



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2021

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THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

W.P. (MD) No. 15811 of 2021

AND

WMP (MD) No. 12735 & 12736 of 2021

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General Public of Nathamadipatti Village
Keelakurichi Panchayat,
Thiruverumbur Taluk, Tiruchirappalli District,
rep. by .Savarinathan,
S/o. Innasimuthu,
3/144, South Street,
Nathamadipatti Village,
Thiruverumbur Taluk,
Tiruchirappalli-620 011.

.. Petitioner

Vs.

1. The District Collector,
Collectorate, Tiruchirappalli.
2. The Superintendent of Police,
Tiruchirappalli District.
3. The Inspector of Police,
Thiruverumbur Police Station,
Tiruchirappalli.
4. M/s. Summit Digital Infrastructure Pvt. Ltd.,
(Formerly Reliance io Infratel Pvt. Ltd.),
having its Circle office at A1 Tower, 8th Floor,
89-90, Dr. Radhakrishnan Salai,
Mylapore, Chennai-600 004
rep. by its Manager

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the first respondent to take suitable action to shift the fourth respondent's under construction Over Ground Telecom Infrastructure (Cell phone Tower) situated in S.F.No.171/13B of Nathamadipatti Village, Keelakurichi Panchayath, Thiruverumbur Taluk, Tiruchirappallai District, to some other location in the village (as it is situated within 100 mtss from the Nathamdipatti Primary School) as per Rule 13 of Indian Telegraph Right to Way Rules, 2016, based on the representation dated 20.07.2021.



For Petitioner : Mr.R.S.Sivaram
For Respondents : Mr.M.Ramesh,
Government Advocate for RR 1 and 2
Mr.K.Govindarajan
for Mr.T.N.Karthikeyan for R4

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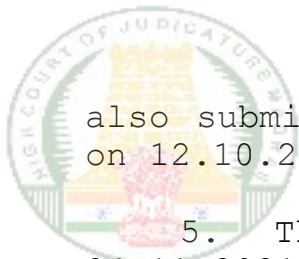
O R D E R**PUSHPA SATHYANARAYANA, J.**

This writ petition *pro bono publico* is filed seeking a direction to the the first respondent to take suitable action to shift the fourth respondent's under construction Over Ground Telecom Infrastructure (Cell phone Tower) situated in S.F.No.171/13B of Nathamadipatti Village, Keelakurichi Panchayath, Tiruverumber Taluk, Tiruchirappallai District, to some other location in the village.

2. The petitioner made such claim on the ground that the fourth respondent commenced the construction of cell phone tower without obtaining permission from the revenue authorities and the tower under construction is situated within 100 meters from the Nathamadipatti Primary School, which has to be removed in terms of Rule 13 of Indian Telegraph Right to Way Rules, 2016, and seeking such relief, they submitted a representation dated 20.07.2021 to the first respondent in vain. Hence, they are before this Court.

3. Learned counsel for the petitioner submitted that it is not the case of the petitioner that the private respondent should not erect the cell phone tower at all, but their only grievance is it is located within the residential area and near a school and as such, the same may be shifted to some other location, for which, they are ready to offer land on lease. It is his further submission that without even obtaining permission from the first respondent, the private respondent commenced the work and hence, the first respondent is empowered to take appropriate action under Rule 13 of the Indian Telegraph Right to Way Rules, 2016.

4. The learned counsel for the fourth respondent contended that the Standing Advisory Committee on Radio Frequency Allocation (SACFA) has approved the site as early as in the year 2019 which was communicated to them by the Deputy Wireless Adviser, Government of India, New Delhi, on 26.11.2019. Subsequently, the fourth respondent entered into the lease deed with the owners of the premises on 22.03.2021 and submitted the application with the first respondent on 29.03.2021. Since the petitioner and other villagers interrupted the work, they filed W.P.(MD)No.7056 of 2021 seeking police protection which was ordered on 29.03.2021. It is



also submitted that the first respondent also accorded permission on 12.10.2021.

5. The first respondent filed a status report dated 24.11.2021 in compliance with the directions issued by this Court on 06.09.2021, wherein, *inter alia*, it is submitted that the fourth respondent submitted an application dated 29.03.2021 for erecting the transmission cell phone tower and the first respondent issued the proceedings in Rc.No.G1/17169/2020, dated 12.10.2021 according permission to the fourth respondent company for erection of the Cell Phone Tower in the subject property on the following terms and conditions :

- (1)The conditions as stipulated in Indian Telegraphic Act, 1855 has to be followed ;
- (2)During the erection of tower, the rules and regulations as formulated by the Telegraphic Department of India has to be followed.
- (3)Only after the payment of required fees as imposed by the Local Administration Department, with the concerned Local Panchayat Authorities, the Cell Phone Tower has to be erected / operated."

