



W.P. No. 30458 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 30458 of 2023

and

W.M.P. No. 30073, 30078 and 30079 of 2023

Sri Balayogi Nagar Residential Welfare Association
Represented by its Vice President Mr. K.Murali
Having office at
Plot No. 25, Sri Balayogi Nagar
New Gummidipoondi
Thiruvallur

... Petitioner

-VS-

1. The District Collector cum District Nodal Officer
Thiruvallur District.
2. The Deputy Director General
Telecom Enforcement Resource & Monitoring
Department of Tele Communication (TERM)
Ministry of Communication Government of India
III Floor, TNT Complex Building
No.60, Ethiraj Salai, Chennai – 600 008.
3. The Superintendent of Police
O/o. Superintendent of Police
Thiruvallur.
4. The Deputy Superintendent of Police
O/o. Deputy Superintendent of Police
Gummidipoondi.
5. The Inspector of Police
F-5, SIPCOT Police Station
Gummidipoondi.



W.P. No. 30458 of 2023

6. The Commissioner /Block Development Officer
O/o. Block Development Officer
Gummidipoondi Union
Gummidipoondi, Thiruvallur District.

7. The President,
New Gummidipoondi Panchayat
Gummidipoondi Union
Thiruvallur District.

8. M/s. Ascend Telecom Infrastructure Pvt Ltd.
Represented by its Authorities Signatory
Mr. Tamil Selvan
Old No.32, New No.54, Butt Road
St. Thomas Mount, Near Kathipara Junction,
Chennai.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, restraining the First and Second Respondents from erecting or commissioning base tower station at New Gummidipoondi Village comprised in Survey No.70/6, Old Survey No.70/1, Patta No.2732, Plot No. 190-A measuring an extent of 1200 square feet further direct the Eighth Respondent to shift the base tower station to some other location after obtaining approval from Sixth and Eighth Respondents.

For Petitioner : Mr. M.Sriram

For Respondents : Mr. M.Alagu Gowtham, GA (R1)
Mr. V.Ashok Kumar (R2)
Mr. S.Rajkumar, APP (RR3 to 5)
Mr. G.Velu (RR6 & 7)
Mr. A.M.Venkatakrishnan (R8)



W.P. No. 30458 of 2023

ORDER

WEB COPY

Heard Mr. M.Sriram, Learned Counsel for the Petitioner, Mr. M.Alagu Gowtham, Learned Government Advocate appearing for the First Respondent, Mr. V.Ashok Kumar, Learned Counsel appearing for the Second Respondent, Mr. S.Rajkumar, Learned Additional Public Prosecutor appearing for the Third to Fifth Respondents, Mr. G.Velu, Learned Counsel appearing for the Sixth and Seventh Respondents and Mr. A.M.Venkatakrishnan, Learned Counsel appearing for the Eighth Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The grievance ventilated by the Petitioner, which is an association of residents of Sri Balayogi Nagar in New Gummidipoondi in Tiruvallur District, is that the permission granted on 30.03.2023 to the Eighth Respondent to erect cellphone tower in Survey No. 70/6, Old Survey No. 70/1, Plot No. 190-A measuring an extent of 1200 sq.ft. by the First Respondent in Application No.TLR221101433 is in breach of the Tamil Nadu Telecom Infrastructure Policy, 2022, causing nuisance and obstruction to the access of residents to the public street, which is challenged in this Writ Petition.



W.P. No. 30458 of 2023

3. The First Respondent has justified the grant of such permission in the Counter-Affidavit filed on 11.12.2023 referring to the relevant statutory provisions governing it. It is also brought to notice that by order dated 28.07.2023 in the Writ Petition in W.P. No. 22217 of 2023 filed by the Eighth Respondent, this Court had directed police protection to be provided for erecting that cellphone tower.

4. At this juncture, reference must be made to Section 17 of the Telegraph Act, 1882, which reads as follows:-

“17. Removal or alteration of telegraph line or post, on property other than that of a local authority :—

(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part



WEB COPY



W.P. No. 30458 of 2023

thereof or to a higher or lower level or altered in from, he may require the telegraph authority to remove or alter the line of post accordingly: Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

- (2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.*
- (3) A District Magistrate receiving an application under subsection (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.”*



W.P. No. 30458 of 2023

WEB COPY

This would obviously mean that even after grant of permission, the First Respondent is empowered to examine requests from third parties, like the Petitioner in this case, for removal or shifting of towers in the light of that statutory provision. It has been brought to notice that after the filing of the Writ Petition, the Petitioner has made a representation dated 18.12.2023 for removal of that cellphone tower to the First Respondent.

5. In such circumstances, this Court without expressing any view on the controversy involved, passes the following order:-

- (i) the First Respondent shall immediately examine the representation dated 18.12.2023 made by the Petitioner under Section 17 of the Telegraph Act including ascertaining as to whether the Petitioner would be entitled for the relief claimed;
- (ii) if it is found that any other details or supporting documents is necessary, the deficiencies in that regard shall be informed in writing to the Petitioner requiring the same to be furnished within a time frame of not less than 10 days for the same;
- (iii) in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal



W.P. No. 30458 of 2023

hearing to all parties concerned including the Petitioner and the Eighth

WEB COPY

Respondent to explain their respective positions in that regard; and

- (iv) a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated to the concerned parties by 31.03.2024 under written acknowledgment and the report of such compliance shall be filed before the Registrar (Judicial) of this Court.

In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, connected Miscellaneous Petitions are closed. No costs.

20.12.2023

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 08.01.2024.

Maya

To

1. The District Collector cum District Nodal Officer
Thiruvallur District.
2. The Deputy Director General
Telecom Enforcement Resource & Monitoring
Department of Tele Communication (TERM)
Ministry of Communication Government of India
III Floor, TNT Complex Building
No.60, Ethiraj Salai, Chennai – 600 008.



WEB COPY



W.P. No. 30458 of 2023

P.D. AUDIKESAVALU, J.

Maya

3. The Superintendent of Police
O/o. Superintendent of Police
Thiruvallur.
4. The Deputy Superintendent of Police
O/o. Deputy Superintendent of Police
Gummidipoondi.
5. The Inspector of Police
F-5, SIPCOT Police Station
Gummidipoondi.
6. The Commissioner /Block Development Officer
O/o. Block Development Officer
Gummidipoondi Union
Gummidipoondi, Thiruvallur District.
7. The President,
New Gummidipoondi Panchayat
Gummidipoondi Union
Thiruvallur District.
8. M/s. Ascend Telecom Infrastructure Pvt Ltd.
Represented by its Authorities Signatory
Mr. Tamil Selvan
Old No.32, New No.54, Butt Road
St. Thomas Mount, Near Kathipara Junction,
Chennai.

W.P. No. 30458 of 2023

20.12.2023