 of 2015
and
M.P.No.1 of 2015

ATC Telecom Tower Corporation Pvt.Ltd
Registered Officer
rep. By Authorised Signatory
Plot No.B 35, 1st floor
Sector 32, Gurgaon
Haryana-122001

....Petitioner

-Vs-

- 1.The District Collector
Coimbatore District
Coimbatore
- 2.The Revenue Divisional Officer
Coimbatore 641 035
- 3.The Tahsildar
Coimbatore North
Coimbatore
- 4.The Sub Inspector of Police
Saravanampatti Police Station
Coimbatore City
- 5.Sri Hari Apartment Residents Welfare
Association, Rep. By its President
T.Karthikeyan
Amman Nagar East
Saravanampatti, Coimbatore

...Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus calling for the records of the 3rd respondent relating to his order Na.Ka.17750/2015/A1 dated 17.08.2015, quash the

same and direct the 4th respondent to give adequate protection to the petitioner to complete the construction of the cellphone tower in S.F.No.158/2, Saravanampatti Village, Coimbatore North.

For Petitioner : Mrs.Hema Sampath, Senior Counsel
for Ms.S.Meenal

For Respondents: Mr.R.Rajeswaran, Spl.G.P., for R1 to R4.
***M.Venkadesh** for R5.

O R D E R

Heard Mrs.Hema Sampath, learned Senior Counsel appearing for the petitioner and Mr.R.Rajeswaran, learned Special Government Pleader for Respondents 1 to 4.

2. The petitioner is a Telecom Corporation and has filed this writ petition, challenging the order passed by the 3rd respondent dated 17.08.2015. By the impugned proceedings, the 3rd respondent has informed the petitioner that on account of public objection, the telecom tower should not be erected.

3. Firstly, it is to be seen as to whether the 3rd respondent has jurisdiction to issue such order. In any event, the larger issue is as to whether mobile phone towers have to exist or not was considered in a batch of cases by the Honourable First Bench of this Court in K.R.Ramaswamy @ Traffic Ramaswamy Vs. The Secretary, Department of Telecommunication, Government of India, New Delhi and others in W.P.No.24976 of 2008 etc batch dated 05.03.2015. In the said batch of cases, the apprehension was on account of the existence of mobile phone towers and the possibility to cause health hazard. The court took into consideration the decision of the Kerala High Court in W.P.(C).No.16724 of 2006 (N) [Reliance Inforcomm Ltd., Vs. The Sub Inspector of Police, Koyilandy, Kozhikode and others) and the reports which were referred to by the Kerala High Court. Further, it also took into consideration the circular issued by the Department of Telecommunications, Government of India in No.GR/TWR-09/01 FEB 2004, which pertain to Roof Top Towers for Cellular Mobile Systems and also to the report of the Departmental Committee of BTS Towers and then disposed of batch of cases on the following terms:-

" 10. We are, thus, of the view that in a judicial proceeding these aspects cannot be analysed. There being no materials atleast as on date, which can finally suggest any health hazards from these towers and the solution thereof, the Court would not venture into

unchartered territory of technical expertise to determine the area where it should be installed. The Court, at best can place this matter before the appropriate Committee to take into this matter which the Kerala High Court already did and we have the benefit of the conclusion arrived at in those proceedings, as noticed above.

11. We are of the view that no further directions are required in these matters, other than to say that the concerned authorities would continue to analyse the materials as and when it emerges to look into the concern raised by the petitioners, especially, in view of the fact that there is no final view as yet on these aspects. Science grows and evolves and one does not know what may happen tomorrow. It is, in this context, we have made these observations.

12. Writ Petitions and the Writ Appeal, accordingly, stand disposed of. No costs. Consequently, all connected Miscellaneous Petitions are closed."

