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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

W.P. No.13305 of 2021

and

W.M.P.No.14132 of 2021

M/s.Ascend Telecom Infrastructure Private Limited,
Represented by its Authorized Signatory,
Mr.Tamilselvan,
Old No.32, New No.54,
Butt Road, St. Thomas Mount,
Near Kathipara Junction,
Chennai – 600 016. ... Petitioner

Versus

1. The Superintendent of Police,
   Chengalpet.

2. The Inspector of Police,
   Thirukazhukundram Police Station,
   Chengalpet. ...Respondents

Writ Petition filed under Article 226 Constitution of India, to issue Writ of Mandamus, to direct the respondents to provide adequate police protection to the petitioner company and its staff and subordinates to erect, commissioning of equipments and to radiate the transmission tower at the lease site namely Site ID No.0010653, property being portion of the land 1200 Sq.ft out of land admeasuring 1200 Sq.ft situated at Punja Survey No.426, Thirukazhukundram Village, Asiriyar Nagar next to Desukugipettai, Thirukazhukundram Majra No.194, within the limits of Thirukazhukundram Town Panchayat, Thirukazhukundram Sub Registration District, Chengalpet Registration District, Vide Registered Document No.2005/1998, Dated 21.08.1998, before Sub Registrar, Thirukazhukundram.

For Petitioner : Mr.A.M.Venkatakrishnan

For Respondents : Mr.A.Damodaran,
Government Advocate (Crl.side)

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ORDER

This petition has been filed for the issuance of a Writ of mandamus, to direct the respondents to provide adequate police protection to the petitioner company and its staff and subordinates to erect, commissioning of equipments and to radiate the transmission tower at the lease site namely Site ID No.0010653, property being portion of the land 1200 Sq.ft out of land admeasuring 1200 Sq.ft situated at Punja Survey No.426, Thirukazhukundram Majra No.194, within the limits of Thirukazhukundram Town Panchayat, Thirukazhukundram Sub Registration Document No.2005/1998, Dated 21.08.1998, before Sub Registrar, Thirukazhukundram.

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 dated 26.04.2021 to the first respondent, seeking police protection. However, the first respondent had not acted upon the said complaint and therefore, the present Petition has been filed.

4.The learned counsel 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:-

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"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."

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.

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7.For the reasons stated above, there shall be a direction to the third respondent police to provide police protection to the petitioner for erection of the cell phone tower. The third 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. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To
1. The Superintendent of Police,
   Chengalpet.

2. The Inspector of Police,
   Thirukazhukundram Police Station,
   Chengalpet.

3. The Public Prosecutor,
   High Court, Madras.

+1CC to Mr.A.M.Venkatakrishnan, Advocate, Sr.No.29762

W.P. No.13305 of 2021
and
W.M.P.No.14132 of 2021

GPL (CO)
K.RK. (20.07.2021)

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