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W.P.(MD)NO.17175 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17175 of 2022 and
W.M.P.(MD)No.12538 & 12542 of 2022

C.Sundaram

... Petitioner

Vs.

1. The District Collector,
Kanyakumari @ Nagercoil,
Nagercoil – 629 001,
Kanyakumari District.

2. The Tahsildar,
Killiyoor Taluk,
Killiyoor -629 157,
Kanyakumari District.

3. V.Thibakar

4. M/s.ATC Telecom Infrastructure Private Limited,
No.45, Damodaran Street,
T.Nagar, Chennai – 600 017. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records related to the impugned proceedings of the first respondent in ROC No.5948/2022/G2 dated 21.02.2022 and quash the same in so far as permission granted to respondents 3 and 4 for erecting Base Trans Receiver Station Towers / Cell Tower in an agricultural land in survey No.449/6B, Aarudesam Village, Killiyoor Taluk, Kanyakumari District, in violation of



the norms laid down in amended G.O.Ms.No.2, Information Technology Department dated 01.04.2002 (as amended vide Government / Letter Lr.No.237/IT/2002-7 Information Technology Department dated 18.09.2002) and G.O(Ms) No.177 dated 17.12.2002 of Municipal Administration and Water Supply (MAI) Department.

For Petitioner : Mr.N.Dilip Kumar

For R-1 & R-2 : Mr.M.Prakash,
Additional Government Pleader.

For R-4 : Mr.K.Govindarajan,
for Mr.M.Karal Marx.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner challenges the impugned order passed by the first respondent granting permission to the fourth respondent to set up a cellphone tower in the petition mentioned land. G.O.Ms.No.2 Information Technology Department, dated 01.04.2002 prohibits raising of such cellphone towers on the agricultural lands. The first respondent could not have done so.



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3. When the matter was taken up for hearing, the learned counsel appearing for the contesting respondent submitted that the case on hand cannot be adjudicated with reference to G.O.(Ms).No.1 Information Technology (B4) Department dated 21.02.2018 or G.O.Ms.No.2 Information Technology Department, dated 01.04.2002. He drew my attention to the fact that the Government of Tamil Nadu has now issued G.O.(Ms).No.4 Information Technology (E1) Department dated 25.01.2022. He drew my attention to the fact that the Government has issued Tamil Nadu Telecom Infrastructure Policy, 2022. In the Tamil Nadu Telecom Infrastructure Policy or G.O.(Ms).No.4 Information Technology (E1) Department dated 25.01.2022, there is prohibition as contested by the writ petitioner.

4. I do find considerable force in the submission of the learned counsel appearing for the fourth respondent. But as rightly pointed out by the learned counsel appearing for the writ petitioner, the impugned order though issued after issuance of G.O.(Ms).No.4 Information Technology (E1)



Department dated 25.01.2022, refers to earlier Government Orders. In fact the conditions annexed which are part of the impugned order clearly stated that the structures should not be erected on any agricultural land. The land in question measures 7 cents of land and is said to be a part of the backyard of the house. The revenue record indicates that this is an agricultural land. Therefore, if G.O.Ms.No.2 Information Technology Department, dated 01.04.2002 is to be applied, obviously, the impugned order could not have been passed in favour of the fourth respondent to set up mobile phone tower at the petition mentioned site. Since I am satisfied that the impugned order granting permission to the fourth respondent in so far as the petition mentioned site suffers from non-application of mind, I quash it as far as the petitioner is concerned. The matter is remitted to the file of the first respondent. The first respondent shall consider the request of the fourth respondent in the light of G.O.(Ms).No.4 Information Technology (E1) Department dated 25.01.2022 and Tamil Nadu Telecom Infrastructure Policy, 2022 and pass order afresh on merits and in accordance with law within a period of four weeks thereafter. The writ petitioner will be put



on notice before the final order is passed. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

01.09.2022

Index : Yes / No
Internet : Yes/ No

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To:

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