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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/6/2019

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.17284 of 2019

A.K.Krishnan

...

Petitioner

Vs

1. The Block Development Officer
Kattankulathur Panchayat Union
Maraimalai Nagar
NH 45 Chennai Trichy Highway
Grant Southern Trunk Road
Kancheepuram 603 203.
2. The Superintendent of Police
Kancheepuram District
Thaliyur Kullam
Kancheepuram 631 501.
3. The Deputy Superintendent of Police
Chengalpattu
Kancheepuram District.
4. The Inspector of Police
Chengalpattu
Kancheepuram District.
5. The District Collector
First Floor, Collectorate
Kancheepuram 631 501.
6. The Revenue Divisional Officer
VOC Nagar, Chengalpattu
Kancheepuram 603 001.
7. R. Pazhani



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8. Reliance Jio Infocomm Limited
rep. By its Authorised Signatory
Circle Office at A 1 Tower, 8th Street
89-90 Dr. Radhakrishnan Salai
Mylapore
Chennai 600 004.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of mandamus, directing the respondent Nos.1 to 6 to restrain respondent Nos.7 and 8 from carrying out any commercial activity in the house plot in S.No.72/2A 1 G & 318/8B (Old Punjai Survey No.74/1A1 and New Survey No.74/12) Vallam Village, Chengalpattu Taluk, Kancheepuram District (said property) including the erection of any telegraphic, cellular towers in the said property.

For Petitioner ... Mr.Kaushik N.Sharma
for M/s. KNS Law Chambers

For Respondents... Mr.E.Manoharan
Additional Government Pleader
for R.R.1 to 6.

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O R D E R

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

Instant writ petition has been filed, to direct the respondent Nos.1 to 6, to restrain respondent Nos.7 and 8, from carrying out any commercial activity, in the house plot, in S.No.72/2A 1 G & 318/8B (Old Punjai Survey No.74/1A1 and New Survey No.74/12) Vallam Village, Chengalpattu Taluk, Kancheepuram District (said property), including the erection of any telegraphic, cellular towers, in the said property.

2. In the supporting affidavit, petitioner has contended as hereunder:-

"(i). R. Pazhani, seventh respondent is the owner of the Residential Plot in Survey No.72/2A1G & 318/8B, (Old Punjai Survey No.74/1A1 and New Survey No.74/12), Vallam Village, Chengalpattu Taluk, Kancheepuram District measuring 2400 sq. ft. ('said property'). The aforementioned residential plot by DTCP as a Residential Land which is classified as Residential Class - II, Type - I by the Registration Department, Government of Tamil Nadu.



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(ii). During the month of May 2018, R.Pazhani, 7th respondent entered into an Agreement with Reliance JioInfocomm Limited, 8th respondent herein for the establishment of '4G Cellular Tower' in the said property, which is situated in the locality where the Petitioner resides. According to the petitioner, the subject matter of agreement is illegal, since such an agreement was to carry out a commercial activity on a land classified for residential purpose. It was also brought to the knowledge of the petitioner that the 7th respondent had received an advance of Rs.50,00,000/- (Rupees Fifty Lakhs Only) and is also receiving a monthly rental of Rs.50,000/- (Rupees Fifty Thousand Only).

(iii). Subsequently the petitioner along with several villagers residing in the locality, made representations to the Village Administrative Officer, District Collector, Kancheepuram District and the Block Development Officer, Kattankulathur Panchayat Union, the 1st respondent herein objecting to the erection of '4G cellular Tower' in the said property. Even as early as May 2018, the Revenue Divisional Officer (RDO), the sixth respondent herein had inspected the said property.

(iv). The Petitioner along with several other residents of Vallam Village had objected to the erection '4G Cellular Tower' mainly due to the fact that the said property is situated in a residential locality where more than 80 families reside and in addition to that there is also an elementary school. Harmful microwave radiations from the '4G Cellular Tower' would affect the entire population of the locality in which the said property is situated, including children and pregnant women.

(v). Based on the aforementioned objections made to the Village Administrative Officer (VAO), District Collector, Kancheepuram District and the 1st respondent, the Village Administrative Officer (VAO) had inspected the said premises and found that the said property is being prepared for the erection of '4G Cellular Tower' and the Village Administrative Officer has requested the representatives of 8th respondent to forthwith stop all the work in relation to the erection of the cellular tower in the said property as the same was proposed to be installed or established amidst residential area.

(vi). The 8th Respondent herein, a Company has proposed to erect the cellular tower in the said premises filed a Criminal Original Petition under Section 482 of the Code of Criminal Procedure, 1973



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numbered as CrI. O.P.No.19366 of 2018 seeking police protection to erect transmission tower and to do electrical work and to do maintenance of tower in the said property. This Hon'ble Court had directed the 8th Respondent to "give a fresh representation to the respondent Police and on receipt of the same the respondent police was to consider the representation and take action in accordance with law, by giving police protection, provided the petitioner produces sufficient materials in support of their claim". The 8th Respondent filed the aforementioned Criminal Original Petition without disclosing the fact that the land in which the transmission/cellular tower is to be set up is a residential plot, which was present amidst the residential houses and that in the first instance, when the 8th Respondent attempted to install the cellular transmission tower, the residents of the locality had objected and the concerned Village Administrative Officer (VAO). After verifying the same instructed the 8th respondent not to proceed with the installation of the cellular transmission tower.

(vii). That on 25.12.2018, the 7th respondent along with the representatives of the 8th respondent arrived at the said premises and once again commenced the work towards the erection of transmission cellular tower in the said premises claiming that they have an order of the Hon'ble High Court of Madras in CrI O.P.No.19366 of 2018, which was obtained by suppressing the vital information regarding the land classification of the said premises.

(viii). Subsequently, the petitioner sent representations dated 27.12.2018 to respondents No.1 to 6 explaining the adverse effects of erecting cellular towers amidst residential plots and the harmful effects of microwave radiation emitting from these cellular towers.

3. On an earlier occasion, when a similar prayer, in W.P.No.34643/2018, directing the respondents therein, from restraining erection of cell phone tower, was sought for, this Court, taking note of the orders, passed in W.P.No.3006 of 2018, dated 19/2/2018 {P.BALASUBRAMANIAM Vs. THE DISTRICT COLLECTOR, NAMAKKAL DISTRICT AND OTHERS}, considered an earlier order, made in W.P.No.24967 of 2008, dated 5/3/2015, disposed of W.P.No.34643 of 2018, dated 7/2/2019, as hereunder:-



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5. When a similar writ petition, opposing commissioning of high rise cellular phone transmission towers, came up for hearing, 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], considered and disposed of the same, 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:



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"10. We are, thus, of the 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."

Said order has been followed by us in W.P.No.23411 of 2018."



4. Only contention of the petitioner is that commercial activity cannot be carried on, in a residential area, and that the seventh respondent has mislead the department, stating that there is an order passed by this Court, in his favour, permitting erection of cell phone tower. It is for the competent authority to act in accordance with the rules.

5. In the light of the earlier decisions and with the above observation, writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

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First Floor, Collectorate
Kancheepuram 631 501.

+1cc to Government Pleader sr.52400

+1cc to Mr.Kaushik N.Sharma, Advocate sr.52047(25/10/2019)

W.P.No.17284 of 2019

cp(co)

nr 20/08/2019