

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM:

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

WP.No.26666 of 2018
and CMP No.31037 of 2018

R.Muniappan

... Petitioner

vs.

1. The District Collector,
Erode District,
Erode - 638 011.

2. The Tahsildar,
Anthiyur Taluk,
Erode District.

3. The Superintendent of Police,
Erode, Erode District.

4. The Inspector of Police,
Appakudal Police Station,
Anthiyur Taluk,
Erode District.

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

6. Karuppusamy ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Mandamus, directing the respondents 1 to 4 to prohibit the 5th respondents from erecting High Rise Cell Phone Tower in Old S.F.No.59B and New S.F.No.47 of Koothampoondi Village, Anthiyur Taluk, Erode District by considering the objections and representations dt. 19.3.2018, 26.3.2018 and 26.9.2018 to the respondents.

For Petitioner : Mr.R.Prabakar

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

ORDER

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

Karuppusamy, respondent No.6, is stated to be owning a house and proposed to erect a cell phone tower. Contending inter alia that emission of rays from the cell phone tower would affect the birds and human beings, petitioner seemed to have sent a representation dated 04.04.2018 to the District Environmental Engineer, Tamilnadu Pollution Control Board, Perundurai. A further representation dated 26.09.2018, has been sent to the Inspector of Police, Appakudal Police Station, respondent No.4, to stop the alleged illegal erection of Jio Cell Tower. Further contending that his representation has not been responded, instant writ petition has been filed for a Mandamus, directing the respondents 1 to 4 to prohibit the 5th respondents from erecting High Rise Cell Phone Tower in Old S.F.No.59B and New S.F.No.47 of Koothampoondi Village, Anthiyur Taluk, Erode District by considering the petitioner's objections and representations dt. 19.3.2018, 26.3.2018 and 26.9.2018, to the respondents.

2. Respondent No.6, is stated to have agreed for setting up of Jio Cell Phone Tower in his property. Objections have been sent. As no adverse order is passed against respondent No.6, and directions are hereby given only to consider a decision of this Court made under similar circumstances, notice to respondents 5 and 6, is waived.

3. Mr.E.Manoharan, learned Additional Government Pleader, who takes notice on behalf of respondents 1 to 4 has consented for the disposal of the writ petition, at the admission stage itself. Thus, on consensus, instant writ petition is disposed of, as hereunder.

4. Material on record discloses that villagers of Koothampoondi Village, have submitted representations to the Inspector of Police, Appakudal Police Station, Appakudal, the 4th respondent herein, on various dates such as 19.03.2018, 26.03.2018, and 26.09.2018, respectively, objecting to the erection of cell phone tower and the Inspector of Police, has assigned CSR No.102/2018 on the petition. Translated version of the representation dated 19.03.2018, is as follows:

Sir,

Sub: Application for prevention of erection of
Jio Cell Phone Tower in dense residential area.

We are living in the above village with our

respective families, our village is surrounded by at about 1000 houses. An attempt has been made to erect High Power Cell Phone Tower in a land belonging to Karuppusamy S/o.Minichamy in Saviyappan Street nearby Koothampoondi East Theru. On enquiring the workers working there they informed that the Jio Cell Phone Tower at height about 150 feet is to be erected.

The proposed cell tower place is surrounded by dense residential houses, and story houses are also being constructed, all have to cross the tower area for reaching the nearby residential areas. Nearby the proposed tower erection schools and Anganwadi counters are situated, children used to play in that area. Due to the proposed installation of mammoth tower in residential area residents are in fear of danger from the radiation as well as noise pollution from the the generator to be operated for the tower. The radiation would also affect the birds, animals, residents, children as well as students, hence our villagers united and opposed the illegal erection of jio cell phone tower at the time of laying foundation, then works were stopped.

We submitted complaint in this regard on 17.03.2018 to you, but the construction materials have been kept there and further attempt is being made to construct the tower.

Hence we request you, on behalf of the villagers, to stop the illegal erection of the Jio Cell tower in the dense residential area, it would affect not only the general public of the village and also the future generation."

5. In W.P.No.23411 of 2018, petitioner therein sought for a writ of prohibition, prohibiting the respondents therein from erecting cell phone tower and sought for a direction on the basis of the representation sent to the respondents therein.

6. When W.P.No.23411 of 2018, came up for admission, attention of this Court was brought to a decision of a Hon'ble Division Bench of this Court in W.P.No.3006 of 2008 dated 19.02.2018. Following the orders made in the said writ petition, W.P.No.23411 of 2018 was disposed of on 07.09.2018, as hereunder.

"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 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 view that in a judicial proceeding these aspects cannot be analysed. There being no materials atleast 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."

7. Instant W.P.No.26666 of 2018, is disposed of on the same terms as in W.P.No.3006 of 2018 dated 19.02.2018. No Costs.

Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To

1. The District Collector,
Erode District, Erode - 638 011.

2. The Tahsildar,
Anthiyur Taluk, Erode District.

3. The Superintendent of Police,
Erode, Erode District.

4. The Inspector of Police,
Appakudal Police Station,
Anthiyur Taluk, Erode District.

+1cc to Mr.R.Prabakar, Advocate SR.No.69491

+1cc to Government Pleader SR.No.69846

WP.No.26666 of 2018
and WMP No.31037 of 2018

GMV (24/10/2018)

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