



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.10.2020

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

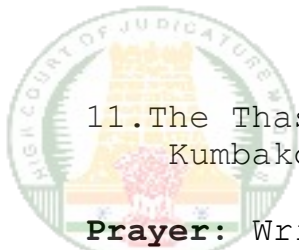
W.P. (MD)No.12971 of 2020

M/s.Indus Towers Limited,
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,
Thanjavur.
- 2.The Deputy Superintendent of Police,
Kumbakonam Sub Division,
Thanjavur.
- 3.The Inspector of Police,
Kumbakonam Taluk Police Station,
Kumbakonam.
- 4.The District Collector,
District Collector Office,
Thanjavur.
- 5.The Municipal Commissioner,
Municipal Corporation,
Thanjavur.
- 6.The Distict Revenue Officer,
Thanjavur.
- 7.The Regional Director,
Municipal Administration,
Thanjavur.
- 8.The Commissioner - Municipality,
Kumbakonam.
- 9.The Executive officer,
Dharasuram, Kumbakonam.
- 10.The Revenue Divisional officer,
Kumbakonam.



11.The Thasildar,
Kumbakonam.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, in the nature of 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 & electronics equipments, OFC Cable and its maintenance work on the said BTS transmission Tower at Thanjavur District, Kumbakonam Taluk, Dharasuramvattam, Elumichangapalayam, East Street, Punjay S.F.No.193/11B, Door No.94. The said property in the limit of Dharasuram Town Panchayat, 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 and also direct the respondents 4 to 11 to co-operate with respondents 1 to 3.

For Petitioner	:	Mr.K.Govindarajan
For R1 to 4,6,9 to 11	:	Mr.M.Rajarajan
		Additional Government Pleader
For R5,7 & 8	:	given up

O R D E R

Heard the learned counsel on either side.

2. The Writ Petitioner is a Company engaged in installation and maintenance of mobile phone towers. The petitioner wants to establish the mobile phone towers in the petition mentioned site. In this regard, application has been submitted to the District Collector, Tanjore vide letter dated 11.10.2019. Till date, the application submitted by the petitioner had not been disposed of. The petitioner has been encountering difficulties in the matter of installation and therefore, they have moved this Court and obtained orders for police protection. On the same lines, this Writ Petition has also been filed.

3.I want to know whether the petitioner can go ahead without getting formal clearance from the District Collector, Tanjore. The learned counsel for the petitioner drew my attention to



Rule 10(3) of Indian Telegraph Act, 1885. The said provision reads as follows:-

10(3) The appropriate authority shall, within a period not exceeding sixty days from the date of application made under Rule 9-

(a) grant permission on such conditions including, but not limited to, the time, mode of execution, measures to mitigate public inconvenience or enhance public safety or structural safety and payment of restoration charge or compensation, subject to the provisions of the Act and these rules; or

(b) reject the application for reasons to be recorded in writing:

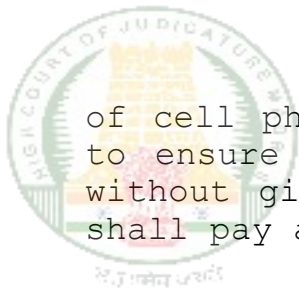
Provided that no application shall be rejected unless the applicant licensee has been given an opportunity of being heard on the reasons for such rejection:

Provided further that the permission shall be deemed to have been granted if the appropriate authority fails to either grant permission under Clause (a) or reject the application under clause (b) and the same shall be communicated in writing to the applicant not later than five working days after permission is deemed to have been granted.

4. The learned counsel for the petitioner contended that since no orders rejecting the petitioner's application has been passed in writing, this Court must assume that the petitioner is having deemed approval for establishing mobile phone towers in the petition mentioned site. I therefore, called upon the learned Additional Government Pleader to respond as to whether the petitioner's application has been disposed of or it is pending.

5. Today when the matter was taken up for hearing, the learned Additional Government Pleader appearing for the respondents produced a copy of the instructions issued by the District Collector, Tanjore. It is seen there from that till date, the petitioner's application has not been disposed of. In the meeting to be held on 21.10.2020, appropriate orders will be issued regarding the establishment of mobile phone towers. The petitioner's counsel states that he had already submitted application and that several months have lapsed. Therefore, applying the aforesaid Rule 10(3) of Indian Telegraph Act, 1885, I must hold that the petitioner is having deemed approval from the fourth respondent for installation of mobile phone towers in the petition mentioned site.

6. The learned counsel for the petitioner drew my attention to the order dated 31.08.2020 made in W.P.(MD) No.10419 of 2020. A learned judge of this Court had directed the official respondents therein to provide police protection to the petitioner for erection



of cell phone towers. The jurisdictional police have been directed to ensure that the entire process will go on in a smooth manner, without giving rise to any law and order problems. The petitioner shall pay a cost of Rs.10,000/- towards police protection.

7.I am of the view that the very same order on the same lines can be passed in the present case also. Therefore, this Criminal Original Petition is disposed of by directing the third respondent to provide police protection for carrying out the erection work. The petitioner shall pay a sum of Rs.10,000/- as cost to the third respondent. The other official respondents are also directed to extend their fullest co-operation. I must record here the submission made by the learned counsel for the petitioner that on account of COVID -19, there is a greater demand for installation of mobile phone towers, since many of our activities are presently conducted only in online mode. Therefore, there is a presence of public interest element also in the case on hand.

8. With these observations and directions, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

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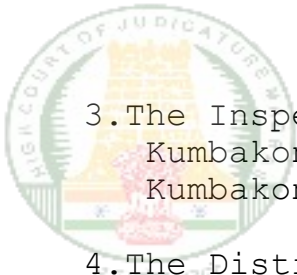
Sub Assistant Registrar(CS)

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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 Superintendent of Police,
District Police Office,
Thanjavur.
- 2.The Deputy Superintendent of Police,
Kumbakonam Sub Division,
Thanjavur.



3.The Inspector of Police,
Kumbakonam Taluk Police Station,
Kumbakonam.

4.The District Collector,
District Collector Office,
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5.The Municipal Commissioner,
Municipal Corporation,
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Thanjavur.

6.The Executive officer,
Dharasuram, Kumbakonam.

7. The Revenue Divisional officer,
Kumbakonam.

8.The Thasildar,
Kumbakonam.

+1 CC to M/s.GP (SR-20543[F] dated 19/10/2020)

W.P. (MD) No.12971 of 2020
16.10.2020

SGS (CO)

AP(06/11/2020) 5P 10C