

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :06.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.39336 of 2015

and

M.P.No.1 of 2015

ATC Telecom Infrastructure Pvt.Ltd.,
Rep.by its Circle Legal Head,
Mr.N.Senathipathi,
Celestial Point, No.45, Damodaran Street, T.Nagar,
Chennai – 600 017.Petitioner
(Petitioner amended vide order dt.28.04.2021 made in
W.M.P.No.3997/2020 in W.P.No.39336/2015 by SMSJ)

Vs

- 1.Sathanur Panchayat,
Rep.by its President and Administrative Officer,
Thandrapattu Taluk,
Thiruvannamalai District.
- 2.The State rep.by its Secretary,
Rural Development and Panchayat Raj Department,
Fort St.George, Chennai – 9.
- 3.The District Collector,
Collectorate, Vengikkal,
Thiruvannamalai 606 604,
Thiruvannamalai District. Respondents
(R3 impleaded as per order dated 06.02.2020 made in
W.M.P.No.2305/2020 in W.P.No.39336 of 2015 by CSNJ)

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the order of 3rd respondent vide proceedings in K.No.7918/A5/2012/VU E(VU) dated 31.01.2013 published in Gazette Notification dated 01.02.2013 and consequential demand notice dated 31.03.2015 on the file of the 1st respondent demanding license fee on the BTS Tower of petitioner and quash the same as illegal, without jurisdiction and unconstitutional.

(Prayer amended vide order dt.28.04.2021 made in W.M.P.No.3999/2020 in W.P.No.39336/2015 by SMSJ).

For Petitioner : Mr.J.Ravikumar

For Respondents : Mrs.I.Lakshmi
for Mr.D.Suriyanarayanan for R1

Mr.V.Veluchamy
Government Advocate for R2 & R3

ORDER

The relief sought for in the present writ petition is to call for the records pertaining to the order of 3rd respondent vide proceedings in K.No.7918/A5/2012/VU E(VU) dated 31.01.2013 published in Gazette Notification dated 01.02.2013 and consequential demand notice dated 31.03.2015 on the file of the 1st respondent demanding license fee on the BTS Tower of petitioner and quash the same.

2.The learned counsel for the writ petitioner made a submission that the petitioner is not liable to pay licence fee, since no licence was granted for construction of Base Transreceiver Station Towers (BTS towers) within the jurisdiction of the first respondent.

3.The learned counsel for the petitioner made a submission that the District Collector was designated as an authority competent only in the year 2019 by the Government for erection of BTS towers. However, prior to the year 2019, no licence or permission was granted for construction of BTS towers and therefore, the first respondent is not empowered and have no jurisdiction to recover licence fee by invoking the provisions of the Tamil Nadu Panchayats Act, 1994 (hereinafter referred to as “the Act”). Even under the general provisions regarding the licence and permission, only in the event of grant of licence or permission under the provisions of the Act, then alone licence fee is recoverable. The third respondent could not able to establish that any such licence or permission was granted by the Local Body and in the absence of any such licence or permission, they are

not entitled to collect licence fee from the petitioner, who had admittedly erected BTS towers in the jurisdiction of the respective Panchayats.

4.In this regard, the Hon'ble First Bench of this Court passed an order on 24.07.2019 in W.P.No.18442 of 2019 and the relevant paragraphs are extracted hereinbelow:-

“3.The learned Government Advocate fairly submitted that as per the Government Letter dated 26.3.2019, in relation to the erection of BTS Towers, the second respondent ought not to have called for approved plan or issued stop work notice.

4.In view of the submissions made by the learned Government Advocate and in the light of the Government Letter dated 26.3.2019, we are of the view that the notice dated 24.5.2019 issued by the second respondent is liable to be set aside and, accordingly, the same is set aside.

In the result, the writ petition is allowed. No costs. Consequently, W.M.P.No.17764 of 2019 is closed.

5.This Court is of the considered opinion that grant of licence and permission under the provisions of the Act are regulated by the Government with effect from the year 2019 and the District Collectors are the competent authorities for grant of licence for erection of BTS towers. However, in respect of the towers which were being operated prior to 2019, the Local Body has no authority or jurisdiction to collect the licence fee, as they have not granted any licence or permission by invoking the provisions of the Act and therefore, the very demand made is without jurisdiction and unsustainable. Therefore, the impugned order passed by the first respondent is to be quashed. Accordingly, the impugned order is quashed.

6.It is made clear that in respect of the payment of property tax, the first respondent is empowered to collect the same from the owners and in the event of factual dispute, the petitioner is at liberty to prefer appeal before the appellate authority.

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7.In respect of licence fee, library fee, advertisement tax and machinery tax, the petitioner need not pay tax and the first respondent is not

empowered to collect or recover the same from the petitioner.

8.In view of the facts and circumstances, the impugned order is quashed in respect of payment of licence fee, library tax, advertisement tax and machinery tax and in respect of property tax, the owners are liable to pay the same and it is recoverable by the first respondent.

9.With the above observations and directions, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

06.07.2021

Speaking order
Index : Yes
Internet: Yes

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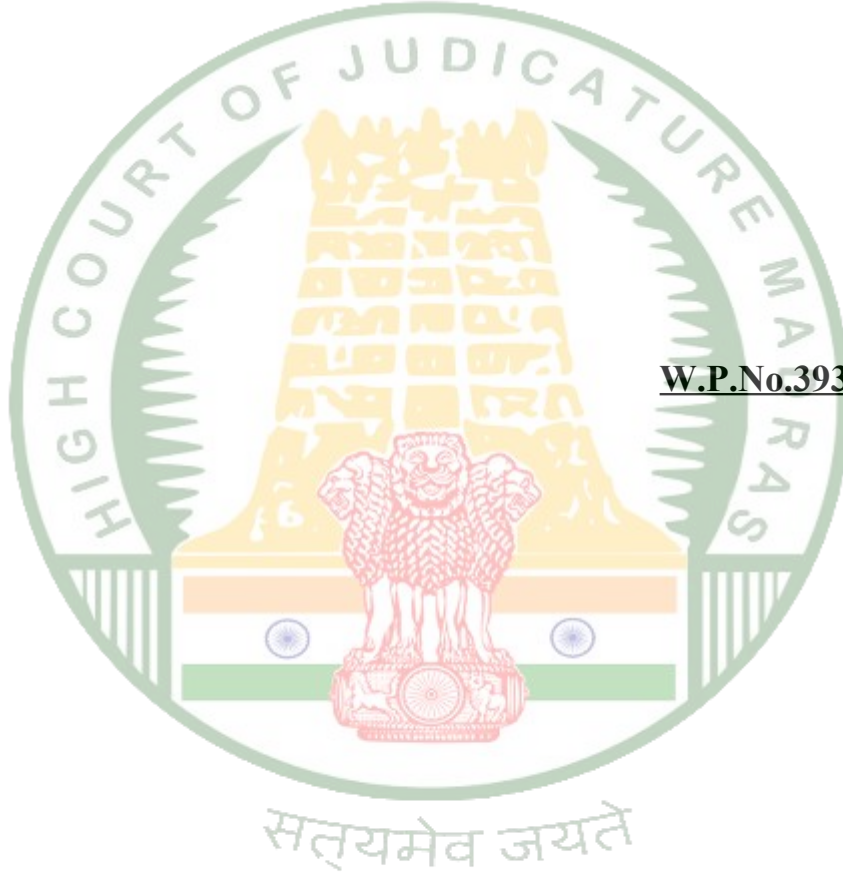
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S.M.SUBRAMANIAM,J.

Pns



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