

In the High Court of Judicature at Madras

Dated : 29.8.2018

Coram :

The Honourable Mr.Justice R.SUBBIAH  
and  
The Honourable Mr.Justice R.PONGIAPPAN

Writ Petition No.39648 of 2006 and MP.No.2 of 2006

1.P.Gunasekaran  
2.T.Lilly Bai

...Petitioners

Vs

- 1.The Commissioner, Corporation of  
Chennai, Ripon Building, Chennai-3.
- 2.The Assistant Engineer, Corporation  
of Chennai, Division No.148, Zone X,  
R.K.Mutt Road, Chennai-28.
- 3.The Member Secretary, Chennai  
Metropolitan Development Authority,  
Gandhi Irwin Road, Chennai-8.
- 4.The Managing Director, Tamil Nadu  
Pollution Control Board, Chennai-35.
- 5.M/s.Indus Towers Limited, rep.  
By its Chief Executive Officer,  
Tamil Nadu Region, IBM Building,  
No.222, TTK Road, Alwarpet,  
Chennai-18.  
(cause title substituted as per order dated  
19.6.2018 in WMP.No.17543 of 2018)

6.Amsa

7.G.Ravi

8.G.Kannan

9.G.Viswanathan

...Respondents

PETITION under Article 226 of The Constitution of India

praying for the issuance of a Writ of Mandamus to direct respondents 1 to 4 to forthwith take immediate action for the removal of the relay tower and stopping of the diesel generator for running the said tower at premises bearing old No.61, new No.85, Thiruvalluvarpettai, Chennai-28 within such time as may be fixed by this Court.

|                         |                           |
|-------------------------|---------------------------|
| For Petitioners         | : Mr.P.Seshadri           |
| For Respondents 1 and 2 | : Mr.R.Arunmozhi          |
| For Respondent-3        | : Ms.Veena Suresh         |
| For Respondent-4        | : Mrs.Rita Chandrasekaran |
| For Respondents 6 to 9  | : Mr.Imaya Varamban       |

Order of the Court was made by R.SUBBIAH,J

Heard the learned counsel on either side.

2. The petitioners filed this writ petition seeking a direction to respondents 1 to 4 to take immediate action for the removal of the relay tower and stopping of the diesel generator for running the said tower at premises bearing old No.61, new No.85, Thiruvalluvarpettai, Chennai-28 within a time frame.

3. The case of the petitioners is that they are the residents of Thiruvalluvarpettai, Mylapore, Chennai-28. The area, in which, they reside, is 8 feet lane in Corporation Zone X and Division No.148 and is a narrow and densely congested area. Respondents 6 to 9 are the owners of the premises in question and the petitioners are their neighbours. Respondents 6 to 9 put up the three storied premises in question on a land of 1200 sq.ft. According to the petitioners, the said building had been constructed violating the planning permission and the relevant Rules.

4. It is the further case of the petitioners that respondents 6 to 9 entered into an agreement with the fifth respondent to install a relay tower in the open terrace of the premises in question, that the power supply required for maintaining/running the relay tower is being generated by installing 1 ton generator and that the tower itself is to the height of 70 feet. Therefore, the petitioners made a representation to respondents 1 to 4 highlighting the construction of the high mast steel relay tower in a thickly congested street without proper approval of the Authorities concerned and the risk involved in putting up such a massive tower in a building constructed violating the various Rules.

5. It appears that earlier, one of the neighbours filed a civil suit before the City Civil Court against the fifth respondent from installing the telecom reception tower at the

premises in question. Though the City Civil Court granted an injunction, it is seen that the tower has been installed and is being operated with the use of the big diesel generator causing threat not only to the life of the residents in the area concerned, but also creating noise pollution apart from polluting air. The petitioners made a representation dated 31.3.2006 to the third respondent herein. But, the same was forwarded to the first respondent and in spite of that, no action has been taken. Hence, left with no other alternative, the petitioners are before this Court.

6. Respondents 1 and 2 filed a counter affidavit mainly contending that the Greater Chennai Corporation is not granting any permission or approval for constructing the cell phone towers over and above the existing buildings and that the owners of the buildings obtained permission only for the building and not for erection of towers and prayed this Court to pass suitable orders.

