

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.12.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WP.No.33537/2019 & WMP.No.33995/2019

K.Palanisamy

..Petitioner

Versus

1.The District Collector
Erode, Erode District.

2.M/s.Indus Towers Limited
Having its Circle Office at 5[NP]
ESPEE, IT Park, 5th floor
Jawaharlal Nehru Road
Ekkatuthangal, Chennai 600 097.

3.S.M.Suramaniam

4.K.Marappan

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the 1st respondent not to permit erection of cell phone tower with the residential area of Kottuveerampalayam, Sathyamangalam Taluk, Erode District in SF.No.333/16, by considering the petitioner's representation dated 18.10.2019.

For Petitioner : Mr.S.Vinoth Kumar

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

(1)The petitioner claims to be a resident of Kottuveerampalayam Village, Sathyamangalam Taluk, Erode District and he came forward to file the present writ petition styled as a Public Interest Litigation, alleging that attempts are being made to locate a mobile phone / cell phone tower on a land belonging to respondents 3 and 4.

(2)The learned counsel for the petitioner has drawn the attention of this Court to the representation dated 18.10.2019 submitted by the petitioner and also signed by the residents of

the locality and would submit that very close proximity to the location, there is an Anganwadi, Paediatric Care Centre and that apart, very many schools are located and besides that, in the event of location of the cell phone tower, there is bound to be radiation and therefore, the petitioner came forward to file the present writ petition, praying for issuance of a writ of mandamus, directing the 1st respondent, not to accord any necessary permission for location of cell phone tower within the residential area.

(3) This Court has considered the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.

(4) The affidavit filed in support of this writ petition is bereft of any material particulars and it is also well settled position of law that a writ of mandamus will not lie unless the petitioner specifically alleges statutory infraction of non-following of the statutory provisions.

(5) The issue relating to the alleged radiation due to erection of cell phone tower, came up for consideration before a Division Bench of Madurai Bench of this Court, in which, one of us was a party [MSNJ] and the same was reported in 2019 [6] MLJ 641 [Manivannan V. District Collector, Tuticorin District, Tuticorin and Others], and it is relevant to extract paragraph No.12.13:-

''12.13 In view of the specific stand taken by the Department of Telecommunication and the reports of WHO, there are no materials on record to confirm the existence of any health hazard from exposure to low level electromagnetic field and as stated by the three earlier orders of the different Division Benches of this Court, this Court cannot dwell into those aspects as an expert. Thus, issue No.1 is answered accordingly.''

(6) The Division Bench, in the above cited decision, had also taken note of G.O.Ms.No.2 of the Information Technology Department dated 01.04.2002 ; G.O.Ms.No.177, Municipal Administration and Water Supply Department dated 17.12.2002 ; G.O.Ms.No.302, Housing and Urban Development [UD 4.2] Department dated 12.12.2002 ; as well as G.O.Ms.No.1 of the Information Technology Department dated 21.02.2018.

and observed in paragraphs No.22 and 13.19 as follows:-

''22 Keeping in mind the statement of Mr.Om Prakash, learned Senior counsel that his clients have approached the officers concerned and they have not processed the request

further, we direct Indust Towers Limited, Chennai, sixth respondent in WP.[MD] Nos.15974 of 2017 etc., WP.No.15144/2017 and tenth respondent in WP.No.7544/2014, to make a fresh application, in terms of G.O.Ms.No.2, Information Technology Department, dated 01.04.2002, for erection of towers [even if they are already installed], within a period of three weeks from the date of receipt of a copy of this order. On receipt of the same, the respondents Nos.1 to 4 in WP.No.15144/2017, are directed to consider the application and take a decision in accordance with law, within a period of six weeks thereafter.

13.19 In view of the above Government Order and the above cited decisions rendered by this Court, the private respondents/service providers have to obtain permission from the District Collectors concerned as per G.O.Ms.No.2 Information Technology Department, dated 01.04.2002. Issue No.2 is answered accordingly.''

(7) In the result, the writ petition stands dismissed at the admission stage itself and however, the 1st respondent shall comply with the relevant Government Orders as pointed out in the above cited judgment reported in 2019 [6] MLJ 641 [Manivannan V. the District Collector, Tuticorin District, Tuticorin]. No costs. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

The District Collector
Erode District

+1 CC to Govt. Pleader sr 101190.

WP.No.33537/2019

MR (CO)
SP (21/01/2020)