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W.P.No.11400 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE **SUNDER MOHAN**

W.P.No.11400 of 2023

and

W.M.P.No.11287 of 2023

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

Vs.

1.The Superintendent of Police,
Thiruvallur.

2.The Inspector of Police,
Kadambathur Police Station,
Thiruvallur.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Mandamus, directing 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.KDBKM7 with a land area of 900 Sq.ft. of Vacant Land out of 2400 Sq.ft and the property situated at Kanchipuram Registration District, Perambakkam Sub



W.P.No.11400 of 2023

Registration District, in the boundary of Thiruvallur District, Thiruvallur Taluk, Kadambathur Panchayat Union 107 Kasavanallathur Village Nanja Punja Survey Numbers 111/6 0.17.5 Acres, 111/7 0.28.0 Ares, 112/1 0.13.0 Ares, 115 0.41.0 Ares, 116 0.56.5 Ares, 117/2 0.18.0 Ares, 117/3B 0.26.5 Ares, 118/2 0.20.0 Ares, 119 0.87.0 Ares totally 3.65.5 Ares in which Acre 9.02 Cents divided as layout and boundary stones laid with Government Recognition DTCP/ L.B./D.T.C.P.No.327/91 named as “Sundaraganesan Nagar” Layout Survey No.116 Plot No.64.

For Petitioner : Mr.T.Pandiyan

For Respondents : Mr.Lonard Arul Joseph Selvam
Government Advocate (Crl. Side)

ORDER

This petition has been filed for the issue of a writ of mandamus, directing the respondents to provide the 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.KDBKM7 with a land area of 900 Sq.ft. of Vacant Land out of 2400 Sq.ft and the property situated at Kanchipuram Registration District, Perambakkam Sub Registration District, in the boundary of Thiruvallur District, Thiruvallur Taluk, Kadambathur Panchayat Union 107 Kasavanallathur Village Nanja Punja Survey Numbers 111/6 0.17.5 Acres,



W.P.No.11400 of 2023

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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



W.P.No.11400 of 2023

work. In this regard, the petitioner gave a complaint to the 2nd respondent on 30.03.2023, seeking police protection. However, the 2nd respondent had 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 CrI.O.P.No.16618 of 2018 dt.28.06.2018.

5.It will be appropriate to extract the relevant portions of the order in CrI.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, 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



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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.



W.P.No.11400 of 2023

WEB COPY

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

8. This writ petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

13.04.2023

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Index : Yes/No
Internet : Yes/No



W.P.No.11400 of 2023

To
WEB COPY

- 1.The Superintendent of Police,
Thiruvallur.
- 2.The Inspector of Police,
Kadambathur Police Station,
Thiruvallur.
- 3.The Public Prosecutor,
High Court, Madras.



WEB COPY



W.P.No.11400 of 2023

SUNDER MOHAN, J.

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W.P.No.11400 of 2023
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