

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2020

CORAM

HONOURABLE MR. JUSTICE G.K. ILANTHIRAIYAN

CRL.O.P.No.9252 of 2020

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

Vs.

1. The Additional Chief Secretary,
Government of Tamil Nadu,
Chennai.
2. The Secretary (IT),
Government of Tamil Nadu,
Chennai.
3. The District Collector,
District Collector Office,
Salem.
4. The Municipal Commissioner,
Municipal Corporation,
Salem City.

(The respondents 1 to 4 are deleted as
per the order of this Court dated 24.06.2020
passed in Crl.O.P. 9252 of 2020)

5. The Commissioner of Police,
Commissioner of Police Office,
Salem City.
6. The Assistant Commissioner of Police,
Sooramangalam, Salem City.
7. The Inspector of Police,
B11 Sooramangalam Police Station,
Salem.

.. Respondents

PRAYER : Criminal Original Petition filed under Section 482 of
Code of Criminal Procedure Code seeking to direct the
respondents 5 to 7 to provide effective police protection to
the petitioner 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 and Taluk, Narashothippatty Village in S.F. No.7/8, presently sub-divided in new S.F. No.7/8D, land sub-divided as per TSLR copy ward No.B, Block No.1, T.S. No.6/19, an extent of measuring 1200 sq.ft. bearing Door No.1/1, Thoppukadu, Mukil Nagar, since the deemed permission to install the BTS transmission tower was granted by the 3rd respondent as per G.O. (Ms) No.1, dated 21.02.2018 by implementing the Indian Telegraph Right of Way Rules, 2016 notified by the Government of India, Ministry of Communications, Department of Telecommunication vide No.G.S.R. 1070(E), dated 15.11.2016 and also to direct the 3rd and 4th respondents to co-operate with respondents 5 to 7 as per the letter dated 26.03.2020 issued by the Additional Chief Secretary to 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 Telecommunication vide letter No. Lr.No.DDG(Technology)/ TN-LSA/DM/Covid-19/20-21/02.

For Petitioner : Mr.K.Govindarajan
for Mr.P.Tilak Kumar
For Respondents
R5 to R7 : Mr. M.Mohamed Riyaz,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking for a direction to the respondent 5 to 7 to provide adequate protection to the petitioner's company and its staff and subordinates to erect, commissioning of equipments and to radiate the transmission tower at the lease site at Salem District and Taluk, Narashothippatty Village in S.F. No.7/8, presently sub-divided in new S.F. No.7/8D, land sub-divided as per TSLR copy ward No.B, Block No.1, T.S. No.6/19, an extent of measuring 1200 sq.ft. bearing Door No.1/1, Thoppukadu, Mukil Nagar.

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 complaint dated 05.05.2019 to the respondent Police No. 7 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."

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 5th 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 7th 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,
Salem City.
2. The Assistant Commissioner of Police,
Sooramangalam, Salem City.
3. The Inspector of Police,
B11 Sooramangalam Police Station,
Salem.
4. The Public Prosecutor,
Madras High Court,
Chennai.

PVS (CO)
CB(16/07/2020)

Crl.O.P.No.9252 of 2020