

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30th September, 2010.

+
%

W.P.(C) No.13748/2009

DR. GYANANDRA KUMAR

..... PETITIONER

Through: Dr. L.S. Chaudhary & Mr. Ajay
Chaudhary, Advocates

Versus

BSES RAJDHANI POWER LTD. & ORS.

..... RESPONDENTS

Through: Ms. Ritu Mishra, Advocate for Ms.
Mansi Gupta, Advocate for R-3/MCD

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

- | | | |
|----|--|----|
| 1. | Whether reporters of Local papers may
be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported
in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a resident of a house in street No.14-A, Sadh Nagar, Palam Colony, New Delhi-110 045, has filed this writ petition averring that an electricity pole in front of Raj Dairy in the aforesaid street had been illegally installed; that the said electricity pole obstructs traffic and the vehicles from turning into the street and causes inconvenience to the residents of the locality at large. It is further averred that the said electricity pole is bending towards the road and needs to be lifted vertically. The complaints made in this regard by the petitioner having not met with any success, the present petition has been filed seeking directions against the respondents BSES Rajdhani Power Ltd. (BSES RPL) and the MCD to remove the said electricity pole and to lift the same vertically.

2. Notice of the petition was issued. The respondent No.3 MCD has filed a short affidavit stating that the electricity pole is a part of public utility service and cannot be termed as encroachment on public land under the Delhi Municipal Corporation Act, 1957. It is further stated that the respondent no.3 MCD has not given any permission to respondent no.1 BSES RPL or any other person for installing the pole in question.

3. The respondent no.1 BSES RPL has also filed a counter affidavit stating that street No.14-A is very narrow having a width of only 15 feet; that the said electricity pole does not cause any disturbance to the traffic; it feeds the supply of electricity connections of more than 100 consumers on the said street; that the pole cannot be shifted due to technical reasons as it maintains the electricity supply to street No.14-A and there is no alternative space available where it can be located. It is further pleaded that the pole was erected about 10 years ago and is not falling; that on receipt of complaints from the petitioner, the pole was got inspected and it was found that though the same is bending slightly but is firmly rooted in the earth with concrete and is completely safe and unlikely to fall. It is further pleaded that there is no space available to provide any support to the said pole. It is also denied that the pole causes any inconvenience. It is assured that whatever safety measures are required to be taken have been taken.

4. The counsel for the petitioner states that he does not need to file any rejoinder. The counsels have been heard.

5. The counsel for the petitioner firstly urged that the respondent no.1 BSES RPL has falsely stated that the pole is 10 years old. It is contended that till recently the pole did not even have the electricity wires and which have been attached thereto after the filing of the petition. It is also urged that the pole has been illegally erected by some persons and the BSES RPL in

collusion with them is protecting the same. Reliance is placed on Sections 298 & 320 of the DMC Act to contend that even such poles cannot be erected in public streets without the permission of the MCD and which the respondent no.3 MCD in its counter affidavit has stated has not been given.

6. Insofar as the contention of the petitioner of the pole having been electrified recently is concerned, in view of the counter affidavit of respondent no.1 BSES RPL, the said factual controversy cannot be adjudicated in writ jurisdiction. The petitioner has his remedies before a fora capable of adjudicating the said factual controversy.

7. Sections 298 & 320 of the DMC Act vest all public streets in MCD and prohibit erection of any post or other structure therein without the permission of respondent no.3 MCD. However, a perusal of the photographs filed by the petitioner show that the colony is not a planned one and layout plan thereof do not appear to have been sanctioned. It rather gives an appearance of an urbanized village. The respondent no.3 MCD inspite of being a party in this petition has not shown any objection to the said pole. Rather it has contended that the same is a part of public utility service and cannot be considered an encroachment. Moreover, from the affidavit of respondent no.1 BSES RPL, it transpires that the pole is assisting electrification of a large number of houses / residents and the petitioner being one of them cannot insist upon its removal. If all residents of the streets / locality feel that the pole should be at some other location, they can jointly represent for the same. No case thus for directing any of the parties to remove the electricity pole is made out.

8. The photographs filed do show that the pole is tilting considerably. However, respondent no.1 BSES RPL has stated on oath that there is no danger of its falling. The only direction which can be given is that

respondent no.1 BSES RPL should have the said pole inspected from time to time and to ensure that there is no danger from the same to the property of anyone and to also consider whether the pole can be got straightened even if to afford psychological relief to the residents; the pole, to a layman would pose a danger.

With the aforesaid observations / directions, the petition is disposed of. No order as to costs.

**RAJIV SAHAI ENDLAW
(JUDGE)**

30th September, 2010
'gsr'