

W.P.(MD)No.9196 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 20.03.2025

CORAM

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

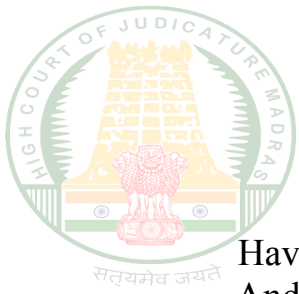
W.P.(MD)No.9196 of 2023

Mohan Lal Chowdhry

... Petitioner

Vs.

- 1.Union of India,
rep., by its Secretary,
Ministry of Communication and Information Technology,
Electronic Niketan, No.6, CGO Complex,
Lodhi Road, New Delhi 110 003.
- 2.The Principal Secretary to Government,
Department of Information Technology and Digital Service,
Fort St.George, Chennai.
- 3.The District Collector,
Office of District Collectorate,
Madurai District.
- 4.The Inspector of Police,
Southgate Police Station,
Madurai.
- 5.The Managing Director,
ATC Telecom Infrastructure Private Limited,
(formerly known as Viom Network Limited)



W.P.(MD)No.9196 of 2023

Having registered office at No.403, 4th Floor, Skyline Icon,
Andheri Kurla Road, Andheri East, Mumbai 400 059.

Having a circle office at

'Celestial Point',

No.45, Damodharan Street, Opp.to T.Nagar Bus Stand,
T.Nagar, Chennai 600 017.

... Respondents

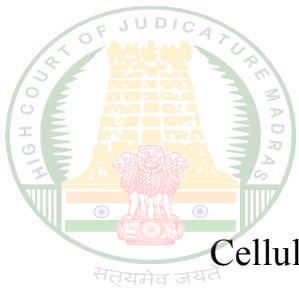
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to direct the respondents herein to remove the installed Cellular Mobile Transmitting Equipment (CMTE) Tower to installation of BTS Shelter, Tower (25 feet maximum) Antenna and other Telecom equipment from the open terrace of the petitioner's home.

For Petitioner : Mr.S.Kishore Kumar

For Respondents : Mr.S.Shaji Bino (for R2 to R4)
Special Government Pleader
Mr.R.Suresh Kumar
Standing Counsel (for R1)
Mr.M.Karl Marx (for R5)

ORDER

The petitioner is the owner of the property situated at 15A, Mahal 4th Street, Madurai 625 001. The petitioner purchased the property on 25.11.2016 from one Mukesh Kumar vide document No.7462 of 2016. The said Mukesh Kumar had permitted the fifth respondent to install a



W.P.(MD)No.9196 of 2023

Cellular Mobile Transmitting Equipment (CMTE) Tower on the premises. After the purchase of the property by the writ petitioner, the arrangement continued.

2. The petitioner pleads that the said CMTE Tower had been abandoned by the fifth respondent sometime in the year 2017. It is also pleaded that on account of non-payment of electricity dues, the power connection to CMTE Tower has also been disconnected. As a result of abandonment and lack of maintenance of the Tower, the petitioner states that it is in a dangerous condition and requires to be dismantled. Hence, he made a representation to the official respondents on 23.03.2023 and as there is no action, he has approached this Court by way of a mandamus.

3. When the matter came up for admission before this Court, a report was called for from the District Collector as to whether the CMTE Tower is actually in use or not. On the day of admission itself, the learned Additional Government Pleader took notice on behalf of the respondents 2 to 4, the learned Standing Counsel took notice on behalf of the first respondent and Mr.Karl Marx took notice on behalf of the fifth respondent.



W.P.(MD)No.9196 of 2023

4. This matter was mentioned before me yesterday (i.e., 19.03.2025) and I asked the learned Special Government Pleader to produce the report and listed the matter today (i.e., 20.03.2025).

