

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2018

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP.No.23411 of 2018
and WMP No.27333 of 2018

A.Shanthi ... Petitioner

vs.

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

3. The Tahsildar,
Thirukzhukundram Taluk,
Kancheepuram District.

4. The Inspector of Police,
Pudhuppattinam Police Station,
Kancheepuram District.

5. The Manger,
The Reliance Jio Info.Com Ltd.,
No.84-90, Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

6. M.Gunasekaran ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of prohibition, forbearing the respondents from erecting Cell Phone Tower in the middle of the are at No.28, Vinayagar Koil Street, Melperumalchery, Pudhuppattinam, Thirukazhukundram Taluk, Kancheepuram District for which the petitioner and the other residents sent representations to the respondents on 04.08.2018.

For Petitioner : Mr.V.Ravi

For Respondents : Mr.E.Manoharan, (For R1 to R4)
Additional Government Pleader.

ORDER

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

Resident of Melperumalchery, Pudhuppattinam, Thirukzhukundram Taluk, Kancheepuram District, has filed the instant writ petition for a writ of prohibition, forbearing the respondents from erecting a Cell Phone Tower in the middle of the are at No.28, Vinayagar Koil Street, Melperumalchery, Pudhuppattinam, Thirukazhukundram Taluk, Kancheepuram District for which the petitioner and other residents have sent representations dated 04.08.2018, to the respondents.

2. Supporting the prayer sought for, petitioner has submitted that there are more than 72 families residing in that area. Respondent No.6, has entered into an agreement with Reliance Jio Info.com Limited, Chennai, Respondent No.5, for erecting a 'cell phone tower', without getting any permission from the concerned authorities. Petitioner has contended that erection of 'cell phone tower' would cause air pollution, space pollution and health hazards to children, senior citizens and residents of the area. Opposing the same, a representation dated 04.08.2018 has been sent to respondents 1 to 4, for which, there is no reply. Contending inter alia that the petitioner has no other alternative remedy, instant writ petition is filed for the relief stated supra.

3. When the matter came up for admission, attention of this Court was invited to an order made by a Hon'ble Division Bench of this Court in W.P.No.3006 of 2018, dated 19.02.2018 [P.Balasubramaniam Vs. The District Collector, Namakkal District and others], by which, a similar writ petition, opposing commissioning of high rise cellular phone transmission towers, was considered and disposed of, as hereunder.

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 asses 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."

4. Following the order made in WP.No.3006 of 2018, dated 19.02.2018, instant writ petition is disposed of, on the same terms. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ars

To

1. The District Collector,
Kancheepuram District,
Kancheepuram.

2. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.

3. The Tahsildar,
Thirukzhukundram Taluk,
Kancheepuram District.

4. The Inspector of Police,
Pudhuppattinam Police Station,
Kancheepuram District.

+1cc to Government Pleader SR.NO.62183

+1cc to Mr.J.William Shakesphere, Advocate SR.NO.62798

sm:24.9.2018

WP.No.23411 of 2018
and WMP No.27333 of 2018