

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2019

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.15354 of 2019

M/s.Indus Towers Limited,
represented by its
Assistant Legal Manager,
S.Prasanna,
having its Circle Office at 5 (NP),
ESPEE, IT Park, 5th Floor, Jawaharlal Nehru Road,
Ekkatuthangal, Chennai - 600 097.
... Petitioner

-vs-

1.The Commissioner of Police,
Commissioner of Police Office,
Salem City, Salem.

2.The Assistant Commissioner of Police,
Assistant Commissioner of Police Office,
Hastampatti, Salem.

3.The Inspector of Police,
Kannankurichi Police Station, Salem.

...Respondents

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to direct the respondents herein to provide the effective police protection to the Petitioner's Company to erect transmission cell phone tower and to install all the telecommunication electrical and electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower at Salem District, Salem Taluk, Mitta Ayyamperumalpatty Village, Resurvey No.72/1, presently subdivided in New Resurvey No.72/1D1 total measuring 2080 Sq.feet of land. The said property in the limit of Resurvey No.72/1D2 measuring 800 Sq.feet of land and Resurvey No.72/1D1 measuring 1280 Sq.feet of land. The said property in the limit of Salem Corporation.

For Petitioner : M/s.R.Vivekananthan

For respondents: Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This petition has been filed for a direction to the respondents herein to provide the effective police protection to the Petitioner's Company to erect transmission cell phone tower and to install all the telecommunication electrical and electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower at Salem District, Salem Taluk, Mitta Ayyamperumalpatty Village, Resurvey No.72/1, presently subdivided in New Resurvey No.72/1D1 total measuring 2080 Sq.feet of land. The said property in the limit of Resurvey No.72/1D2 measuring 800 Sq.feet of land and Resurvey No.72/1D1 measuring 1280 Sq.feet of land. The said property in the limit of Salem Corporation.

2.The case of the petitioner is that the petitioner is engaged in the business of providing broadband internet services and other allied services throughout India. For the said purpose, cell phone towers are going to be erected. The petitioner had also entered into a lease agreement with the owner of the property and had taken steps to install the cell phone tower. Already, the Government of Tamil Nadu has granted exemption to all the Telecom companies to install the cell phone towers by virtue of Government Order passed in G.O.Ms.No.2, dated 01.04.2002.

3.When the petitioner attempted to erect the cell phone tower, the residents of the area came to the spot and started causing hindrance to the company officials from carrying out the construction work. The petitioner also gave a representation to the respondents Police to provide them with protection. However, the respondents Police had not acted upon the said complaint and therefore, the present Criminal Original Petition has been filed.

4.The learned counsel appearing for the petitioner would submit that the issue involved in this Criminal Original Petition is covered by the earlier Judgments of this Court. The learned counsel brought to the notice of this Court the order passed by this Court in Crl.O.P.No.16618 of 2018, wherein the very same petitioner was a party.

5.It will be appropriate to extract the relevant portions of the order in Crl.O.P.No.16618 of 2018, which is extracted hereunder:-

"2.The learned counsel for the petitioner would submit that the petitioner's company had the contract agreement for installation of cell phone tower with

M/s.Indus Towers Limited, a company registered under the provisions of Indian Companies Act, 1956. It is further submitted by the learned counsel for the petitioner that whenever the petitioner's company attempted to erect transmission cell phone tower, publics are causing interference. The learned counsel for the petitioner also submitted that by order dated 05.03.2015, the Honourable First Bench of this Court, in W.P.Nos.24976 of 2008 and etc., batch, held that because of the advancement in the science, no one has prevented to erect cell phone towers. It is also submitted that the petitioner has given a complaint dated 24.02.2016 to the first respondent police seeking police protection, for which C.S.R.No.42 of 2016 and since the same has not been considered so far, he has come up with the present petition for the relief stated supra.

3.Heard the learned Additional Public Prosecutor appearing for the respondents.

4.Considering the facts and circumstances of the case, the petitioner is directed to send a fresh representation to the respondents and on receipt of the same, the respondents are directed to consider the representation to be submitted by the petitioner and pass appropriate orders on merits and in accordance with law, within a period of one week from the date of receipt of copy of this order.

5.With the above directions, this Criminal Original Petition is disposed of."

6.This Court has consistently taken the view that no one can be prevented from erecting the cell phone towers on a mere apprehension about the effect of radiation from the cell phone tower. The apprehension does not have a scientific backing. Till a positive finding is given in this regard, cell phone towers cannot be prevented to be installed on mere apprehensions.

7.For the reasons stated above, there shall be a direction to the respondents police to provide police protection to the petitioner for erection of the cell phone tower. The second respondent police shall ensure that the entire process goes on in a smooth manner, without giving raise to any law and order problem and the petitioner shall pay a cost of Rs.10,000/- (Rupees Ten Thousand only) to the respondent police towards police protection.

8.The Criminal Original Petition is disposed of with the above direction. No costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Commissioner of Police,
Commissioner of Police Office,
Salem City, Salem.

2.The Assistant Commissioner of Police,
Assistant Commissioner of Police Office,
Hastampatti, Salem.

3.The Inspector of Police,
Kannankurichi Police Station, Salem.

4.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.R.Vivekanandan, Advocate sr 49182

CRL.O.P.No.15354 of 2019

SAI (CO)
SP(21/06/2019)

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