4. In the instant case, it has to be pointed out that the Cell Phone Tower has not been erected on the roof top of any private building, but on the vacant site. Hence, the impugned proceedings is necessarily to be held as not tenable. Accordingly, the Writ Petition is allowed. The impugned order is set aside and it is observed that no further directions are required other than the observation made by the Honourable First Bench of this Court. The decision of the Kerala High Court in W.P.(C).No.16724 of 2006 (N) [Reliance Inforcomm Ltd., Vs. The Sub Inspector of Police, Koyilandy, Kozhikode and others] shall also stand applicable to the case of the parties, who are concerned in this writ petition. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

Sd/-
Assistant Registrar(V)

**Amended as per order of this
court dated 02.03.2016**

Sd/-

Assistant Registrar(CS VI)

22.03.2016

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The District Collector
Coimbatore District
Coimbatore

2.The Revenue Divisional Officer
Coimbatore 641 035

3.The Tahsildar
Coimbatore North
Coimbatore

4.The Sub Inspector of Police
Saravanampatti Police Station
Coimbatore City

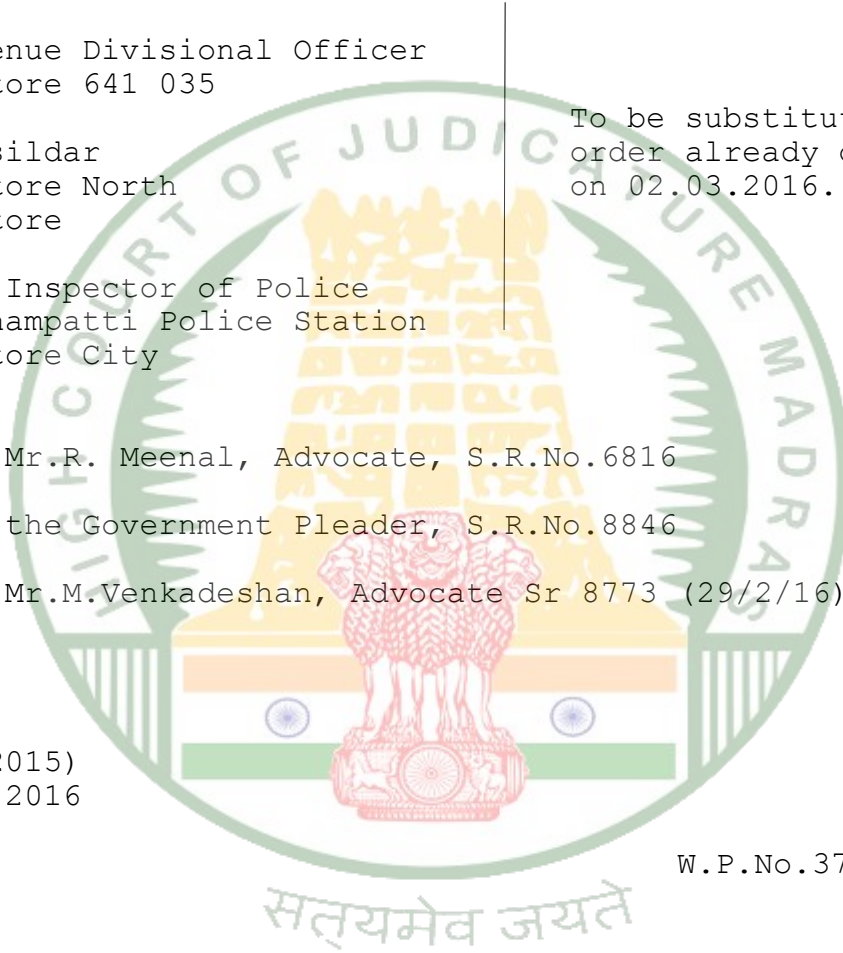
To be substituted to
order already despatched
on 02.03.2016.

+ 1 cc to Mr.R. Meenal, Advocate, S.R.No.6816

+ 1 cc to the Government Pleader, S.R.No.8846

+ 1 cc to Mr.M.Venkadeshnan, Advocate Sr 8773 (29/2/16)

CTK (CO)
EU (23/02/2015)
kra 22.03.2016



W.P.No.37348 of 2015

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