



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

W.P(MD)No.10419 of 2020

WEB COPY

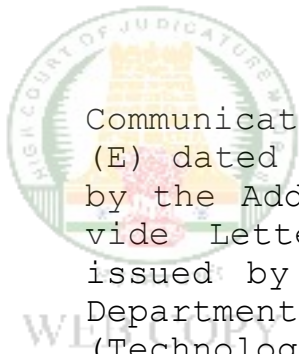
M/s.Indus Towers Limited
having its circle office at 5(NP),
ESPEE, IT Park, 5th Floor,
Jawaharlal Nehru Road,
Ekkatuthangal, Chennai - 600 097
represented by its Assistant Legal Manager,
S.Prasanna ... Petitioner

Vs.

- 1.The Commissioner of Police,
Commissioner Police Office, Trichy City.
- 2.The Assistant Commissioner of Police,
Golden Rock, Trichy City.
- 3.The Inspector of Police,
Golden Rock Police Station, Trichy.
- 4.The District Collector,
District Collector Office, Trichy.
- 5.The Municipal Commissioner,
Municipal Corporation,
Trichy City.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing 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 and electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower at Trichy Taluk, Alathur Village, Melakalkandarkottai, S.F.Nos.277/1 & 6, 278/1A Part, 2A Part, 281/1, 5A, 5B, 282/1, 323/1, 2, 3, 325/1, 2, 3 land subdivided into plots in the name of "Srivenkateshwara Nagar" in Plot No.107. The said property in Survey No.323/1 & 323/2 limit and Tiruchirappalli Corporation Ward No.T, Ponmalai Zone limit., since, the deemed permission to install the BTS transmission Tower was granted by the 4th respondent as per the G.O.(MS)No.1, dated 21.02.2018, by implementing the Indian Telegraph Right of



Communications, Department of Telecommunication vide No.G.S.R.1070 (E) dated 15.11.2016 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 and also direct the 4th and 5th respondents to co-operate with respondents 1 to 3.

For Petitioner : Mr.K.Govindarajan

For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Mandamus, directing 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 and electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower at Trichy Taluk, Alathur Village, Melakalkandarkottai, S.F.Nos.277/1 & 6, 278/1A Part, 2A Part, 281/1, 5A, 5B, 282/1, 323/1, 2, 3, 325/1, 2, 3 land subdivided into plots in the name of "Srivenkateshwara Nagar" in Plot No.107. The said property in Survey No.323/1 & 323/2 limit and Tiruchirappalli Corporation Ward No.T, Ponmalai Zone limit.

2.The case of the petitioner is that the Petitioner Company is engaged in the business of operation and maintenance of Mobile Phone towers across India for the licensed mobile phone operators/service providers on agreed terms and conditions. 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, Information Technology Department, 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.

3.The learned counsel appearing for the petitioner would submit that the issue involved in this petition is squarely covered by the earlier decisions rendered by this Court. The learned counsel brought to the notice of this Court the order dated 28.06.2018, passed by this Court in Crl.O.P.No.16618 of 2018, wherein the very same petitioner was a party.



4.It will be appropriate to extract below the relevant portions of the order dated 28.06.2018, made in CrI.O.P.No.16618 of 2018.

''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.''

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

7.The Writ Petition is disposed of with the above direction.
No costs.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MPK

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Commissioner of Police,
Commissioner Police Office, Trichy City.

2.The Assistant Commissioner of Police,
Golden Rock, Trichy City.

3.The Inspector of Police,
Golden Rock Police Station, Trichy.

4.The District Collector,
District Collector Office, Trichy.

5.The Municipal Commissioner,
Municipal Corporation, Trichy City.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K. GOVINDARAJAN, Advocate (SR-15476[F])

W.P(MD)No.10419 of 2020

31.08.2020

SE(CO)

<https://hseervices.ecourts.gov.in/hseervices> TP(21.09.2020) 4P 8C