

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2019

CORAM:

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

WP.No.15317 of 2019
and WMP.No.15309 of 2019

K.R.Ganesamoorthy

... Petitioner

vs.

1. The District Collector,
Tiruppur, Tiruppur District.

2. The Commissioner,
Corporation of Tiruppur,
Tiruppur District.

3. The Block Development Officer,
Palladam Municipality,
Tiruppur District.

4. The Tahsildar,
Palladam, Tiruppur District.

5. The Director,
Do and DGM North Telecom,
No.8, Saisurthi Apartment,
Ramar Koil Street,
Ram Nagar, Coimbatore.

6. Bharathi Airtel Zonal Office,
NSR, Road Main,
Saibaba Colony,
Coimbatore District.

7. Eswara Moorthy

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, forbearing the respondents 1 to 3 from erecting mobile / cell phone tower by the 6th respondent comprised in S.No.351/5B at Kosarampalayam, Palladam Town, Tirupur District.

For Petitioner : Mr.S.Kumaresan

For Respondents : Mr.E.Manoharan
AGP (for R1, R3 & R4)

ORDER

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

M.Easwara Moorthy, respondent No.7, is stated to be owning a house and proposed to erect a cell phone tower. Contending inter alia that erection of Antenna, would cause obstruction to ingress and egress to his land, as well as to the people who move for the industries situated adjoining to his land, apart from the worshippers of a nearby Vinayagar Temple, petitioner seemed to have sent a representation dated 04.04.2018 to the District Collector, Tiruppur District, 1st respondent herein. Further contending that his representation has not been responded, instant writ petition has been filed for a Mandamus, forbearing the respondents 1 to 3 from erecting mobile / cell phone tower by the 6th respondent comprised in S.No.351/5B at Kosarampalayam, Palladam Town, Tirupur District.

2. Respondent No.6, is stated to have agreed for setting up of a Airtel

Mobile Tower Antenna 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 to 7, is waived.

3. Mr.E.Manoharan, learned Additional Government Pleader, who takes notice on behalf of respondents 1, 3 and 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 petitioner and other villagers of Palladam Village, have submitted representation dated 27.03.2019 to the District Collector, Tiruppur, the 1st respondent herein, objecting to the erection of Mobile Tower Antenna, in the property owned by the 7th respondent and the representation reads thus:

Sir,

Sub: Petition submitted to stop giving permission for installing a mobile tower for Airtel by Eswaramurthy in a narrow place in an area of limited extent in Survey No.351/4B in Palladam Village, Tiruppur District which is nearer to common passage and which will be a hindrance to the public and cause radiation - regarding.

We are residing at the above addresses. The properties belonging to us situate in Palladam Town, Palladam Village, Kosavampalayam Survey No.351 and the places surrounding that. Here in this petition there is a person by name S.Eswaramurthy, Son of Subbaiyan residing at Door No.12/13, Kuttao Thotttam, Kosavampalayam Road, Palladam Town, Tiruppur District. He has got a property in Survey No.351/5C as per which

there is 0.06 cents land and in that an area of an extent still better to that which is registered in the revenue records. This place is middle of the industrial and tenements there and also nearer to a Vinayagar Temple. This coconut spathe / frond shaped narrow portion has been given to Airtel Company on rental basis for erecting a mobile tower there. Following the agreement Airtel company was also started the initial work for the erection of the tower. Further this tower is at ground level. The said Eswaramurthy has been publishing in the village that he has rented out the place for setting up a mobile tower at ground level.

The land belonging to Eswaramurthy which is a coconut spathe / frond shaped place is not suitable to erect a mobile tower and it is not as per the regulations and guidelines given by the Department of Telecommunication. The mobile tower to be erected will not only cause hindrance to the persons living in the nearby tenements, the industries nearby and the workers there, the persons visiting the temple but also will emit radiation. When we approached and requested the said Eswaramurthy to drop the plan to lease out the place for Airtel for erecting a mobile tower at ground level, he refused to concede to our request. Further he also stated that he would definitely carry out the work as per his plan with his political influence and anybody's tried to stop him doing his plan will be suitably dealt with to complete his plan.

We request your good offices that your good offices may not permit the plan of the said Eswaramurthy, who is trying to set up a mobile tower not adhering to the rules for erecting such mobile tower and Airtel Company to erect a mobile tower there, if that company has already made such a request for permission. And also stop their plan. Further beneath that land of the said Eswaramurthy, there lie 2 pipelines for Athikadavu Water Project.

We therefore, request your good offices to stop the project of erecting a Mobile Tower by Airtel on the place in Survey No.351/5B against the rule of law considering the welfare of the people which will be affected by radiation hazard.

Guidelines for installation of the Mobile Towers:

1. Installation of Base station antennas within the premises of schools and hospitals must be avoided because children and patients are more

susceptible to electromagnetic radiation.

2. Installation of Base Station Antennas in narrow lanes should be avoided in order to reduce the risks caused by any earthquake or wind related disaster.

3. The Base Station antennas should be atleast 3 m away from nearby buildings and antennas should not directly face a building. Further, the lower end of the antenna should be at least 3 meters above the ground or roof.

4. In case of multiple transmitter sites at a specific locality, sharing of a common tower infrastructure should be explored, as far as possible, which can be coordinated through a nodal agency.

5. First preference shall be given to the location of tower in forest areas.

6. Second preference shall be given to the location of tower in the open or public areas away from residential locations.

7. Where it is not possible to avoid the location of the tower in residential area, the same shall not be located in open spaces or parks, with prior consent of the owners of adjoining residential houses.

8. Erection of towers shall not be allowed within a radius of 100 meters from residential buildings, schools and hospitals.

9. Structural safety certificate from designated institute. This is an important certificate for installation of towers in buildings if the tower is installed on the building of a school.

10. Consent from authority: Mobile phone operators and building owners have to get the consent of the municipality or the respective authority. Ensure that the school or building owner has obtained required permission from the concerned authority to setup the tower.

11. Indemnity Bond is to take care of the loss or injury due to any accident caused by the tower.

12. Latest guidelines regarding the safe clearance distance for a house (Eh:100m, 200m etc) in a residential area and safe antenna orientation distance from a mobile tower.

13. Who can be contacted.

14. To get the radiation level from a mobile tower measured.

15. To get a copy of the structural design, radiation clearance certificate, installation plan details consent from the land owner for the installation

of a mobile tower.

16. To file a complaint regarding the safe clearance distance from a ground based tower.

Place: Palladam

Date: 27.03.2019

Yours Truly,

Sd/-

5. On an earlier occasion, when a similar writ petition viz., W.P.No.23411 of 2018 was filed, for prohibiting the respondents therein, from erecting cell phone tower, 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 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 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.

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."

6. In view of the above, instant W.P.No.15317 of 2019, is also 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.

(S.M.K., J.) (S.P., J.)
06.06.2019

Index: Yes/No.
Internet: Yes
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S.MANIKUMAR,J.
AND
SUBRAMONIUM PRASAD, J.

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To

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