

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.14613 of 2020

Indus Towers Limited
represented 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,
Krishnagiri District.
- 2.The Deputy Superintendent of Police,
Denkanikottai Division, Krishnagiri District.
- 3.The Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District(CSR No.113 of 2020)
- 4.The District Collector,
Krishnagiri District.
- 5.The Tahsildar,
Denkanikottai Taluk, Krishnagiri District.
- 6.The Block Development Officer,
Denkanikottai, Krishnagiri District. .. Respondents

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C. to direct the respondents 1 to 3 to provide necessary police protection to the petitioner for their mobile phone tower works at the premises being about 900 sq.ft of land at S.F.No.315, Jai Street 1st Cross, Denkanikottai, Denkanikottai Taluk, Krishnagiri District-635107, 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

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 Company and its staff and subordinates to erect, commissioning of equipments and to radiate the transmission tower at the lease site namely S.F.No.315, Jai Street 1st Cross, Denkanikottai, Denkanikottai Taluk, Krishnagiri District-635107 measuring to an extent of 900 sq.ft of land.

2. Heard Mr.S.Anil Sandeep, 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 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.

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 before the fourth respondent and third respondent dated 15.05.2020, 30.06.2020 and 01.07.2020 respectively 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, 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."

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 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 rise 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mpa

To

1. The Superintendent of Police,
Krishnagiri District.
- 2.The Deputy Superintendent of Police,
Denkanikottai Division, Krishnagiri District.
- 3.The Inspector of Police,
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- 5.The Tahsildar,
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- 6.The Block Development Officer,
Denkanikottai, Krishnagiri District.
- 7.The Public Prosecutor,
High Court, Madras.

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AJS (CO)
CB(02/11/2020)

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