



W.P.No.31559 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2023

CORAM

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Writ Petition No.31559 of 2022

S.P.Kulandaivel

.. Petitioner

Vs.

1. The District Collector
Tiruppur
Tiruppur District.
2. The Revenue Divisional Officer
Udumalpet
Tiruppur District.
3. The Assistant Director (Panchayat)
Tiruppur
Tiruppur District.
4. The Superintendent of Police
Tiruppur
Tiruppur District.
5. The Tahsildar
Madathukulam
Tiruppur District.



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6. The Block Development Officer
Madathukulam
Tiruppur District.

7. The President
Jothampatti Village Panchayat
Tiruppur District.

8. The Manager
M/s. Indus Tower Limited
NP-5, Jawaharlal Nehru Road
Espee IT Park
5th Floor, Ekkathuthangal
Chennai.

9. Sivasubramaniam .. Respondents

Prayer: Writ Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus to call for the records of order dated 08.05.2022 vide proceedings in Reference No.4138/2022/C5 on the file of first respondent and quash the same and forbear the respondents from erection of mobile tower in the land comprised in S.No.207/1A situated at Jothampatti Village, Madathukulam Taluk, Tiruppur District.

For the Petitioner : Mr.K.Myilsamy

For the Respondents : Mr.P.Muthukumar
State Government Pleader
Assisted by
Mr.P.Balathandayutham
Special Government Pleader
for Respondents 1 to 6



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ORDER
(Made by the Hon'ble Acting Chief Justice)

The writ petition has been filed challenging the order dated 08.05.2022 vide Reference No.4138/2022/C5 issued by the first respondent granting permission to the eighth respondent to install and operate Mobile Phone Tower in S.No.207/1A, Jothampatti Village, Madathukulam Taluk, Tiruppur District, with certain conditions.

2. According to the petitioner, more than 500 families are residing in Jothampatti Village. Two mobile phone towers were already erected in their Village. In view of the radiation from the said towers, some of the residents were affected with cancer and other deadly diseases. The petitioner, along with some of the residents, made an objection for extension of license period for the towers, as the tenure of 15 years for the towers was to expire and also requested to remove the mobile phone towers.

3. That apart, one mobile phone tower erected by the eighth respondent in S.No.199/A2A, which is far away from the petitioner's



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Village and in isolated place, is likely to be shifted to the land in S.No.207/1A, Jothampatti Village, owned by the ninth respondent. The said place is nearly 60 to 70 feet to the petitioner's area. Moreover, a transformer is also located within ten feet of the proposed place.

4. The eighth respondent, without obtaining permission from the respondents 1 to 7, inspected the proposed place. Hence, the petitioner lodged a complaint before the Kaniyur Police Station and also sent several representations to the respondents. Since no steps were taken, the petitioner filed W.P.No.3776 of 2022 and the same was withdrawn with liberty to file a fresh writ petition if work for erection of tower is commenced in violation of the norms and without permission from the competent authority.

5. Thereafter, by the impugned order, the first respondent has granted permission to the eighth respondent, under the Tamil Nadu Telecom Infrastructure Policy, for erection of mobile phone tower. Hence, the above writ petition.



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6. Learned counsel for the petitioner submitted that a perusal of the impugned order directs the eighth respondent to submit No Objection Certificate from the building owner, fire clearance and electrical clearance certificates. When the eighth respondent has not furnished the above documents along with the application, the first respondent ought not to have granted permission and therefore, the same is arbitrary. Thus, he pleaded that the writ petition deserves to be allowed.

7. Learned State Government Pleader, referring to the order passed in earlier writ petition in W.P.No.3776 of 2022, wherein liberty was given to the petitioner to file a fresh writ petition if work for erection of tower is commenced in violation of the norms and without permission from the competent authority, submitted that the first respondent has passed an order with certain conditions and if there is any violation, the petitioner can file a writ petition. But, the petitioner cannot file a writ petition merely on apprehension.

8. Referring to the written instructions, learned State



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Government Pleader further submitted that no one can be prevented from erecting cell phone towers on a mere apprehension about the effects of radiation from the cell phone tower as it does not have a scientific backing and therefore, the erection of towers cannot be prevented.

9. We have heard learned counsel appearing for both sides and perused the typed set of papers.

10. A perusal of the impugned order shows that the said order was passed only after careful consideration of the proposal and the enclosures submitted by the eight respondent and also in accordance with G.O.Ms.No.4, Information and Technology (E1) Department dated 25.01.2022.

11. Further, the petitioner has been given liberty to file a writ petition only if the work for erection of tower is commenced in violation of the norms or without permission from the competent authority. But, the petitioner could not show any violation by the



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eighth respondent. Without there being any violation, except mere apprehension, we do not find any merit in this writ petition. Accordingly, the writ petition fails and the same is dismissed. There will be no order as to costs. Consequently, WMP Nos.31013 and 31011 of 2022 are also dismissed.

(T.R., ACJ.) (D.B.C., J.)
04.01.2023

Index : Yes/No
Neutral Citation : Yes/No

kpl

To

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T.RAJA, ACJ,
and
D.BHARATHA CHAKRAVARTHY,J

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