

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **29.07.2019**

CORAM

THE HON'BLE MR.JUSTICE **N.ANAND VENKATESH**

Crl.O.P.No.20193 of 2019

M/s.ATC Telecom Infrastructure P Ltd.,
Represented by Circle Legal Head (Senathipathy),
"Celestial Point' No.45, Damodharan Street,
Opposite to T.Nagar Bus Stand, T.Nagar,
Chennai 600 017 ...Petitioner

-Vs-

1. The Superintendent of Police,
District Police Office, Erode District,
Tamil Nadu.
2. The Deputy Superintendent of Police,
District Police Office, Erode District,
Tamil Nadu.
3. The State,
Rep. by Inspector of Police (Law and Order),
Erode Taluk Police Station,
Erode, Erode District. ... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct the respondent police to provide effective police protection to the petitioner's company to fully complete the erection of transmission cell phone tower and to install all the telecommunication electrical and electronic equipments, cables at the open land ad-measuring about 1200 (40 x 30) Sqft. out of the total land situated comprised in Resurvey No.1089 / 2, 3, 4, 5 & 6, Plot No.57, Ward No.47, Erode Village & Taluk, Erode Sub-Registration District, Erode Registration District 638 004 on the basis of the complaint dated 29.06.2019 vide CSR No.178 of 2019

dated 29.06.2019.

For Petitioner : Mr.J.Ravi Kumar

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Criminal Original petition has been filed seeking for a direction to the respondent police to provide effective police protection to the petitioner's company to fully complete the erection of transmission cell phone tower and to install all the telecommunication electrical and electronic equipments, cables at the open land ad-measuring about 1200 (40 x 30) Sq. ft. out of the total land situated comprised in Resurvey No.1089 / 2, 3, 4, 5 & 6, Plot No.57, Ward No.47, Erode Village & Taluk, Erode Sub-Registration District, Erode Registration District 638 004 on the basis of the complaint dated 29.06.2019 vide CSR No.178 of 2019 dated 29.06.2019.

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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 dated 29.06.2018 to the 3rd respondent to provide them with protection. However, the respondent 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 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 respondent.

4.Considering the facts and circumstances of the case, the petitioner is directed to send a fresh representation to the respondent and on receipt of the same, the respondent is 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 3rd respondent police to provide police protection to the petitioner for erection of the cell phone tower. The 1st and 2nd 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 3rd respondent police towards police protection.

8.The Criminal Original Petition is disposed of with the above direction.

29.07.2019

Index : Yes/No
 Internet: Yes/No
 Speaking Order/Non Speaking Order
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N.ANAND VENKATESH, J

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To

1. The Superintendent of Police,
District Police Office, Erode District,
Tamil Nadu.
2. The Deputy Superintendent of Police,
District Police Office, Erode District,
Tamil Nadu.
3. The State,
Rep. by Inspector of Police (Law and Order),
Erode Taluk Police Station,
Erode, Erode District.
4. The Public Prosecutor,
High Court, Madras.

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