

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2018

CORAM

The HON'BLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
The HON'BLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.3006 of 2018
and WMP.No.3672 of 2018

P.Balasubramaniam .. Petitioner
vs.

1.The District Collector,
Namakkal District,
Namakkal.

2.The Block Development Officer,
Village Panchayat,
Namakkal District.

3.The Village President,
Molasi Village Panchayat,
Molasi,
Tiruchengode Taluk,
Namakkal District.

4.Panneerselvam

5.The Reliance Jio Infocomm Limited,
Jio Tower,
3rd and 4th Floor, Indus Tower 1045,
Avinashi Road,
Annasalai,
Srivar Shrimanth Race Course,
Gopalapuram, Coimbatore,
Pin Code : 641 018.

6.The Assistant Engineer,
Tamilnadu Electricity Board,
Kollapatti,
Tiruchengode Taluk,
Namakkal District.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India for issuance of a writ of mandamus
directing the respondents 1 to 3 to consider the

representations dated 8.1.2018 sent by the petitioner and others and issue necessary orders forbearing the respondents 4 & 5, their agents and persons claiming through them or any other person from erecting/commissioning high rise Cell Phone Transmission Tower in Molasi Village, Tiruchengode Taluk, Namakkal District.

For Petitioner : Mr.P.Mani

For Respondents : Mr.T.N.Rajagopalan
Government Pleader
for respondent Nos.1 & 2
Mr.S.K.Raameshwar
for respondent No.6

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

In this writ petition, the petitioner has sought a writ of mandamus directing the respondents 1 to 3 to consider the representation dated 08.1.2018 made by petitioner and to issue necessary orders restraining the respondent Nos.4 and 5, their agents and persons claiming through them from commissioning high rise Cellular Phone Transmission Tower in Molasi village, Tiruchengode Taluk, Namakkal District. The petitioner has also sought an interim injunction restraining the respondent Nos.4 and 5 from erecting and/or commissioning high rise Cellular Phone Transmission Tower in the village in question pending disposal of the writ petition.

2. In the affidavit filed in support of the writ petition, it is stated that the petitioner is a permanent resident of the village, where more than 500 families reside, including a large number of children as also aged persons.

3. According to the petitioner, there is a Government Primary Health Hospital, private hospitals and schools in the village. There was no complaint of any serious health hazards till erection of Cellular Phone Transmission Towers few years ago. According to the petitioner, after the BSNL (Bharat Sanchar Nigam Limited) and Aircel Cellphone Transmission Towers were erected in the residential area, aged persons and children have become exposed to serious health hazards such as cancer, loss of memory, sleeplessness, fatigue, cataracts etc. It is also stated that the respondent Nos.4 and 5 have not obtained any permission from the local authority and the District

administration or from the State and Central Governments for constructing Cellular Phone Tower in the residential area. According to the petitioner, various State Governments have imposed restrictions on construction of Cellular Phone Towers, particularly, in residential areas because of the serious health hazards caused by radiations. It is also contended that the respondent Nos.4 and 5 have not obtained No Objection Certificates (NOC) from neighbours and they have not executed the indemnity bond for building damage and public safety. It is stated that the radiation from the Mobile Phone Tower poses the following serious health hazards:

- (i) Cancer;
- (ii) Memory loss; fatigue and loss of concentration;
- (iii) Digestive disorders;
- (iv) Cataracts

4. It is stated that as per the established norms, the radiation level of 600 milli-watts per metre square is considered safe. However, Mobile Phone Towers emit electro magnetic rays above the safe level.

5. It is not for this Court exercising its extraordinary writ jurisdiction to assess the health hazards of erection and/or commission of high rise Mobile Phone Towers in residential areas or elsewhere. The exercise of study of health hazards, if any, of erection of Cellular Phone Transmission Towers has to be done by the Health Department of the Union of India and the Government of Tamil Nadu and based on such study, measures may have to be taken. This Court neither has the expertise, nor the technical knowledge to assess the effects and/or ill-effects of the radiation, if any, caused by the installation of Cellular Phone Transmission Towers.

