



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.04.2022

WEB COPY

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.15965 of 2012 & M.P.Nos.1 & 2 of 2012

M/s.Indus Towers Ltd.,  
Rep.by its Authorized Signatory,  
Mr.S.Vijayraj, Srivari Shrimath,  
3<sup>rd</sup> and 4<sup>th</sup> Floors, No.1045,  
Avinashi Road, Coimbatore - 641 018.

...Petitioner

Vs

- 1.The District Collector,  
District Collectorate,  
Salem.
- 2.The Assistant Director (Panchayats),  
Salem District.
- 3.The President,  
Kongupatti Panchayat,  
Kadayampatti Panchayat Union,  
Omalur Taluk, Salem - 636 305.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the third respondent in Notice dated 23.05.2012 seeking to levy fee concerning the business quash the said notice being in derogation of law and consequently direct the respondents not to interfere with the erection commissioning and operation of the telecom tower of the petitioner at Survey No.506/1C, Kuppanaickanoor Village, Kongupatti Panchayat, Omalur Taluk, Salem District 636 305.

|                 |   |                                                    |
|-----------------|---|----------------------------------------------------|
| For Petitioner  | : | Mr.Elaya Rajkumar<br>for M/s Ramalingam Associates |
| For Respondents | : | Mr.E.Sundaram                                      |
| For R1 & R2     | : | Government Advocate                                |
| For R3          | : | Mr.B.Anand                                         |



## O R D E R

The petitioner is a Telecom Service Provider, which claims to be in possession of all requisite licences to carry on its activities within the licenced area. The challenge is to an order passed by R3, ie., President, Kongupatti Panchayat levying all manner of taxes upon it.

2. Admittedly, the cell tower has been erected and commissioned and there is no dispute in regard to the licence held by the petitioner. While this is so, after exchange of notice and reply, the impugned orders have come to be passed levying taxes under the following heads: i) Fee planning permission Rs.30,000/- ii) House tax - Rs.1100/- iii) Professional Tax - Rs.20,000/- and iv) Tax on Dangerous and Offensive Trade - Rs.600/-.

3. The impugned order makes no reference to any provision or enactment drawing power from which the impugned levies are made. Mr.Anand would seek to improve the order referring to Section 172 of the Tamil Nadu Panchayats Act, 1994 (in short 'Act'). I am tempted to allow this Writ Petition even at this stage taking a cue from the judgment of the Hon'ble Supreme Court in the case of Mohinder Singh Gill V. Chief Election Commissioner (1978 AIR 851) that to the effect an impugned order is to either stand or fail on its own strength and cannot be supplemented either by averments in the counter, or oral submission as is sought to be done now.

4. That apart, there is no merit whatsoever even in the reference to Section 172. The said provision relates to 'house tax' and the definition of 'house' under Section 2(14) of the Act defines 'house' in the following terms:

2 (14) 'house' means a building fit for human occupation, whether as a residence or otherwise, having a separate principal entrance from the common way;and includes any shop, workshop or warehouse or any building used for garaging or parking buses or as a bus-stand;

5. I am of the considered view that the infrastructure in question that comprises of a cell phone tower and a room for housing genset, would not come within the definition of 'house' as set out in Section 2(14) of the Act, since the definition covers only various types of buildings, either houses for human occupation or otherwise or for commercial purposes and specifically includes only shops, work shops, warehouses and buildings used as garages, bus depots or bus stands.



6. In light of the discussion as above, the impugned order is quashed and this Writ Petition is allowed. No costs. Connected Miscellaneous Petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

sl

To

1.The District Collector,  
District Collectorate,  
Salem.

2.The Assistant Director (Panchayats),  
Salem District.

3.The President,  
Kongupatti Panchayat,  
Kadayampatti Panchayat Union,  
Omalur Taluk, Salem - 636 305.

+2ccs to M/s.Ramalingam & Associates, Advocates SR. No.26462  
+1cc to Government Pleader SR. No. 26370

W.P.No.15965 of 2012 & M.P.Nos.1 & 2 of 2012

BR (CO)

PR (02/05/2022)