

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL
AND
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.21979 and 14877 of 2017
and
W.M.P.Nos.23042 and 16122 of 2017

1. Indus Towers Limited,
Rep. by its Authorised Signatory,
Mr.S.Prasanna,
No.5, ESPEE IT Park,
5th Floor, Jawaharlal Nehru Road,
Ekkatuthangal, Chennai-600 097.
2. Ganapathy .. Petitioners in W.P.No.21979 of 2017
- R.Krishnamurthy .. Petitioner in W.P.No.14877 of 2017
Vs.
1. The Secretary to Government,
Municipal Administration Department,
The Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The Executive Officer,
Nandhivaram Guduvanchery Town Panchayat,
Kancheepuram District.
3. R.Krishnamurthy .. Respondents in W.P.No.21979 of 2017
1. The Director,
Directorate of Town Panchayat,
Kuralagam, Chennai-1.
2. The Executive Officer,
Nandhivaram Guduvancherry Town Panchayat,
Kanchipuram District.
3. Indus Towers,
NB-5, Jawaharlal Nehru SP IT Park,
5th Floor, Ekkattuthangal,
Chennai-32

4. Bharthi Airtel Ltd.,
Rep. by its Authorised Signatory, Circle Office,
Oceanic Towers,
101, Santhome High Road, Chennai-28.

5. Ganapathy .. Respondents in W.P.No.14877 of 2017

Prayer:

Writ Petition No.21979 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the second respondent's notice bearing Na.Ka.No.282/2017/A1, dated 06.06.2017 restraining the petitioners from erecting their mobile tower and threatening coercive action, and to quash the same, and consequently forbear the second respondent from taking any coercive action as mentioned in the said notice in respect of their mobile phone tower at Old Grama Natham Survey No.93B/1B, New Grama Natham Survey No.195/5, situated at G.S.T.Road, No.5, Guduvanchery Village, Kancheepuram District.

Prayer:

Writ Petition No.14877 of 2017 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents to remove illegal and unauthorised construction of cell phone tower in Old S.No.359/1, Dr.Jagir Hussain Street, Nandhivaram Guduvanchery Village, Kanchipuram District, by implementing the Stop Notice Order issued by the second respondent through his proceedings in Na.Ka.No.282/2017/A1, dated 06.06.2017.

(Prayer in W.P.No.14877 of 2017 is amended as per the order of Court, dated 27.07.2017 passed in W.M.P.No.19932 of 2017 in W.P.No.14877 of 2017)

For petitioner : Mr.S.Anil Sandeep in W.P.No.21979 of 2017
Mr.K.Balakrishnan in W.P.No.14877 of 2017

For respondents in
W.P.No.21979 of 2017: Mr.A.N.Thambidurai, Spl.G.P.
for RR-1 and 2
Mr.K.Balakrishnan for R-3

For respondents in
W.P.No.14877 of 2017: Mr.A.N.Thambidurai, Spl.G.P.
for RR-1 and 2
Mr.S.Anil Sandeep for R-3
No appearance for RR-4 and 5

ORDER

(The Order of the Court was made by S.Vaidyanathan, J)

Writ Petition No.21979 of 2017 is filed praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the second respondent's notice bearing Na.Ka.No.282/2017/A1, dated 06.06.2017 restraining the petitioners from erecting their mobile tower and threatening coercive action, and to quash the same, and consequently forbear the second respondent from taking any coercive action as mentioned in the said notice in respect of their mobile phone tower at Old Grama Natham Survey No.93B/1B, New Grama Natham Survey No.195/5, situated at G.S.T.Road, No.5, Guduvanchery Village, Kancheepuram District.

2. Writ Petition No.14877 of 2017 is filed praying for issuance of a Writ of Mandamus to direct the respondents to remove illegal and unauthorised construction of cell phone tower in Old S.No.359/1, Dr.Jagir Hussain Street, Nandhivaram Guduvanchery Village, Kanchipuram District, by implementing the Stop Notice Order issued by the second respondent through his proceedings in Na.Ka.No.282/2017/A1, dated 06.06.2017. (Prayer in W.P.No.14877 of 2017 is amended as per the order of Court, dated 27.07.2017 passed in W.M.P.No.19932 of 2017 in W.P.No.14877 of 2017).

