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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. No. 5531 of 2020

Lakshמידevi

.. Petitioner

Vs

1. State represented by
The Deputy Inspector of Police,
Salem City, Salem.

2. The Inspector of Police,
Ammapettai Police Station,
Salem.

.. Respondents

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C. to direct the second respondent to give police protection to the petitioner while laying Cell Phone Tower in the vacant site situated in Survey No. 147/3C. Balaji Nagar, Athigaripatti Village, Salem District on the basis of the complaint given by him on 02.03.2020 to the second respondent.

For Petitioner : Mr.T.Muruganantham

For Respondents

For R1 & R2 : Mr.M.Mohamed Riyaz
Addl. Public Prosecutor

ORDER

This Criminal Original petition has been filed seeking for a direction to the second respondent police to provide adequate protection to the petitioner while laying Cell Phone Tower in the vacant site situated in Survey No.147/3C. Balaji Nagar, Athigaripatti Village, Salem District on the basis of the complaint given by him on 02.03.2020 to the second respondent.

2.The case of the petitioner is that, the petitioner has purchased 1261 square feet of vacant site situated in Survey No. 147/3C in Adhigaripatti Village of Salem District. After purchasing of house site, the Reliance Jio Company approached the petitioner for the purpose of erection of Cell Phone Tower. The petitioner granting permission to the company and she was cleaning the house site for the purpose of erection of cell phone tower. At that time, some unknown persons belonging to Adhigaripatti Village prevented the petitioner and threatened her to clear the house site. 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 Adhigaripatti area came to the spot and started causing hindrance to the petitioner from carrying out the construction work. The petitioner also gave a representation dated 02.03.2020 to the 2nd respondent to provide her 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



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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 2nd respondent police to provide police protection to the petitioner for erection of the cell phone tower. The 1st 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 2nd respondent police towards police protection.

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

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Deputy Inspector of Police,
Salem City, Salem.

2. The Inspector of Police,
Ammappettai Police Station,
Salem.

3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.T.Muruganatham Advocate sr23356

Cr1.O.P. No. 5531 of 2020

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