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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2019

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.8457 of 2009

and

M.P.No.2 of 2009

1. M/s. Bharti Infratel Ltd.,
Registered Office at No.H-5/12,
Qutab Ambience, Mehrauli Road,
New Delhi - 110 030 and its
Circle Office at Fagun Mansionn 2nd floor,
New No.74, Ethiraj Salai, Chennai 600 105
Represented by its Authorized Signatory,
Mr.K.Kalichamy.

2. M/s. Bharti Airtel Ltd.,
Registered Office at No.H-5/12,
Qutab Ambience, Mehrauli Road,
New Delhi - 110 030 and its
Circle Office at Oceanic Towers,
No.101, Santhome High Road,
Santhome, Chennai - 600 028.

... Petitioners

Vs.

1.The Secretary
Housing and Urban Development Dept.,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009.

2. The Commissioner,
Udumalpet Municipality,
Udamalpet, Coimbatore District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus to call for the records of the second respondent in Notification Na.Ka.No.1592/2007 (F) dated 17.07.2007, published in the Coimbatore District Gazette, Special Edition, dated 18.08.2007 with No.39 and to quash the said notification being in derogation of law.



For Petitioners

: Mr.E.Om Prakash
Senior Counsel
Assisted by Mr.P. Elaya Rajkumar
for M/s.Ramalingam & Associates

For Respondent No.1

: Mrs.K.Bhuvaneswari
Additional Government Pleader

For Respondent No.2

: Mrs. Lita Srinivasan
Government Pleader

O R D E R

These petitioners have filed this petition seeking issuance of Writ of Certiorari Mandamus to call for the records of the second respondent in Notification Na.Ka.No.1592/2007 (F) dated 17.07.2007, published in the Coimbatore District Gazette, Special Edition, dated 18.08.2007 with No.39 and to quash the said notification being in derogation of law.

2. Heard learned counsel for the petitioners as well as the learned Government Pleader appearing for the second respondent.

3. The second respondent Municipality levied licensee fee for erecting the telecom services tower within the jurisdiction and imposing the licenses fee of Rs.3000/- per annum, aggrieved against which, the present writ petition is filed.

4. The learned Senior Counsel appearing for the petitioners would submit that the very same issue was already dealt with by this court and decided whether the Municipality have the power to levy the license fee for erecting the towers within the jurisdiction area.

5. The Principal seat of Madras High Court as well as the Madurai Bench of Madras High Court has clearly held in paragraph Nos.13 to 17 as follows:

"13. At this, the learned senior counsel for the petitioner would submit that providing telecom services cannot come within the business as envisaged in Sub para (a) of Section 361 for any standards and therefore, such interpretation by the learned counsel for the Corporation is misconceived and preposterous. He would further rely on the letter dated 26.3.2009 addressed by the Energy Department, Government of Tamil Nadu to the Tamil Nadu Electricity Board, in which, it is clearly stated that the Municipal Administration and Water



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Supply Department and Rural Development and Panchayat Raj Departments have instructed to issue necessary instructions to the Corporation/Municipalities/Local bodies not to insist upon building permission from the cell phone companies for erecting of BTS towers in view of G.O.Ms.No.177 dated 17.12.2002 and G.O.Ms.No.302 dated 12.12.2002. He would further draw the attention of this Court to a recent order dated 23.3.2017 passed by a learned single Judge of this Court in W.P.(MD) No.17 of 2015, wherein, similar issue came up for consideration and the learned single Judge has held as under in para 3 and 4:

"3. The impugned notice refers to Section 277 of the Dindigul Municipal Corporation Act which deals with construction or reconstruction of a building. The learned Senior Counsel appearing for the Petitioner would contend that the said provision cannot be invoked in respect of tower which is put up by the Petitioner. The learned Senior Counsel would also drawn the attention of this Court to G.O.Ms.No.177, dated 17.2.2002 wherein, these towers have been exempted from the Tamil Nadu District Municipalities Building Rules 1972 and Multi-storeyed and Public Building Rules, 1973 and by G.O.Ms.No.302, dated 12.12.2002, the Government has also directed that the installation of Base Transfer Receiver Station Towers shall be permitted in all the land use zones in the master plan. The learned Senior Counsel would also drawn my attention to the letter No.5742/C3/2008-G, dated 26.3.2009 by the Secretary to Government, Energy Department, Chennai addressed to the Principal Secretary and Chairman, Tamil Nadu Electricity Board, Chennai-2, wherein, it is very clearly stated that all Municipalities and local bodies have been instructed not to insist upon building permission from the cell phone companies for erection of Base Trans Receiver Station Towers, in view of the orders issued in G.O.Ms.No.177. Apart from the above, Secretary to the Department of Telecommunications by D.O.No.17-2/2013-S-1, dated 8.8.2013 made it clear that necessary guidelines should be framed by the State Governments for issue of clearance for installation of mobile towers. In the said guidelines, it has been made clear that the telecom towers have been given infrastructure



