

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.08.2020
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
Crl.O.P.No.13177 of 2020

Indus Tower Limited
Rep by its Authorized Signatory
Mr.S.Prasanna
No.5, ESPEE IT Park
5th Floor, Jawaharlal Nehru Road
Ekkatuthangal, Chennai - 600 097. .. Petitioner

Vs

1.The Superintendent of Police,
Dharmapuri District.
Police Superintendent Office
Near District Collectorate, Dharmapuri District - 636 705.

2.The Deputy Superintendent of Police
Dharmapuri District
Police Superintendent Office
Near District Collectorate, Dharmapuri District - 636 705.

3.The Inspector of Police
B-1 Town Police Station, Dharmapuri District - 636 705.

4.The District Collector
Collectorate Office, Dharmapuri District-636 705.

5.The Block Development Officer
Virapakshipuram
Gandhi Nagar, Dharmapuri District-636 701. .. Respondents

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C. to direct the respondents 1 to 3 to provide adequate police protection to the petitioner for their mobile phone tower works at the premises being about 1200 sq.ft., of land at Door No.1/33, Kamaraj Street, AR Quarters, Mandabam, Lakkiampatti, Dharmapuri- 636 705, which is deemed to have been permitted by the 4th respondent under the Indian Telegraph Right of Way Rules, 2016, read with G.O.Ms.No.2 of 2002 issued by the Secretary, Information Technology Department, Government of Tamil Nadu.

For Petitioner : Mr.S.Anil Sandeep

For Respondents : Mr.S.Karthikeyan
Addl. Public Prosecutor for 1 to 3

O R D E R

This petition has been filed seeking for direction to direct the respondents 1 to 3 to provide adequate police protection to the petitioner for their mobile phone tower works at the premises being about 1200 sq.ft., of land at Door No.1/33, Kamaraj Street, AR Quarters, Mandabam, Lakkiampatti, Dharmapuri- 636 705, which is deemed to have been permitted by the 4th respondent under the Indian Telegraph Right of Way Rules, 2016, read with G.O.Ms.No.2 of 2002 issued by the Secretary, Information Technology Department, Government of Tamil Nadu.

2. Heard Mr.S.Anil Sandeep, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondents 1 to 3.

3. 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 erected. The petitioner had also entered into a lease agreement with the owner of the property and had taken steps and installed 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.

4. When the authorized representative of the petitioner tried to enter into the above said premises for erection and maintenance work of 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 19.08.2020 to the respondents herein 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.

5. 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 CrI.O.P.No.16618 of 2018, wherein the very same petitioner was a

party.

6.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 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."

7.This Court has consistently taken the view that no one can be prevented from erecting the cell phone towers or doing their mobile phone tower works 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.

8. 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 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.

9. In view of the above, this Criminal Original Petition is disposed of.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1.The Superintendent of Police,
Dharmapuri District.
Police Superintendent Office
Near District Collectorate, Dharmapuri District - 636 705.

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Gandhi Nagar, Dharmapuri District-636 701.

6.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.13177 of 2020

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