



WP(MD)No.13507/2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2023

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

WP(MD)No.13507/2021

V.Sivaramdoss @ V.Ramesh

... Petitioner

Vs.

1.The District Collector / Inspector of Panchayats,
Virudhunagar,
Virudhunagar District.

2.The Superintendent of Police,
Virudhunagar,
Virudhunagar District.

3.The Commissioner,
Vembakottai Panchayat Union, Vembakkotai,
Virudhunagar District.

4.The President,
Elayirampannai Village Panchayat,
Elayirampannai, Vembakottai Taluk,
Virudhunagar District.

5.Chennai Network Infrastructure Limited (CNIL),
1168, 2nd Floor, Sam Surya Tower,
PMN Palayam, Avinashi Road,
Coimbatore.

... Respondents



WP(MD)No.13507/2021

WEB COPY

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondents to remove the Cellphone Tower and all other accessories attached therewith from the petitioner's site in S.No.98/B of Elayirampanni Village in Sattur Taluk, Virudhunagar District measuring an extent of 2400 sq. ft. out of 10,441 sq. ft.

For Petitioner	:	Mrs.S.Mahalakshmi
For Respondents	:	Mr.D.Ghandiraj Special Government Pleader, R1 to R3

ORDER

In the guise of evicting a tenant, the petitioner has approached this Court for a mandamus.

2. The facts in brief are herein below set out.

2.1. It is the case of the petitioner that the vacant site in S.No. 98/6B of Elayirampanni Village, Sattur Taluk, Virudhunagar District measuring an extent of 2400 sq.ft. out of 10,441 sq.ft. belonging to the petitioner was taken on lease by M/s.Aircel Limited for the purpose of



WP(MD)No.13507/2021

WEB COPY

erecting Cellular Mobile Transmitting Equipment, BTS Shelter, Tower, Antenna and other related Electronic Trans-receiving Equipment along with the Diesel Electric Power Generator collectively called CMTE. The lease was entered into on 25.01.2008 on a monthly rental basis. Thereafter, the fifth respondent has continued the lease vide lease deed dated 09.02.2017. All of a sudden, in the month of December 2017, the transmission of the electronic network through the antenna and tower erected had stopped abruptly and without any intimation. Thereafter, the rent was not paid. As per the terms of lease agreement, the lessee is liable to pay the arrears of rent with interest at the rate of 8%. The petitioner has issued legal notice dated 15.11.2018 to the fifth respondent requesting them to pay the arrears of rent from December 2017 onwards. However, the fifth respondent who had acknowledged the receipt of the notice failed to pay the rent and vacate the premises.

2.2. The petitioner would submit that the Tower, which is about 40 metres high is remaining idle without any maintenance. This Tower is lying in the middle of the Village and there are residential houses around



WP(MD)No.13507/2021

the same. He apprehends that there could be an imminent and immediate danger to the passers by or the residents of the adjacent houses. Therefore, a representation dated 24.02.2020 was addressed to the respondents to take appropriate action against the fifth respondent under the Tamil Nadu Panchayats Act for removal of Tower. The Authorities however failed to take any action and therefore, the petitioner is before this Court seeking a mandamus to the respondents to remove the Cell Tower.

3. The learned counsel appearing for the petitioner more or less reiterated her contentions in the affidavit filed in support of the writ petition.

4. Mr.D.Ghandiraj, learned Special Government Pleader appearing for the respondents 1 to 3 would submit that the issue is purely a dispute between the landlord and tenant and without resolving the same before the proper forum, the petitioner cannot seek a mandamus against the respondents.



WP(MD)No.13507/2021

WEB COPY

5. Heard the learned counsels on either side.

6. It is an admitted case that the CMTE has been put up in pursuant of the Lease Agreement entered into between the petitioner and M/s.Aircel Limited originally and thereafter, the fifth respondent. The petitioner is now seeking to have the CMTE dismantled only on the ground that the fifth respondent is in arrears of rent. The petitioner is before the wrong forum as it is simply a case of default in payment of rent. The petitioner ought to have approached the competent Civil Court and obtained orders of eviction by establishing his case. Thereafter, the Authorities can very well take steps to dismantle the CMTE, if so requested by the petitioner. Instead of doing so, the petitioner has approached this Court by filing a writ for mandamus. Since the CMTE in question has been put up in pursuant to a Lease Agreement and the relationship being a contractual one, there is no duty cast upon the respondents to dismantle the CMTE. Therefore, the writ petition is dismissed. However, in the event of the petitioner getting orders for eviction against the fifth respondent and further orders for removing the



WP(MD)No.13507/2021

WEB COPY

CMTE, the respondents 1 to 4 shall upon the request of the petitioner at their expense dismantle the Cell Tower. No costs.

03.04.2023

NCC:Yes/No

Index:Yes/No

Speaking/Non-speaking order

mbi



WP(MD)No.13507/2021

WEB COPY

To

- 1.The District Collector / Inspector of Panchayats,
Virudhunagar,
Virudhunagar District.
- 2.The Superintendent of Police,
Virudhunagar,
Virudhunagar District.
- 3.The Commissioner,
Vembakottai Panchayat Union, Vembakkotai,
Virudhunagar District.



WEB COPY



WP(MD)No.13507/2021

P.T.ASHA, J.

mbi

WP(MD)No.13507/2021

03.04.2023