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status by the Government of India and all benefits as applicable to infrastructure Industry should be extended to the construction of towers. It is also stated that considering the essentiality of service, sealing of BTS towers/disconnection of electricity may not be resorted to without the consent of the respective TERM Cell of DoT in respect of the EMF related issues. The said guidelines also require State Governments to frame guidelines fixing a nominal administrative fee and provide for a single window clearance for construction of such towers. It is seen from the letter, dated 2.6.2014 from the Deputy Secretary to the Government, Municipal Administration Department to the Principal Secretary and Commissioner, Corporation of Chennai, Commissioner of Municipal Administration, Chennai and Director General of Panchayats that all efforts are taken to frame proper guidelines and comments have been requested from the authorities and that it is admitted case that as on date no such guideline has been framed by the Government. Therefore the action of the Municipality in insisting on licence/permission for construction of tower is not in accordance with the existing law as well as the Government orders issued referred to supra.

"4. Hence the Writ Petition is allowed and the impugned proceedings, dated 18.12.2014 are quashed. However, it is open to the respondent to take appropriate action after the required guidelines are framed by the Government of Tamil Nadu as directed by the Central Government in letter, dated 8.8.2013. Consequently, connected Miscellaneous Petitions are closed. No costs."

14. Therefore, the learned senior counsel would submit in all fours that the writ petition is entitled to be succeeded.

15. This Court has given its anxious consideration to the rival submissions of the learned counsel for the parties after perusing the entire materials and pleadings placed on record.

16. This Court finds that there is merit in the contention put forth by the learned senior counsel



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for the petitioner that it is the Central Government alone is competent authority to issue license for providing telecom services under the Indian Telegraph Act. In the absence of any delegation of powers to the State Government or any local authorities, the impugned action by the respondent Corporation in claiming license fee is without the authority of law.

17. Moreover, the Government itself had thought it fit to encourage the telecom services in keeping with the global trends, has provided blanket permission to put up BTS tower both in private and government buildings in the aforementioned Government Orders and also granted exemption from application of Municipal rules, etc. in G.O.Ms.No.177 dated 17.12.2002. That being the case, this Court does not appreciate as to on what legal basis, the present license fee has been demanded from the petitioner by the respondent Corporation."

6. In view of the abovesaid concurrent decisions by this court as held in W.P.No.5065 of 2012 and Madurai Bench of Madras High Court in WP.(MD) No.17 of 2015, this court is of the view that the express provision for levying the license fee against the service provided by the petitioner namely erecting the telecom services tower within the jurisdiction and imposing the licenses fee in favour of the Municipality does not arise. Accordingly, in the light of the abovesaid two orders, this court extends the benefit to the petitioner.

7. In the similar type of the issue raised before the Gujarat High Court, it is held in paragraph No.12 as follows:

"Moreover, on a perusal of the impugned letter/notices it is apparent that the levy of annual rent on mobile telecommunication towers on the basis of the height of each individual tower at the rate of Rs.1000/- per metre, though not directly based upon the Government Resolution dated 11th December, 2008 appears to be in the context of the said resolution. The resolution dated 11th December, 2008 issued by the Government of Gujarat, Urban Development and Urban Housing Department provided for levy and recovery of Annual Permission Fees and Installation Charges on mobile telecommunication towers in the areas covered under Municipal Corporations/Municipalities in the State of Gujarat. It is common ground between the parties that Government Resolution dated 11th December, 2008 was



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subject matter of challenge in the case of Indus Towers Limited Vs. State of Gujarat in Special Civil Application No.1898 of 2009 and other cognate matters. By judgment of Gujarat in Special Civil Application No.1898 of 2009, this Court has quashed the said resolution holding that in absence of any statutory provision permitting the respondents therein to impose authority of law and violative of Article 265 of the Constitution of India. The ratio of the said decision would also be applicable to the present cases."

In view of the above terms, the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gv

To

- 1.The Secretary
Housing and Urban Development Dept.,
Government of Tamil Nadu,
Fort St. George, Chennai 600 009.
2. The Commissioner,
Udumalpet Municipality,
Udamalpet, Coimbatore District.
3. The Public Prosecutor,
High Court, Madras,
Chennai

+2cc to Mr.Ramalingam, Advocate, S.R.No. 50871
+1cc to the Government Pleader, S.R.No. 51772

W.P.No.8457 of 2009
and
M.P.No.2 of 2009

PPA(CO)
GN(22/08/2019)