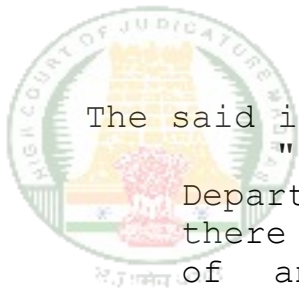
Further, before issuing the said proceedings, the first respondent obtained reports from the Tahsildar, Thiruverambur Taluk, the Revenue Divisional Officer, Trichirappalli, and the Inspector of District Panchayat, dated 14.09.2021, 21.09.2021 and 07.10.2021 respectively, which were submitted by the officials after making field inspection along with the concerned officials, including the survey department staff, and after perusing the same, the above proceedings was issued. It is also submitted that in the meanwhile, the fourth respondent also filed WP(MD)No.7056 of 2021 seeking police protection for carrying the said work and the same was ordered by this Court on 29.03.2021 on certain terms.

6. It is to be stated that the learned counsel for the petitioner relied on a judgment of a coordinate Bench in **Manivannan V. The District Collector and Others** reported in **2019 SCC OnLine Mad 4348**, wherein, a similar relief was sought for and after discussing the points *in extenso* and relying upon the Government Order in vogue and the rules and regulations, the following two issues were framed for consideration by this Court :

11. The common issues that are arising out for consideration in these writ petitions are:

1. Whether the BTS Towers can be permitted in the residential area, nearby residential buildings and schools? and whether it would cause any health hazards to the nearby residents?

2. Whether any permission or no objection certificate is required for installation of BTS Towers from the Localbodies/Panchayats or any other authorities?"



The said issues were answered in the following manner :

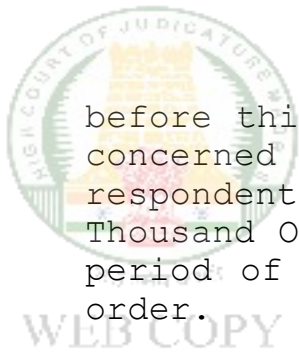
"24. In view of the specific stand taken by the Department of Telecommunication and the reports of WHO, there are no materials on record to confirm the existence of any health hazard from exposure to low level electromagnetic field and as stated by the three earlier orders of the different Division Benches of this Court, this Court cannot dwell into those aspects as an expert. Thus, issue No. 1 is answered accordingly.

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43. In view of the above Government Order and the above cited decisions rendered by this Court, the private respondents/service providers have to obtain permission from the District Collectors concerned as per G.O.Ms. No. 2 Information Technology Department, dated 01.04.2002. Issue No. 2 is answered accordingly."

7. In the light of the above decision, the contention of the petitioner that the proposed cell phone tower is hazardous cannot be accepted. Further, the reports of the revenue and panchayat officials also unequivocally stated that the schools are located beyond 100 meters and not as claimed by the petitioner. Thus, the only point that requires determination is whether the service provider obtained permission from the District Collector in terms of G.O.Ms.No.2, Information Technology Department, dated 01.04.2002. As indicated above, the first respondent District Collector issued the proceedings dated 12.10.2021 granting permission with certain conditions and the same mandates the service provider, i.e., the fourth respondent, to adhere to the conditions stipulated in the Indian Telegraphic Act, 1855, the rules and regulations as formulated by the Telegraphic Department of India for the erection of tower, etc.,. In such backdrop, the provision relied on by the petitioner, i.e., Rule 13 of Indian Telegraph Right to Way Rules, 2016, has no application for the present and the petitioner cannot seek the relief. If there is any violation of those provision by the fourth respondent, then the petitioner could initiate appropriate proceedings and the instant writ petition is premature one.

8. However, what causes great concern is that the fourth respondent in W.P.(MD)No.7056 of 2021, while seeking police protection, submitted before this Court that they got necessary permission from the concerned authorities to erect a mobile tower in the premises. This Court is of the view that when there was no valid permission accorded by the District Collector, which was given only on 12.10.2021 and the fourth respondent obtained only clearance from SACFA and entered into a lease agreement with the land owners on 22.03.2021 and submitted the application on 29.03.2021, they were not entitled to make such a submission



before this Court that they obtained necessary permission from the concerned authorities. In such view of the matter, the fourth respondent is directed to pay a sum of Rs.2,000/- (Rupees Two Thousand Only) as costs to the Chief Justice Relief Fund, within a period of four weeks from the date of receipt of a copy of this order.

9. Excepting the above direction, we do not find any merit in the claim of the petitioner and accordingly, the writ petition fails and the same is dismissed as devoid of merits. There shall be no order as to costs on the writ petitioner. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

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To

1. The District Collector,
Collectorate, Tiruchirappalli.
2. The Superintendent of Police,
Tiruchirappalli District.
3. The Inspector of Police,
Thiruverumbur Police Station,
Tiruchirappalli.

Copy to

The Section Officer, Accounts Section,
Madurai Bench of Madras High Court, Madurai.

- +1 CC to M/s.R.S.SIVARAM, Advocate (SR-38503[F] dated 14/12/2021)
- +1 CC to M/s.T.N.KARTHIKEYAN, Advocate (SR-38967[F] dated 15/12/2021)
- +1 CC to M/s.SPL GP (SR-38870[F] dated 15/12/2021)

**W.P. (MD)No.15811 of 2021
AND WMP (MD)No.12735 & 12736 of 2021
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