5. When the matter was taken up for hearing today, the learned Special Government Pleader produced a report of Tahsildar, Madurai South Taluk to the District Collector, Madurai District, in Na.Ka.No.A2/2427/2023, dated 10.03.2025. In the said report, the Tahsildar has confirmed that the Tower is in a dangerous condition and requires immediate dismantling to prevent any harm to passers-by. He has also pointed out that the writ petitioner has informed the Tahsildar that rents have not been paid for the past 8 years.

6. The learned counsel appearing for the petitioner produced an order of this Court in the case of ***S.Senthil Pandian Vs., Union of India and others, in W.P.(MD).No.876 of 2023, dated 24.02.2023*** and pleaded that the petitioner may be permitted to dismantle the mobile tower and dispose it of as scrap.



W.P.(MD)No.9196 of 2023

7. I have carefully considered the submissions of both sides and gone through the records.

8. The report of the Tahsildar, which has been submitted pursuant to the order of this Court dated 20.04.2023, makes the following aspects clear:-

- (i) CMTE tower is in dangerous condition;
- (ii) Electricity connection has been disconnected to the CMTE tower;
- (iii) CMTE tower is non-functioning and
- (iv) The fifth respondent has abandoned the CMTE tower for all practical purposes.

9. When it comes to the notice of the Executive Magistrate, namely, the District Collector and the Tahsildar that a superstructure exists within their jurisdiction which is dangerous, and if left standing may cause damage to any passers-by or persons living in the neighbourhood, or that its removal is necessary, they are empowered to direct the removal of the same in terms of Section 152 of the Bharatiya

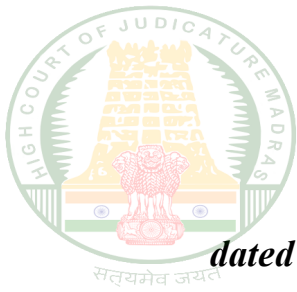


W.P.(MD)No.9196 of 2023

Nagarik Suraksha Sanhita (BNSS), 2023. Certain procedure is contemplated under the said Section. Therefore, there shall be a direction to the third respondent to invoke the power under Section 152 of BNSS either by himself or by any Executive Magistrate subordinate to him and pass appropriate orders, after following the due procedure.

10. Insofar as the plea of Mr.S.Kishore Kumar that the petitioner should be permitted to dismantle the tower and appropriate an amount towards the rental arrears is concerned, I am afraid to give such a direction while exercising the power under Article 226 of Constitution of India. The appropriate remedy for a landlord, who has not received rent from the tenant, is to file a suit and get a decree and thereafter, initiate execution and get the property, which belongs to the tenant, attached and proceed for sale. I am not willing to short-circuit the established procedure and grant the relief that has been sought for by Mr.Kishore Kumar.

11. In fact, a perusal of the order made in the case of ***S.Senthil Pandian Vs., Union of India and others, in W.P.(MD).No.876 of 2023,***



W.P.(MD)No.9196 of 2023

dated 24.02.2023 shows that the learned Judge had taken judicial notice that the sixth respondent therein is no longer a functioning enterprise and consequently, issued the direction that he did. I am not in a position to conclude that the fifth respondent herein is not a functioning enterprise.

12. In the light of the above discussion, this Writ Petition is ordered. The direction set-forth above shall be strictly complied with by the District Collector. No costs.

13. Post the matter after three weeks 'for reporting compliance' .

Index :Yes / No
NCC :Yes / No
Rmk

20.03.2025

To

1.The Secretary,
Ministry of Communication and Information Technology,
Electronic Niketan, No.6, CGO Complex,
Lodhi Road, New Delhi 110 003.



W.P.(MD)No.9196 of 2023

2.The Principal Secretary to Government,
Department of Information Technology and Digital Service,
Fort St.George, Chennai.

3.The District Collector,
Office of District Collectorate,
Madurai District.

4.The Inspector of Police,
Southgate Police Station,
Madurai.



WEB COPY



W.P.(MD)No.9196 of 2023

V. LAKSHMINARAYANAN, J.

Rmk

W.P.(MD)No.9196 of 2023

20.03.2025