



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 05.09.2017

CORAM

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THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

W.P (MD) No. 4871 of 2011
and
M.P (MD) No. 1 of 2011

A. Ebenezer

.. Petitioner

Vs

1. The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kappalur,
Madurai.

2. Vijay Sugumaran

3. The Reliance Communications,
represented by its Area Manager,
48, Bye-pass Road,
Madurai.

.. Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of directing the first respondent to remove the communication Tower and 20 KVA Generator laid down by the third respondent in 27, Srinivasa Second Cross Street, Namachivaya Nagar, Madurai in the site of the second respondent.

For Petitioner : M/s.S.Thamizharasan
For Respondent-1 : Mr.A.Muthukaruppan
Addl. Government Pleader
For Respondent-2 : No appearance
For Respondent-3 : Mr.M.S.Suresh Kumar

ORDER

The prayer in the Writ Petition is for a direction to the first respondent to remove the communication Tower and 20 KVA Generator laid down by the third respondent in 27, Srinivasa Second Cross Street, Namachivaya Nagar, Madurai in the site of the second respondent.

<https://hcservices.ecourts.gov.in/hcservices/>

2. Heard Mr.S.Thamizharasan, learned counsel for the Petitioner,



Mr.A.Muthukaruppan, learned Additional Government Pleader appearing for the respondent No.1 and Mr.M.S.Suresh Kumar, learned counsel appearing for the respondent No.3 and perused the materials placed before this Court.

3. It is submitted that in similar Writ Petitions filed before the Principal Bench were listed before the Division Bench, the Division Bench disposed of the Writ Petitions by order, dated 5.3.2015 and the relevant portion of the order reads as follows:

'9. Learned counsel for the Petitioner in W.P. (MD) Nos.16907 to 16909 of 2012 has also referred to the report of the Departmental Committee of BTS Towers, which contains recommendations. The Departmental Committee report is dated 30.3.2012. This, actually, thus succeeds GR.No.GR/TWR-09/01 FEB 2004 issued by the Department of Telecommunications, referred to above by us. In fact, it enforces the health aspects of the concerned authorities and thus periodically reviewing the matter depending upon the evidentiary material available for and against the health aspects qua these towers.

10. We are, thus, of the view that in a judicial proceeding these aspects cannot be analyzed. There being no materials at least as on date, which can finally suggest any health hazards from these towers and the solution thereof, the Court would not venture into un-chartered 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 look 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 analyze 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 stands disposed of. No costs. Consequently, all connected Miscellaneous Petitions are closed.'



4.This Writ Petition is also disposed of in same terms. Consequently, connected Miscellaneous Petition is closed. No costs.

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Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
Kappalur,
Madurai.

+ 1 CC TO Mr.M.S.SURESH KUMAR, ADVOCATE IN SR No. 76536

VSN

TE/JC/SAR-II : 25/09/2017 : 3P/3C

W.P (MD) No.4871 of 2011 and
M.P (MD) No.1 of 2011

05.09.2017