



W.P.No.29243 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.29243 of 2019

And

W.M.P.No.29046 of 2019

- 1.D.Doraisamy (Deceased)
- 2.D.Jayaprakash
- 3.D.Rajendran
- 4.D.Srinivasan
- 5.G.Jayalakshmi
- 6.V.Amudalakshmi

(P2 to P6 being the legal heirs of the deceased first petitioner are brought on record as per the order of this Court dated 30.03.2023 made in W.M.P.No.20723 of 2021 in W.P.No.29243 of 2019 by MDIJ)

... Petitioners

Vs.

- 1.The Chief General Manager,
BSNL No.78, Purasawalkam High Road,
Chennai 603 109.
- 2.The Deputy General Manager,
No.238, R.K.Mutt Road,
BSNL Telephone Exchange II Floor,
R.K.Nagar,
Mandaveli 600 028.
- 3.The Divisional Engineer,
BSNL No.MES Rod,
East Tambaram,
Chennai 600 052.



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4.The Chief Divisional Manager,
BSNL,
New Delhi 110 001.

5.N.Rajagopal

6.G.Swathi

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 4 to remove the illegal BSNL mobile tower raised by them in petitioner's residential house site in Survey No.81/14 = 0.9 cents out of 0.15 cents at Muttukadu Village, Thiruporur Taluk, Kancheepuram District.

For Petitioners : Mr.T.V.Krishnamachari
For Respondents : Mr.S.Udayakumar for R1 to R4
Mr.G.Vigneshwar for R5
for M/s.Nicholas

O R D E R

This writ petition has been filed seeking issuance of Writ of Mandamus directing the respondents 1 to 4 to remove the illegal BSNL mobile tower raised by them in petitioner's residential house site in Survey No.81/14 = 0.9 cents out of 0.15 cents at Muttukadu Village, Thiruporur Taluk, Kancheepuram District.

2.The case of the deceased petitioner is that the petitioner is



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the owner of the subject property and due to his age, he was not able to frequently visit the property and to his shock and surprise, he found a Mobile tower was put up by BSNL without his consent. Hence, he made representation to the official respondent seeking to intimate him as to whom they have been paying the monthly rent and subsequently sent lawyer's notice to the respondents stating the he is objecting to keep the tower in his place, however, there was no reply. Thereafter, he got information through the RTI Act that the fifth respondent has granted permission to erect BSNL tower in the petitioner's place and a sum of Rs.15,000/- has been paid to the fifth respondent as monthly rent by BSNL. Thereafter, the petitioner sent lawyer's notice to the official respondents seeking to remove the tower erected in his place, however, there is no response. Hence, this writ petition.

3.The learned counsel appearing for the petitioners submitted that though the petitioners are the owners of the property, a portion of the subject property was leased out by the fifth respondent in favour of BSNL, which is not sustainable one and the erection of mobile tower by BSNL is illegal.



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4.The learned counsel appearing for the respondents submitted that for the very same relief, the first petitioner has already filed a suit in O.S.No.9 of 2014 before the District Munsif Court, Chengalpattu and has also filed this writ petition, which is unsustainable one.

5.Heard the arguments advanced on either side and perused the materials available on record.

6.The facts in the present case is not in dispute. It appears that the suit filed by the first petitioner in O.S.No.9 of 2014 before the District Munsif Court, Chengalpattu is still pending. Hence, this Court is not inclined to render any opinion on the merits of the case since rendering any opinion on the merits of the case will adversely affect the interest of the parties. This Court grants liberty to the petitioners to take appropriate steps for removal of the encroachment after disposal of the suit filed by the first petitioner.

7.This writ petition is accordingly disposed of. No costs. Consequently, the connected miscellaneous petition is closed.



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Speaking Order/ Non Speaking Order
Index: Yes/ No Internet: Yes/ No

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