

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 11161 of 2020

Indus Towers Limited,
Rep. By its Authorized Signatory
S.Prasanna, No.5, ESPEE IT Park,
5th Floor, Jawaharlal Nehru Road,
Ekkatuthangal, Chennai-97.

...Petitioner

Vs.

1. The Commissioner of Police,
Salem City, Salem District.
2. The Assistant Commissioner of Police,
West Range, Alagapuram, Salam City,
Salem District.
3. The Inspector of Police,
Fairlands Police Station,
Salem City, Salem District.
(CSR.No.377 of 2020)

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the 3rd respondent to provide necessary police protection to the petitioner for their mobile phone tower works at the premises being the vacant land measuring about 1200 Sq.Ft. at Plot No.8, in the DTCP approved layout named Rajarajan Nagar in Nanjai S.F.No.160/4, Alagapurampudur Village, Salem Taluk, within Salem City Corporation limits, Salem District.

For Petitioner : Mr.S.Anil Sandeep
For Respondents : Mr.S.Karthikeyan
Additional Public Prosecutor.
For Intervenor : Mr.D.Padmanaban

ORDER

This Criminal Original petition has been filed seeking for a direction to the 3rd respondent to provide necessary police protection to the petitioner for their mobile phone tower works at the premises being the vacant land measuring about 1200 Sq.Ft. at Plot No.8, in the DTCP approval layout named Rajarajan

Nagar in Nanjai S.F.No.160/4, Alagapurampudur Village, Salem Taluk, within Salem City Corporation limits, Salem District.

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 08.07.2020 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.

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 CrI.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 CrI.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 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."

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 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.

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

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

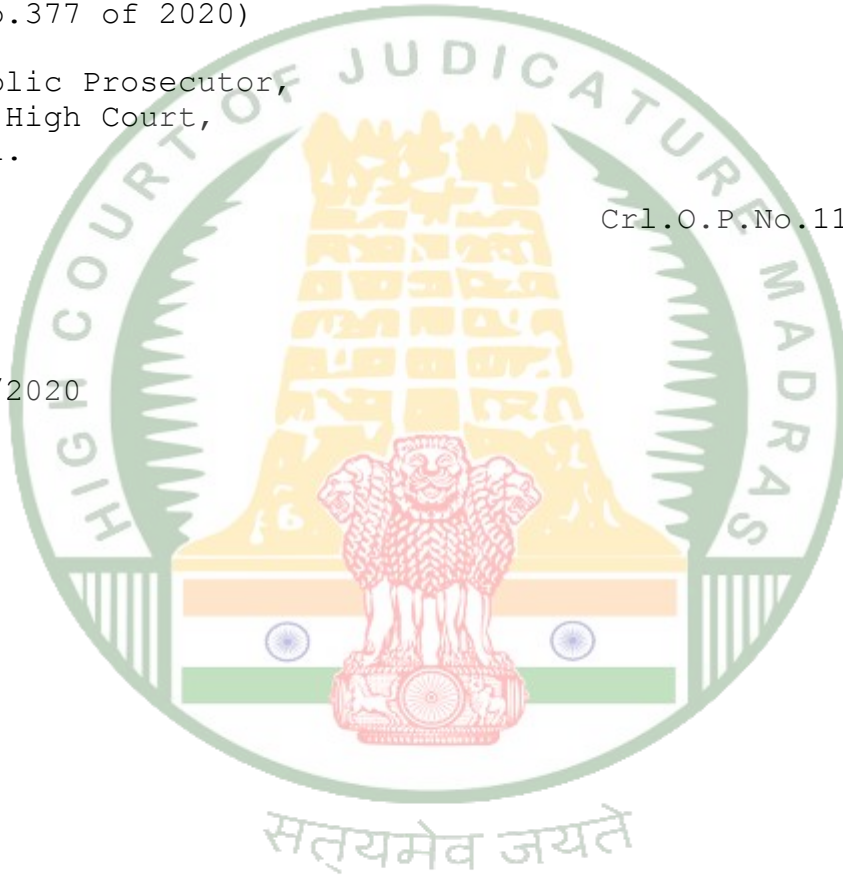
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To

1. The Commissioner of Police,
Salem City, Salem District.
2. The Assistant Commissioner of Police,
West Range, Alagapuram, Salam City,
Salem District.
3. The Inspector of Police,
Fairlands Police Station,
Salem City, Salem District.
(CSR.No.377 of 2020)
4. The Public Prosecutor,
Madras High Court,
Chennai.

Crl.O.P.No.11161 of 2020

NAS (CO)
KKV/25/08/2020



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