3. For the purpose of convenience, the parties are referred to as they are ranked in W.P.No.21979 of 2017.

4. The sum and substance of these two Writ Petitions is questioning the action of the authorities in issuing impugned notice under Section 216(1) of the District Municipalities Act on the ground that the petitioners, without permission of the local authorities, erected the cell phone tower and that continuation of the construction work has got to be stopped.

5. Learned counsel for the petitioners drew the attention of this Court to G.O.Ms.No.2, Information Technology Department, dated 01.04.2002 and contended that the same will be applicable only to the Government buildings and that the official respondents cannot enforce the said G.O., if any cell phone tower is erected in a private building or private land by availing the same on rental basis. Learned counsel for the petitioners also referred to G.O.Ms.No.177, Municipal Administration and Water Supply (MAI) Department, dated 17.12.2002 and submitted that the conditions in the said G.O.Ms.No.2 were widened and that it has permitted the cell phone tower operating to erect the towers even in a private place also and that the Tamil Nadu District Municipalities Building Rules and Multi-storeyed and Public Building Rules, would not be applicable to the persons who are erecting the cell phone towers, as it would be coming under the purview of any building.

6. Learned counsel for the petitioners further submitted that even though there is a specific order by the Department of Telecommunication (DoT) and the guidelines have to be framed for the purpose of regulating the erection of cell phone towers, as on date, there are no guidelines framed either by the DoT that is made applicable to all the States or that the State has not framed any guidelines with regard to the erection/construction of cell phone towers either in the public premises or in a private building. Learned counsel for the petitioners further stated that the provisions of the Tamil Nadu District Municipalities Act, are not made applicable and hence, the impugned notice issued under the said provisions of the Act, are illegal and that the same has got to be interfered with. He further contended that in the premises of the third respondent-R.Krishnamurthy, the cell phone tower was erected without the permission of the authorities and due to enmity, he demanded exorbitant money and that as the petitioners felt that the said Krishnamurthy is trying to extort money and decided to move out from the said building and occupy another building next to the building of the said Krishnamurthy in the vacant land close-by to the said Krishnamurthy. Since no money has been paid to the said Krishnamurthy and on account of the vengeance, suppressing the fact that the petitioners are tenants of the said Krishnamurthy's mother, the said Krishnamurthy has given a complaint, based on which, notice has been issued by the second respondent-Town Panchayat. Even assuming that the complaint given by the said Krishnamurthy is said to be disputed question of fact, which has got to be decided in a different forum legally, when the Tamil Nadu District Municipalities Act is not applicable, the notice has got to be interfered with.

7. It is the contention of the learned counsel for the official respondents that it is true that the provisions of the Tamil Nadu District Municipalities Act may not be applicable to the case, provided the building is going to be constructed. Insofar as the construction/erection of cell phone tower, the petitioners will have to inform the authorities and get prior permission from the authorities before erecting the cell phone tower, and thereafter continue its operation. The petitioners get their right in terms of G.O.Ms.No.177, Municipal Administration and Water Supply Department, dated 17.12.2002 and that giving a go-by to the said G.O., the petitioners cannot erect the cell phone tower in a private place without obtaining prior permission from the authorities. Learned counsel for the official respondents submitted that the authorities have not gone into any of the averments made by the petitioners, but it is only notice issued under Section 216(1) of the Tamil Nadu District Municipalities Act, asking the petitioners to stop the formation of cell phone tower and that no prejudice would be caused to the petitioners if a reply to the impugned notice is given. It is further submitted that the said G.O.Ms.No.177 had been issued in order to give certain benefits to the persons

like the petitioners, but for the said G.O.Ms.No.177, the provisions of the Tamil Nadu District Municipalities Act will be made applicable to the petitioners.

8. In reply, learned counsel for the petitioners submitted that in terms of G.O.Ms.No.177, dated 17.12.2002, the Government authorities have to take a decision in the matter, but the same has been clarified by letter dated 26.03.2009 issued by the Government. It is stated in the said letter that the cell phone towers shall be permitted in all the land use zones in the Master Plan and that in terms of paragraph 3 of the said letter, the Municipal Administration and Water Supply Department and Rural Development and Panchayat Raj Department have been instructed to issue necessary instructions to the Corporation/Municipalities/Local Bodies not to insist upon building permission from the cell phone companies for erection of Base Trans Receiver Station Towers, in view of the orders issued in G.O.Ms.No.177, Municipal Administration and Water Supply Department, dated 17.12.2002 and in G.O.Ms.No.302, Housing and Urban Development Department, dated 12.12.2002. The Government, after careful examination, accepted the proposal of the Special Commissioner of Town and Country Planning and accordingly, the Government directed that the installation of Base Trans Receiver Station Towers shall be permitted in all the land use zones in the Master Plan.

