



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2017

CORAM:

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P (MD) No.17959 of 2017

and

W.M.P (MD) No.14477 of 2017

S.Sankar

... Petitioner

Vs.

1.The Executive Officer

Town Panchayat, Alwarkurichi,
Tirunelveli District.

2.The Inspector of Police

Police Station, Alwarkurichi,
Tirunelveli District.

3.Indus Towers Ltd.,

5 ESPEE IT Part,
5th Floor, Jawahar Nehru Road,
Ekkattuthangal, Chennai - 32
through the Managing Director.

... Respondents

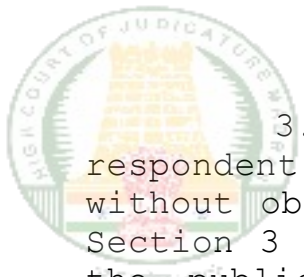
PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to enforce the provision in Tamil Nadu District Municipalities Act particularly in Section 3(3) against the third respondent and prevent him from construction any superstructure in S.No.1430/1A of all over the town.

For Petitioner : Mr.T.S.R.Venkataramana

For Respondents : Mr.S.Chandrasekar - for R.1
: Mr.M.Alagathevan - for R.2
Special Government Pleader
: Mr.M.Ponniah - for R.3

O R D E R

This writ petition has been filed, seeking to direct the respondents to enforce the provision in Tamil Nadu District Municipalities Act particularly in Section 3(3) against the third respondent and prevent him from constructing any superstructure in S.No.1430/1A of all over the town.



3. It is the allegation of the petitioner that the third respondent has illegally erected a cell tower in Alwarkurichi without obtaining any permission or licence as contemplated under Section 3 (3) of the Tamil Nadu District Municipalities Act. When the public started protest against it, the second respondent police threatened the public by saying that the High Court has permitted the construction. In the meanwhile, the petitioner got information under the Right to Information Act from the first respondent, which reveals that no such permission has been granted to the third respondent to erect the cell phone tower and hence, the petitioner is before this Court for the aforesaid relief.

4. By relying on the counter affidavit, the learned Counsel appearing for the third respondent vehemently opposed the contention of the petitioner and further submitted that no such illegality was committed in respect of construction of a cell phone tower and so as to substantiate his stand, he relied upon various G.O.'s for installation of BTS towers, which shall be permitted in all the land.

5. At this juncture, the learned Counsel appearing for the petitioner submitted that the third respondent has illegally erected the cell phone tower, without obtaining any permission or licence as contemplated under Section 3 (3) of the Tamil Nadu District Municipalities Act, which is also revealed from the information dated 14.09.2017, received under the Right to Information Act, from the first respondent and now, the petitioner seeks indulgence of this Court, to permit the petitioner to submit a fresh representation narrating all the events, before the authorities concerned, who shall look into the matter, as per law.

6. The learned Special Government Pleader as well as the learned Counsel appearing for the first respondent would submit that the first respondent is the competent authority to pass orders in this matter and the petitioner has not submitted any representation to the first respondent. In the event of the petitioner submitting a fresh representation along with supporting documents, the same will be considered in a time bound manner.

7. Under such circumstances, this Court, without expressing any opinion on the merits of the matter, directs the petitioner to submit a fresh representation with all necessary documents, along with a copy of this order to the first respondent within a period of two weeks from the date of receipt of copy of this order and on such filing, the first respondent shall consider the same and pass appropriate orders on merits and in accordance with law and also keeping in mind the provision of Section 3(3) of the Tamil Nadu District Municipalities Act, after affording an opportunity of hearing to the petitioner as well as other interested parties, if any, within a period of four weeks thereafter.



8. With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Executive Officer
Town Panchayat, Alwarkurichi,
Tirunelveli District.
- 2.The Inspector of Police
Police Station, Alwarkurichi,
Tirunelveli District.

+1cc to M/S.M.Ponniah, Advocate SR.No. 92843
+1cc to Special Government Pleader, SR.No. 93125

W.P (MD) No.17959 of 2017

rm
JM/SV MMS/SAR 1/15.12.2017/3P/5C