

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.9248 of 2020

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

... Petitioner

Vs.

- 1.The Commissioner of Police,
Commissioner of Police Office, Chennai City.
- 2.The Assistant Commissioner of Police,
Villivakkam, Chennai City.
- 3.The Inspector of Police,
V4, Rajamangalam Police Station
Chennai.
- 4.The District Collector,
District Collector Office, Chennai.
- 5.The Commissioner,
Greater Chennai Corporation, Chennai.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to direct the Respondents 1 to 3 to provide the effective police protection to the petitioner company to erect transmission cell phone tower and to install all the telecommunication electrical & electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower at Plot No.37 Part, New Door No.39, Thillai Nagar 2nd Main Road, Kolathur, Chennai-600099, Comprised in Survey Nos.22/3 and 22/4 of Kolathur Village. The said property as per the TSLR New Survey No.157/1, old S.F.N No.22/3A1PT, 22/4APT, D.No.37/1, New No.39/1 and also direct the 4th and 5th Respondents to co-operate with Respondents 1 to 3 as per the letter dated 26.03.2020 issued by the Additional Chief Secretary to the Government of Tamil Nadu vide Letter No. 45324/IT(E)/2020 and a letter dated

20.04.2020 issued by the Government of India Ministry of Communications, Department of Telecommunications vide Letter No. Lr.No.DDG (Technology)/TN- LSA/DM/COVID-19/20-21/02.

For Petitioner : Mr.K.Govindarajan
for Mr.P.Thilak Kumar

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

ORDER

This Criminal Original Petition has been filed to direct the Respondents 1 to 3 to provide the effective police protection to the petitioner company to erect transmission cell phone tower and to install all the telecommunication electrical & electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower at Plot No.37 Part, New Door No.39, Thillai Nagar 2nd Main Road, Kolathur, Chennai-600099, Comprised in Survey Nos.22/3 and 22/4 of Kolathur Village. The said property as per the TSLR New Survey No.157/1, old S.F.N No.22/3A1PT, 22/4APT, D.No.37/1, New No.39/1 and also direct the 4th and 5th Respondents to co-operate with Respondents 1 to 3 as per the letter dated 26.03.2020 issued by the Additional Chief Secretary to the Government of Tamil Nadu vide Letter No. 45324/IT(E)/2020 and a letter dated 20.04.2020 issued by the Government of India Ministry of Communications, Department of Telecommunications vide Letter No. Lr.No.DDG (Technology)/TN- LSA/DM/COVID-19/20-21/02.

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. 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 12.07.2019 to the 2nd 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.

3. 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 dated 28.06.2018, passed by this Court in Crl.O.P.No.16618 of 2018, wherein the very same petitioner was a party.

4. 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, public is 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."

5. 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.

6. 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.

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

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner of Police,
Commissioner of Police Office, Chennai City.
- 2.The Assistant Commissioner of Police,
Villivakkam, Chennai City.
- 3.The Inspector of Police,
V4, Rajamangalam Police Station
Chennai.
- 4.The District Collector,
District Collector Office, Chennai.
- 5.The Commissioner,
Greater Chennai Corporation, Chennai.
- 6.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No. 9248 of 2020

AD(CO)
GN(31/07/2020)