9. Learned counsel for the petitioners submitted that when there are several exemptions granted and that when there are no guidelines/regulations framed by either the State or by the DoT or on the broad instructions given by the DoT/State, the impugned notice dated 06.06.2017 needs to be interfered with. Learned counsel for the petitioners drew the attention of this Court to the order dated 12.12.2017 in W.P.No.5065 of 2012, and submitted that in similar circumstances, this Court has interfered with the notice therein claiming licence fee.

10. Learned counsel for the third respondent-Krishnamurthy, who is the petitioner in W.P.No.14877 of 2017, brought to the attention of this Court that the construction for the erection of the cell phone tower has been made in violation of the guidelines/statutory provisions, and the said Krishnamurthy has come forward with the prayer in W.P.No.14877 of 2017 to remove the illegal and unauthorised construction of cell phone tower that is going to be made by the petitioners in W.P.No.21979 of 2017.

11. Heard both sides and perused the materials available on record.

12. The sum and substance of the case is that the petitioners in W.P.No.21979 of 2017 like to have the Base Trans Receiver Station Towers in a private land, for which, whether the planning approval is required in terms of the provisions of the Tamil Nadu District Municipalities Building Rules and Multi-storeyed and Public Building Rules. But for G.O.Ms.No.2, Information Technology Department, dated 01.04.2002,

G.O.Ms.No.302, Housing and Urban Development Department, dated 12.12.2002 and G.O.Ms.No.177, Municipal Administration and Water Supply Department, dated 17.12.2002, the exemption has been granted with regard to the Base Trans Receiver Station Tower from the aforesaid Act/Rules. The petitioners get their right only based on the said G.O.Ms.No.177, dated 17.12.2002. On a reading of paragraph 3 of the said G.O.Ms.No.177, it would make it clear that the Government has granted exemption to BTS Towers constructed by Telecom Companies from the Tamil Nadu District Municipalities Building Rules and the Multi-Storeyed and Public Building Rules, subject to the conditions imposed in the said G.O.Ms.No.2 and the Government's letter dated 18.09.2002, which means that the conditions mentioned in G.O.Ms.No.2, have been bodily incorporated into G.O.Ms.No.177. Unless the petitioners satisfy/fulfils the conditions laid down in the said G.O.Ms.No.2, the petitioners cannot have a right to have the cell phone towers - Base Trans Receiver Station Towers.

13. It is true that there is no need for any building plan or permission from the authorities. What is required as per the said G.Os. is that an application has got to be made and permission has got to be obtained. A reading of G.O.Ms.No.2 makes it clear that permission may be granted initially for a period of ten years and the word "permission" would mean that there shall be an application and that the authorities will have to scrutinise the papers and permit the person to operate the cell phone towers in a particular place.

14. A reading of G.O.Ms.No.177 in isolation without reference to G.O.Ms.No.2, would not be correct. No prejudice is going to be caused to the petitioners, if all the particulars/documents that are required by the authorities are produced. There are Advisory Guidelines for the State Government framed by the DoT (Department of Telecommunication) for issuance of Clearance Certificate for the purpose of installing Mobile Towers with effect from 01.08.2013, wherein it is stated that detailed scrutiny has got to be done including structural stability, etc. As the cell phone towers are going to be used for the purpose of making the citizens to use the cell phones, it is mandatory on the part of the petitioners in W.P.No.21979 of 2017 to seek prior permission from the authorities concerned. Without the permission from them, the petitioners cannot be permitted to operate the cell phone towers from the Base Trans Receiver Station Towers. However, it is mandatory that even before the installation, such permission has got to be granted and taking note of the present case that the installation has already commenced, the necessary papers along with the request may be made to the authorities and the said authorities will have to consider the request of the petitioners in W.P.No.21979 of 2017 in terms of G.O.Ms.No.2. It will not preclude the authorities from looking into the Advisory Guidelines of the DoT for the purpose of granting the relief sought for by the petitioners. It is open for the petitioners in W.P.No.21979 of

2017 to make an application to the authorities within a period of one month from the date of receipt of a copy of this order, enclosing all the necessary documents. When once such application is received, the authorities shall hear the petitioners in W.P.No.21979 of 2017 and also the petitioner in W.P.No.14877 of 2017 and others who are interested in the matter, including the complainant and pass appropriate orders within a period of one month from the date of receipt of such application from the petitioners. It is needless to mention that the observations touching upon the merits of the issue in question, are only for the purpose of disposal of these Writ Petitions and the petitioners and others are entitled to put-forth their factual and legal submissions before the authorities, who shall consider the request of the petitioners in accordance with the statutory provisions/Rules/guidelines, if any.

