

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.10903 of 2021

ATC Telecom Infrastructure Pvt. Ltd.

Represented by Authorised Signatory

N.Senathipathi

"Celestial Point", No.45, Damodharan Street,

T.Nagar, Chennai - 600 017Petitioner

Versus

1.The District Collector,
Collectorate,
Erode District - 638 011

2.The Superintendent of Police,
District Police Office,
Erode - 638 001

3.The State,
Rep. by Inspector of Police (Law & Order),
North Police Station,
Erode - 638 009

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ, Order of Direction in the nature of Writ of Mandamus, directing the Respondents 2 & 3 to forthwith provide effective police protection to the petitioner's company to fully complete the erection of transmission cell phone tower and to install all the telecommunication electrical and electronic equipments, cables at the open land admeasuring about 1200 Sq.ft. (30x40) out of total land situated /comprised in Survey No.242/A, 250A, 251A, R.S.No.318/1 & 319/1, Periyasemmur Village, Erode Taluk, Erode District, on

the basis of the complaint filed by the petitioner dated 05.04.2021, since, the deemed permission to install the BTS transmission Tower was granted by the 1st respondent as per the G.O.(MS) No.1, Information Technology (B4) Department dated 21.02.2018, by implementing the Indian Telegraph Right of way Rules, 2016, notified by the Government of India, Ministry of Communications, Department of Telecommunication vide No.G.S.R.1070(E) dated 15.11.2016.

For Petitioner : Mr.J.Ravikumar
For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor.

ORDER
(Through Video Conferencing)

This petition has been filed for the issue of a writ of mandamus, directing the Respondents 2 & 3 to forthwith provide effective police protection to the petitioner's company to fully complete the erection of transmission cell phone tower and to install all the telecommunication electrical and electronic equipments, cables at the open land admeasuring about 1200 Sq.ft. (30x40) out of total land situated /comprised in Survey No.242/A, 250A, 251A, R.S.No.318/1 & 319/1, Periyasemmur Village, Erode Taluk, Erode District, on the basis of the complaint filed by the petitioner dated 05.04.2021, since, the deemed permission to install the BTS transmission Tower was granted by the 1st respondent as per the G.O.(MS) No.1, Information Technology (B4) Department dated 21.02.2018, by implementing the Indian Telegraph Right of way Rules, 2016, notified by the Government of India, Ministry of Communications, Department of Telecommunication vide No.G.S.R.1070(E) dated 15.11.2016.

2.The case of the petitioner is that the petitioner is engaged in the business of Operation and Maintenance of Mobile phone towers across India for all the mobile phone operators/service providers providing broadband Internet services and other allied services. For the said purpose, cell phone tower is 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.

3. When the petitioner attempted to erect the cell phone tower, some people with vested interest claiming to be neighbours have been causing hindrance and preventing the workers from carrying out the construction work. In this regard, the petitioner gave a complaint to the 2nd and 3rd respondent on 05.04.2021, seeking police protection. However, the 2nd and 3rd respondent have not acted upon the said complaint and therefore, the present Petition has been filed.

4. 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 dt.28.06.2018.

5. 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."

6.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.

7.For the reasons stated above, there shall be a direction to the 2nd and 3rd respondent police to provide police protection to the petitioner for erection of the cell phone tower. The 2nd and 3rd respondent police shall ensure that the entire process goes on in a smooth manner, without giving raise to any law and order problem.

8. This writ petition is disposed of with the above direction. No costs.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

1. The District Collector,
Collectorate,
Erode District - 638 011
2. The Superintendent of Police,
District Police Office,
Erode - 638 001
3. The Inspector of Police (Law & Order),
North Police Station,
Erode - 638 009
4. The Public Prosecutor,
High Court, Madras.

W.P.No.10903 of 2021

GSM(CO)
KKV/13/07/2021

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