



W.P(MD)No.22174 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 17.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.22174 of 2015

Kansulmagariba

... Petitioner

Vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The Commissioner,
Panchayat Union,
Kadaladi,
Ramanathapuram District.

3.Executive Officer (Panchayat),
Muthukulathoor Town Panchayat,
Ramanathapuram District.

4.The Bharti Aritel Limited,
Oceanic Towers,
8th Floor, 101, Santhome High Road,
Chennai 600 028.

5.The President,
Melasirupodhu Panchayat,
Muthukulathoor Taluk,
Ramanathapuram District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the Respondents No.2 and 3 to take necessary action for controlling the noise and smoke from the 4th Respondent's Generator.

For Petitioner : Mr.R.Venkatesan

For Respondents : Mr.N.Satheesh Kumar,
Addl. Government Pleader for R1 to R3.
Mr.K.Mahesraja for R5.
Mr.Ramalingam for R4.

ORDER

Heard the learned counsel on either side.

2.The petitioner feels aggrieved by the location of the mobile phone tower installed by the fourth respondent in the vicinity of her house. The petitioner alleges that the installation is generating noise as well as smoke and it is causing serious nuisance. She therefore wants the local body to take action in the matter. Since her representation was not considered, the present writ petition came to be filed.



W.P(MD)No.22174 of 2015

3.The stand of the contesting respondent / fourth respondent is that the writ petition itself is not maintainable. He also would add that the tower was put up only after getting clearance from all the concerned authorities. His specific plea is that the generator is not used often. The tower has battery back up which will last for 24 hours. Only in the event of there being power shutdown and it lasts beyond 24 hours, the generator will have to be used. Such occasions would rarely arise. He denied all the other allegations made in the affidavit filed in support of the writ petition. He called upon this Court to dismiss the writ petition.

4.I carefully considered the rival contentions and went through the materials on record. I have to reject the argument of the learned counsel for the fourth respondent founded on the ground of maintainability. It is true that writ petition will normally lie only against State or its instrumentality as defined in Article 12 of the Constitution of India. The fourth respondent admittedly is a private entity. The Hon'ble Apex Court in the recent decision reported in **(2023) 4 SCC 1 (Kaushal Kishor Vs. State of Uttar Pradesh)** had held that the fundamental rights guaranteed under Article 19 and 21 of the Constitution of India can be horizontally



W.P(MD)No.22174 of 2015

applied even against persons or bodies who are falling outside the scope of Article 12 of the Constitution of India. It is well settled that right to hygienic and pollution free environment is a part of Article 21 of the Constitution of India. The petitioner alleges that her right under Article 21 of the Constitution of India has been breached. Therefore, such a right can be horizontally invoked against a private entity. I, therefore, hold that the writ petition is very much maintainable.

5. There is however no merit in the petitioner's counsel's argument anchored under Section 144 of the Tamil Nadu Panchayats Act, 1994. Section 144 of the Act is as follows:-

“144. Removal of filth or noxious vegetation from lands and buildings.- (1) The Commissioner or Executive Authority may by notice require the owner or occupier of any building or land which appears to him to be in a filthy or unwholesome state or overgrown with any thick or noxious vegetation, trees or undergrowth injurious to health or dangerous to the public or offensive to the neighbourhood, or otherwise a source of nuisance, to clear, cleanse or otherwise put the building or land in



W.P(MD)No.22174 of 2015

proper state or to clear away and remove such vegetation, trees or undergrowth or to take such other action as may be deemed by the Commissioner of Executive Authority necessary to remove such nuisance within such period and in such manner as may be specified in the notice.

(2) If it appears to the Commissioner or Executive Authority necessary for sanitary purposes so to do, he may by notice require the owner or occupier of any building or land to cleanse or lime-wash the same in the manner and within a period to be specified in the notice

6.The said section does not speak about the noise or air pollution.

Therefore, the local body may not have any say in the matter. If according to the petitioner, the fourth respondent is causing air and noise pollution, her remedy is to go before the Tamil Nadu Pollution Control Board. If any such complaint is filed, the same will be enquired into. The fourth respondent shall be put on notice. Thereafter, final order shall be passed by the Pollution Control Board. If the Pollution Control Board passes any order, which ensures that pollution levels are not exceeded, the fourth respondent is obliged to put in place safeguard mechanisms.



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W.P(MD)No.22174 of 2015

7.With this liberty to the petitioner to approach the Pollution Control Board, this writ petition is disposed of. No costs.

17.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.22174 of 2015



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W.P(MD)No.22174 of 2015

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W.P(MD)No.22174 of 2015

17.08.2023