15. Before parting with this order, we make it clear that 99% of the citizens are carrying cell phones with them and the cell phones have become not only a part of the life, but also part of the body (like Kavacha Kundalam of Karnan in Mahabharatha, i.e. a protective shield and ear-ring). Hence, we request the authorities to take a decision at the earliest point of time. We feel that the gadgets are used by the violators to commit economic and other offences and the cell phones being protective, are destroyer of 'peace'.

16. With the above observations and directions, both the Writ Petitions are disposed of. No costs. Consequently, W.M.Ps. are closed.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

cs

To

1. The Secretary to Government,
Municipal Administration Department,
The Government of Tamil Nadu,
Fort St.George, Chennai-600 009.

2. The Executive Officer,
Nandhivaram Guduvanchery Town Panchayat,
Kancheepuram District.

3. The Director,
Directorate of Town Panchayat,
Kuralagam, Chennai-1.

+ 3 cc to Mr.S.Anil Sandeep Advocate,SR.10420

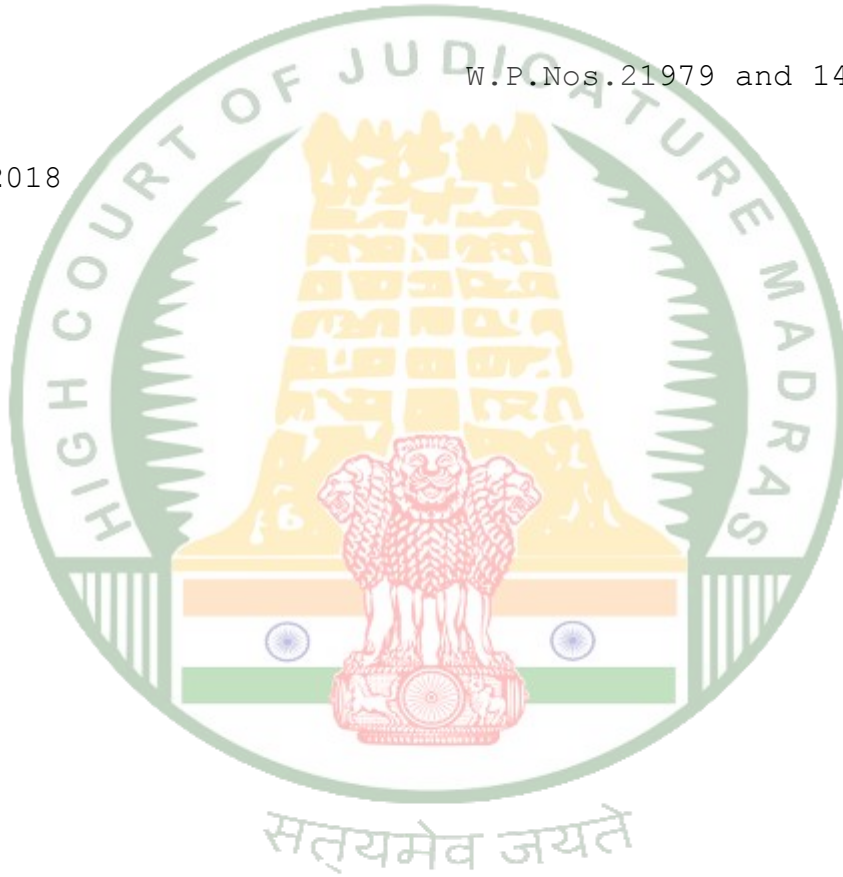
+ 3 cc to Mr.S.Anil Sandeep Advocate,SR.10419

+ 1 cc to Mr.K.Balakrishnan Advocate,SR.10752

+ 1 cc to The Govt.Pleader, SR.10643

W.P.Nos.21979 and 14877 of 2017

ssv(co)
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