6. It is believed that not only erection of towers, but even excessive use of mobile phones has its own hazards. However, mobile phones seem to have become a part of life, where parents who can afford mobile phones, even provide children with mobile phones so that they can keep track of the children. Mobile phones are used by persons of every strata of society. Regretfully, we cannot but comment on our own inability to strictly enforce switching off of mobile phones even in the Court rooms and Court proceedings are often disturbed by ringing mobile phones. In these circumstances, we are not sure whether an order by the Court prohibiting erection of Mobile Phone Towers can be considered to be an order in public interest, though personally we may feel that restriction in use of mobile phones is imperative for reasons of health, reasons of concentration and may be even social and family harmony.

7. A similar writ petition was moved by Dr.K.R.Ramaswamy @ Traffic Ramaswamy being W.P.No.24967 of 2008, where an order dated 05.03.2015 was passed by the then Hon'ble Chief Justice Sanjay Kishan Kaul and Hon'ble Mr.Justice M.M.Sundresh as under:

"10. We are, thus, of the view that in a judicial proceeding these aspects cannot be analysed. 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 uncharted 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 analyse the materials as and when it emerges to look into the concern raised by the petitioner, 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."

8. As a Bench of co-ordinate strength, we are bound by the aforesaid verdict dated 05.3.2015 in the public interest litigation initiated by Dr.K.R.Ramaswamy @ Traffic Ramaswamy.

9. We expect the concerned Health Ministries to conduct necessary studies in this regard and to take such measures as may be deemed appropriate upon such studies.

10. Needless to mention that Cellular Phone Transmission Towers can only be erected on obtaining of requisite permissions and approvals as per law.

The writ petition is disposed of. No costs. Consequently, WMP.No.3672 of 2018 is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To:

1.The District Collector,
Namakkal District,
Namakkal.

2.The Block Development Officer,
Village Panchayat,
Namakkal District.

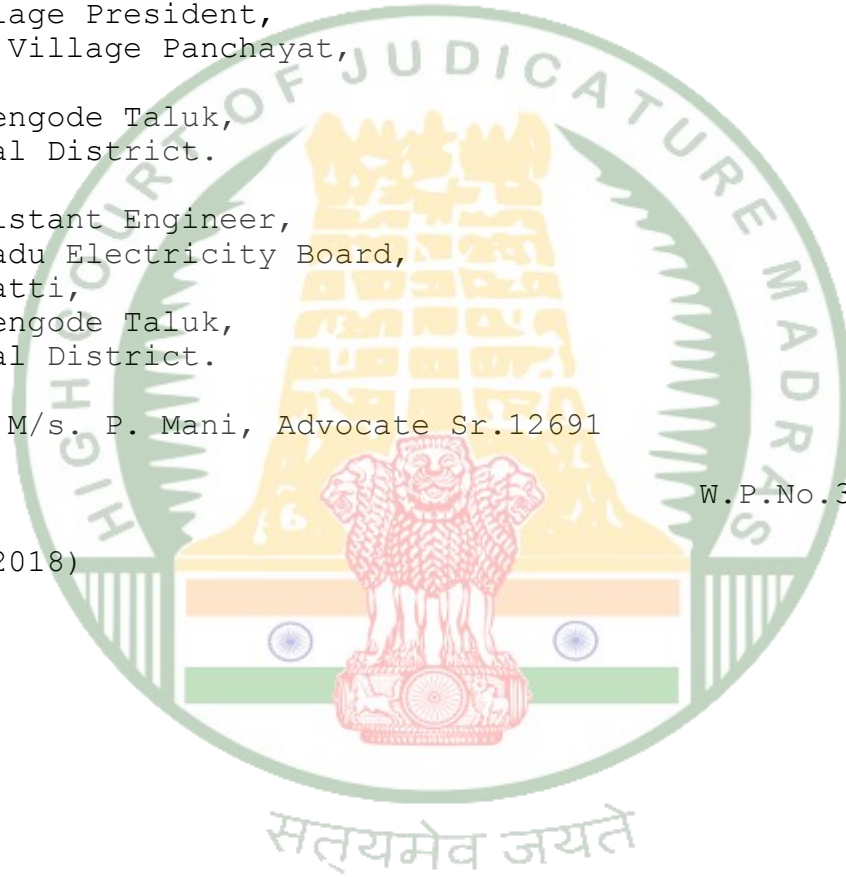
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Namakkal District.

+ 1 cc to M/s. P. Mani, Advocate Sr.12691

W.P.No.3006 of 2018

KAN(CO)
EU(10/04/2018)



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