

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.No.22190 of 2017
and
W.M.P.Nos.23219 and 23220 of 2017

Indus Towers Limited,
Rep. by its Authorized Signatory Mr.S.Prasanna,
No.5, ESPEE IT Park,
5th Floor, Jawaharlal Nehru Road,
Ekkatuthangal, Chennai-600 097
(M/s.Bharti Infratel Ventures Ltd.
merged into Indus Towers Limited,
as per Hon'ble Delhi High Court order
dated 18.04.2013 in C.P.No.14/12) ... Petitioner

Vs.

1. The Secretary to the Government,
Municipal Administration Department,
The Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The District Collector, Coimbatore District.
3. The Executive Officer,
Annur Town Panchayat,
Coimbatore District. .. Respondents

Prayer:

Writ Petition 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 third respondent's notice bearing Na.Ka.No.462/2017/E, dated 06.07.2017 directing the removal of the mobile phone tower at 33-9-B1, Azad Street, Annur, Coimbatore District and threatening coercive action, and to quash the same and consequently forbear the third respondent from taking any coercive action as mentioned in the said notice in respect of the said mobile phone tower.

For petitioner : Mr.S.Anil Sandeep
For respondents : Mr.A.N.Thambi Durai, Spl.G.P.

ORDER

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

The petitioner has filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the third respondent's notice bearing Na.Ka.No.462/2017/E, dated 06.07.2017 directing the removal of the mobile phone tower at 33-9-B1, Azad Street, Annur, Coimbatore District and threatening coercive action, and to quash the same and consequently forbear the third respondent from taking any coercive action as mentioned in the said notice in respect of the said mobile phone tower.

2. The learned counsel for the petitioner drew the attention of this Court to an order of a Division Bench of this Court in W.P.No.24976 of 2008, etc., dated 05.03.2015, wherein it has been pointed out that there is no proof with regard to the hazard and ill-health that may be caused to the users of cell phones on account of the radiation or waves. It is the further contention of the learned counsel for the petitioner that unless it is established that the cell phones are going to cause harm, the petitioner cannot be restrained from erecting the cell phone towers, if the petitioner complies with the necessary requirements as mentioned in 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. This Court has dealt with the matter in detail regarding the applicability of these G.Os., to the facts of the case, in W.P.Nos.21979 of 2017 and 14877 of 2017, which were disposed of by this Court today.

3. It is also represented that the cell phone towers are in existence from 2002 onwards. If there is any evidence with regard to the radiation or waves causing any health hazard, it is open for the authorities to take appropriate action in accordance with law. In the above said order passed by the Division Bench of this Court in W.P.No.24976 of 2008, etc., dated 05.03.2015, the Division Bench dealt with the aspect of erection of the cell phone towers and its health hazards and referred to a Division Bench order of the Kerala High Court in W.P.(C).No.16724 of 2006 (N) (Reliance Infocomm Ltd., Vs. The Sub-Inspector of Police, Koyilandy, Kozhikode and others), dated 12.10.2006 and thereafter, this Court held that in a judicial proceeding, these aspects cannot be analysed and the issue with regard to the health hazards from these towers, cannot be gone into as it involves technical expertise.

4. The reliance placed by the learned counsel for the petitioner on the order of this Court dated 12.12.2017 in W.P.No.5065 of 2012, will not be applicable to the facts and circumstances of the case, as the relief sought for by the petitioner is regarding the licence fee therein, and the issue relating to permission has to be sought for or not, has not been gone into by this Court in that case. Though we agree with the said order of this Court in W.P.No.5065 of 2012, as the issue on hand has not been referred to or whether the permission that has got to be taken by the writ petitioner, we hold that the order passed in W.P.No.5065 of 2012 will not be applicable to the present set of facts.

5. Moreover, if the permission has not already been obtained by the petitioners with regard to the erection of cell phone towers, it is open for the petitioners herein to make an application before the authority concerned within the time stipulated in the order passed today in W.P.Nos.21979 and 14877 of 2017, i.e. within 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 petitioner 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 petitioner. 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.

6. With the above observations, the Writ Petition is disposed of. No costs. Consequently, W.M.Ps. are closed.

7. Before parting with the case, it has to be observed that whether the radiation in the cell phones, causes health hazard or not, certainly, it causes harm to the family, as it distances them who are close-by.

Sd/-
Asst.Registrar (CS IX)

/true copy/

Sub Asst. Registrar

CS

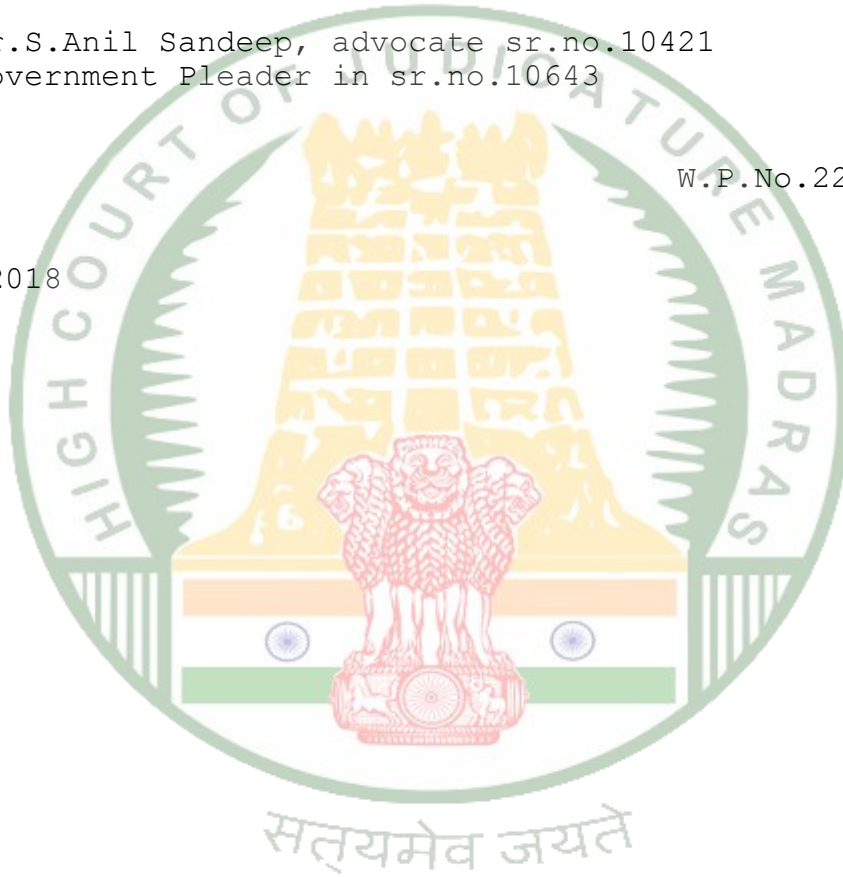
To

1. The Secretary to the Government,
Municipal Administration Department,
The Government of Tamil Nadu,
Fort St.George, Chennai-600 009.
2. The District Collector, Coimbatore District.
3. The Executive Officer,
Annur Town Panchayat, Coimbatore District.

+3cc to Mr.S.Anil Sandeep, advocate sr.no.10421
+1cc to Government Pleader in sr.no.10643

W.P.No.22190 of 2017

ssv(co)
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