



C.R.P.No.2270 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 27.09.2023

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No. 2270 of 2023

The Residents of Sedan Kuttai 2nd Cross Street,
Tindivanam,
Represented by

1. Babu
2. A.Jayanthi
3. Jothi
4. Arul Prakash

.. Petitioners

Versus

The Government of Tamilnadu,
Represented by

1. The District Collector,
Villupuram.
2. The Sub Collector,
Tindivanam.
3. The Tahsildhar,
Tindivanam.
4. The District Environment Engineer,
Villupuram.
5. The Executive Engineer,
TANGEDCO,
Tindivanam.



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6. The Commissioner,
Tindivanam Municipality,
Tindivanam.

7. P.Rajendran

8. R.Kantha

9. M/s.Ascent Telecom Infrastructure Pvt. Ltd.,
Authorised Signatory,
Mr.Tamilselvan,
Old.No.32, New No.54, Butt Road,
St.Thomas Mount,
Near Kathipara Junction,
Chennai – 16.

.. Respondents

Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the Docket order in unnumbered O.S. of 2023 dated 28.04.2023 on the file of the Principal District Munsif's Court, Tindivanam.

For Petitioners	:	Mr. N. Suresh
For Respondents	:	Mr. S.P. Karthik, Government Advocate (for R1 to R4)

ORDER

This Civil Revision Petition is filed against the Docket order in unnumbered O.S. of 2023 dated 28.04.2023 on the file of the Principal District Munsif Court, Tindivanam.

2. The revision petitioners have filed the unnumbered plaint praying to grant a permanent injunction restraining the defendants 1 to 6 from granting permission to launch 5G cell phone tower in the suit property and to restrain



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the defendants 7 to 9 from launching and/or erecting 5G cell phone tower in the suit property.

3. As per the averments in the plaint, the plaintiffs are residents of Second Cross Street, Sedankuttai Village, Sedan Kuttai, Tindivanam. It is stated that there are several residential houses constructed in the second cross street to which patta was also granted. It is further stated that there are elders, small children and women are residing in the street. While so, the defendants 7 and 8 as power of attorney agents of one Sasikala have purchased the A Schedule property in the suit. In fact, the A Schedule property is classified as residential house or meant for residential use and it cannot be exposed for commercial activity. After purchasing the residential plot, the defendants 7 and 8 in collusion with the 9th defendant attempted to erect a high powered cell phone tower. According to the plaintiffs, if a cell phone tower is permitted to be erected in the residential colony, it would result in severe health hazard to the habitants in the locality. Therefore, the plaintiffs opposed for erecting the cell phone tower on 20.03.2023. However, the defendants 7 to 9 with the help of police force, restrained the villagers from preventing the defendants 7 to 9 from erecting the cell phone tower. Therefore, the plaintiffs have instituted the suit.



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4. When the suit was presented, the learned Principal District Munsif, Tindivanam refused to entertain the suit and passed an order dated 28.04.2023 rejecting the plaint at the threshold without even numbering the suit. In the order dated 28.04.2023, it was stated that this Court has dismissed similar nature of cases by stating that there are no materials on record to conform that erecting a cell phone tower would result in health hazard to the habitants due to exposure to low level electro magnetic field. It was also reasoned that there is no bar from the Union or State Government to erect towers in residential, public and other buildings. Accordingly, the learned Principal District Munsif, Tindivanam declined to number the plaint filed by the plaintiffs. Aggrieved by the order dated 28.04.2023, the plaintiffs are before this Court with this Civil Revision Petition.

5. The learned counsel for the revision petitioners would vehemently contend that at the pre-litigation stage or preliminary stage, the trial court cannot go into the merits of the case. Unless the plaint presented by the plaintiffs is barred by any law in force or the Court has no jurisdiction to entertain the plaint, the rejection of the plaint at the threshold is legally not sustainable. The learned counsel for the revision petitioners also submit that the trial court may reject the plaint before numbering it or entering it in the



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Register of suits only if it is shown that the suit is barred by any law or suffers from any procedural infirmity. However, even before numbering the plaint, the trial court cannot conduct a roving enquiry into the merits of the case by testing the correctness of the plaint averments. In this regard, heavy reliance was placed on the decision of this Court in the case of **Selvaraj and others vs. Koodankulam Nuclear Power Plant India Limited and others** reported in **2021 (4) CTC 539** wherein this Court has laid down parameters for rejecting the plaint at the threshold. According to the learned counsel, none of the parameters laid down by this Court in the aforesaid judgment are attracted in the present case warranting rejecting the plaint at the threshold by the trial court. Therefore, the learned counsel for the revision petitioners prayed for allowing this Civil Revision Petition.

6. On the above contentions, this Court heard the learned Government Advocate appearing for the respondents 1 to 4 and perused the materials placed on record.

7. This court finds enormous force in the submissions of the learned counsel for the revision petitioners. It is no doubt true that the trial court can refuse to entertain a plaint if it has no pecuniary or territorial jurisdiction to



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entertain it or the pleadings in the plaint, if read as a whole, is barred by any law in force. At the same time, the trial court cannot go into the merits of the pleadings or the case projected by the plaint as a condition precedent for numbering the plaint. In other words, the trial court cannot conduct a roving enquiry as to whether the suit, if numbered or entertained, would result in a decree being passed thereof. In this context, the learned counsel for the petitioners placed reliance on the decision of this Court in *Selvaraj's* case and the ratio laid down thereof is squarely applicable to the facts of the present case.

8. Even though the trial court, by citing the orders passed by this Court in several cases concluded that erection cell phone tower will not cause any health hazard to it's habitants, the trial court did not consider the fact that the power exercised by this Court under Article 226 of the Constitution of India cannot be exercised by it while entertaining a plaint under Order VII Rule 1 of the Code of Civil Procedures. In any event, the trial court ought to have numbered the plaint and proceeded to hear the parties to the plaint on merits. Given the nature of pleadings in the plaint, this Court is of the view that they are not barred by any law in force and therefore, the trial court is not justified in refusing to entertain the plaint.



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9. In the light of the above, the order dated 28.04.2023 of the trial court is set aside. The Civil Revision Petition is allowed. No costs. The trial court is directed to entertain the plaint presented by the plaintiffs, if it is otherwise in order and proceed further in accordance with law.

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Index : Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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V.BHAVANI SUBBAROYAN, J.

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