7. When the matter is taken up for hearing, the learned counsel for the petitioners has produced a copy of the common order passed by the Division Bench of this Court in an identical matter in W.P.Nos.14877 and 21979 of 2017 dated 09.2.2018. By placing reliance on G.O.Ms.No.177 Municipal Administration and Water Supply Department dated 17.12.2002, the Division Bench of this Court directed the Executive Officer of Nandhivaram Guduvanchery Town Panchayat to consider the grievance of the petitioners therein in the presence of all necessary parties.

8. Relying upon the said common order, in the instant case, the learned counsel for the petitioners has submitted that the respondent Corporation may be directed to consider the representation of the petitioners dated 31.3.2006 and that the petitioners would be satisfied if a direction is given to the respondent Corporation to consider their representation in the presence of the fifth respondent and others concerned. He has also invited the attention of this Court to the provisions contained in Rule 9(2)(vii) of the Indian Telegraph Right of Way Rules, 2016 to contend that the respondent Corporation can enquire into the matter before taking any further action.

9. In the light of the said submission, we have heard the learned Standing Counsel for respondents 1 and 2 also.

10. In the result, the writ petition is disposed of with a direction to the petitioners to furnish a copy of the representation dated 31.3.2006 to the second respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of such a representation, the second respondent is directed to issue notice to all the parties concerned, enquire into the matter and pass appropriate orders within a period of eight weeks there from. No costs.

Consequently, the connected MP is closed.

Sd/-  
Assistant Registrar (CS-VII)

//True copy//

Sub Assistant Registrar

RS

+2cc to Mr.Ramalingam, Advocate SR.No.59521

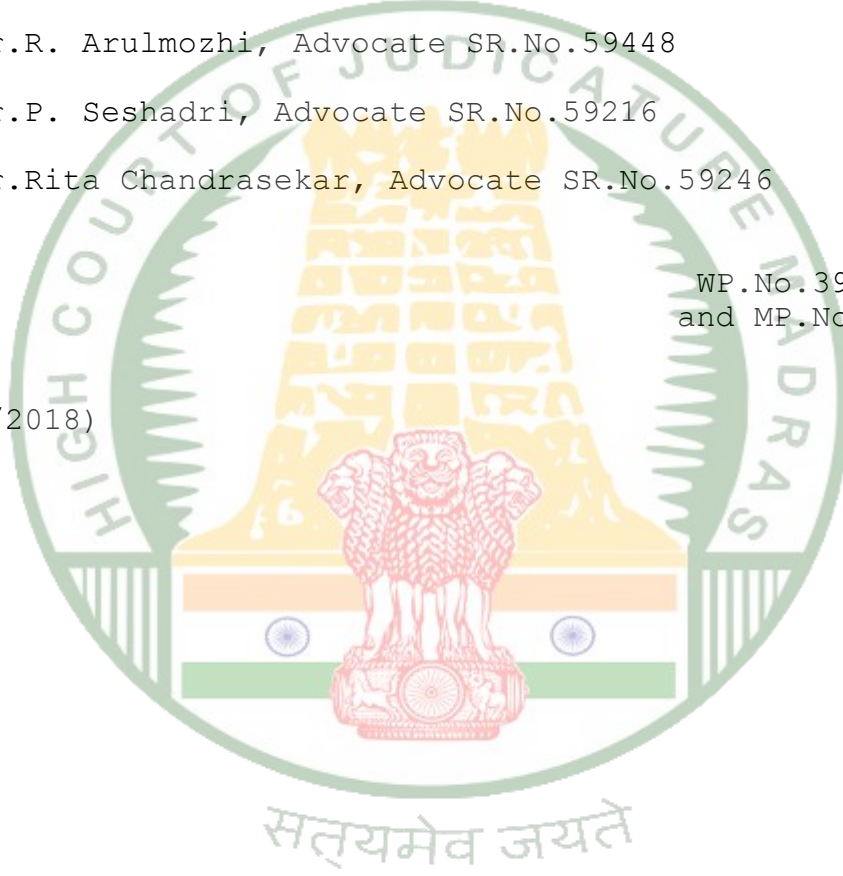
+1cc to Mr.R. Arulmozhi, Advocate SR.No.59448

+1cc to Mr.P. Seshadri, Advocate SR.No.59216

+1cc to Mr.Rita Chandrasekar, Advocate SR.No.59246

WP.No.39648 of 2006  
and MP.No.2 of 2006

GMV (11/09/2018)



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