

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.14879 of 2020

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

.. Petitioner

.Vs.

1. The Superintendent of Police,
District Police Office, Tiruvannamalai.
2. The Deputy Superintendent of Police,
Arni Sub-Division, Tiruvannamalai District.
3. The Inspector of Police,
Arni Town Police Station, Arani, Tiruvannamalai.
4. The District Collector,
District Collector Office, Tiruvannamalai.
5. The Municipal Commissioner,
Municipal Corporation, Tiruvannamalai.

.. Respondents

Prayer :- Criminal Original Petition filed under Section 482 Cr.P.C., to direct the respondents 1 to 3 to provide the effective police protection to the petitioner company to erect transmission cell phone tower and to install all the telecommunication electrical & electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower at Arani Taluk, Mullipattu Village Punjay, S.F.No.197/2 in new S.F.No.197/2A2 in Mullipattu Panchayat, West Arani Union limit, bearing No.567, Arani to polur road, MKM Complex, Mullipattu, Arani - 632316, which is deemed to have been permitted by the 4th respondent under the Indian Telegraph Right of Way Rules, 2016, notified by the Government of India Ministry of Communications, Department of Telecommunications vide No. G.S.R.1070(E) dated

15.11.2016, read with G.O.Ms.No.2 of 2002 issued by the Secretary, Information Technology Department, Government of Tamilnadu and as per the letter dated 26.03.2020 issued by the Additional Chief Secretary to the 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 Telecommunications vide Letter No.Lr.No.DDG (Technology)/TN-LSA/DM/COVID-19/20-21/02.

For Petitioner : Mr.T.N.Karthikeyan

For Respondents : Mr.S.Karthikeyan
Additional Public Prosecutor

O R D E R

This petition has been filed seeking for direction to direct the respondents 1 to 3 to provide the effective police protection to the petitioner company to erect transmission cell phone tower and to install all the telecommunication electrical & electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower at Arani Taluk, Mullipattu Village Punjay, S.F.No.197/2 in new S.F.No.197/2A2 in Mullipattu Panchayat, West Arani Union limit, bearing No.567, Arani to polur road, MKM Complex, Mullipattu, Arani - 632316, which is deemed to have been permitted by the 4th respondent under the Indian Telegraph Right of Way Rules, 2016, notified by the Government of India Ministry of Communications, Department of Telecommunications vide No. G.S.R.1070(E) dated 15.11.2016, read with G.O.Ms.No.2 of 2002 issued by the Secretary, Information Technology Department, Government of Tamilnadu and as per the letter dated 26.03.2020 issued by the Additional Chief Secretary to the 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 Telecommunications vide Letter No.Lr.No.DDG (Technology)/TN-LSA/DM/COVID-19/20-21/02.

2. Heard Mr.T.N.Karthikeyan, learned counsel appearing for the petitioner as well as Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the respondents.

3. The case of the petitioner is that the petitioner company is carrying the business of Operation and Maintenance of Mobile phone towers across India for all the mobile phone operators/service providers who are all licensed by the Government under Section 4 of Indian Telegraph Act 1885 on mutual agreed terms and conditions. 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.177, dated 17.12.2002, Municipal Administration and Water Supply (MAI) Department and G.O.MS.No.302 dated 12.12.2002.

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 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.

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 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 respondents 1 to 3 to provide police protection to the petitioner for erection of the cell phone tower. The respondents 1 to 3 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 respondents 1 to 3 towards police protection and also direct the 4th and 5th respondents to co-operate with respondents 1 to 3.

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

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Superintendent of Police,
District Police Office, Tiruvannamalai.
2. The Deputy Superintendent of Police,
Arni Sub-Division, Tiruvannamalai District.
3. The Inspector of Police,
Arni Town Police Station, Arani, Tiruvannamalai.
4. The District Collector,
District Collector Office, Tiruvannamalai.

5. The Municipal Commissioner,
Municipal Corporation, Tiruvannamalai.

6. The Public Prosecutor,
High Court, Madras.

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