

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/09/2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.13781 of 2020

M/s.Ascend Telecom Infrastructure Private Limited,
Represented by its Authorized Signatory,
Tamilselvan,
Old No.32, New No.54,
Butt Road, St Thomas Mount,
Near Kathipara Junction,
Chennai-600 016 ... Petitioner

Vs

- 1.The Commissioner of Police,
No.132, Commissioner Office Building,
EVK Sampath road,
Vepery, Periyampet,
Chennai-600 007
- 2.The Inspector of Police,
K10, Koyambedu Police Station,
Koyambedu,
Chennai-600 107 .. Respondents

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondents to provide adequate police protection to the petitioner company and its staff and subordinates to erect, Commissioning of equipments and to radiate the transmission tower at the lease site namely site ID No.0010591 situated at plot No.25, comprised in Survey No.293, 20th Street, 'Sakthi Nagar', Nerkundram village, Ambattur Taluk, Tiruvallur District, Virugambakkam Sub Registration District, Chennai South Registration District measuring to an extent of 600 sq.ft.

For Petitioner : Mr.A.M.Venkata Krishnan

For Respondents: Mr.S.Karthikeyan
Addl. Public Prosecutor

O R D E R

This petition has been filed seeking for a direction to the respondents to provide adequate police protection to the petitioner company and its staff and subordinates to erect, Commissioning of equipments and to radiate the transmission tower at the lease site namely site ID No.0010591 situated at plot No.25, comprised in Survey No.293, 20th Street, 'Sakthi Nagar', Nerkundram village, Ambattur Taluk, Tiruvallur District, Virugambakkam Sub Registration District, Chennai South Registration District measuring to an extent of 600 sq.ft.

Heard Mr.A.M.Venkata Krishnan, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondents.

3. The case of the petitioner is that the petitioner is engaged in the business of providing telecommunication services and has been in the process of setting up various facilities like telecommunication electrical and electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower. 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 corporations, municipalities and Panchayats to install the cell phone towers by virtue of Government Order passed in G.O.Ms.No.302, dated 12.012.2002 and G.O.Ms.No.177 dated 17.12.2020.

4. 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 10.08.2020 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.

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 Crl.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 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 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 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 2nd respondent to provide police protection to the petitioner for erection of the cell phone tower. The 2nd respondent 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 towards police protection and also direct the 1st respondent to co-operate with the 2nd respondent.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsn

To

1.The Commissioner of Police,
No.132, Commissioner Office Building,
EVK Sampath road,
Vepery, Periyampet,
Chennai-600 007

2.The Inspector of Police,
K10, Koyambedu Police Station,
Koyambedu,
Chennai-600 107

3.The Public Prosecutor,
High Court, Madras.

+1 cc to M/s.A.M.Venkatakrisnan, Advocate Sr.No.

CrI.O.P.No.13781 of 2020

SR(CO)
RMP(19/10/2020)

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