

Court No. - 40

Case :- WRIT - C No. - 36750 of 2023

Petitioner :- Hare Krishna Dwivedi

Respondent :- The U.P. Power Corporation Limited And 3 Others

Counsel for Petitioner :- Vinay Mishra, Mata Achal Mishra

Counsel for Respondent :- Narendra Kumar Tiwari, Krishna Agarawal

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. The petitioner is permitted to implead the District Magistrate, Prayagraj as respondent no.5 in the array of parties forthwith and a copy of the petition may also be served upon learned Standing Counsel during the course of the day.

2. By means of instant writ petition the petitioner has prayed for mandamus directing the respondents to remove the electricity poles installed over plot no.21 situated in Village Sarai Khurd, Post Achhola, Tehsil Meja, District Prayagraj, which is bhumidhari land of the petitioner and install the said electric poles on the west side of the road.

3. Petitioner claims to be owner of plot no.21 situated in Village Sarai Khurd, Post Achhola, Tehsil Meja, District Prayagraj. It is alleged that the respondent no.4 has installed the electric pole on his plot to which the petitioner has objected. The petitioner submits that there is damar road near the plot of the petitioner and the said electric pole may be installed in the west side of the road.

4. The claim of the petitioner has been opposed by learned counsel for respondents.

5. In **Deva Raj Vs. U.P. State Electricity Board, Lucknow & Ors., AIR 1977 Allahabad 452**, a Division Bench of this Court had examined the provisions of Section 51 of the Indian Electricity Act, 1910, which is similar to the provisions of Section 164 of the Electricity Act, 2003 and observed that in view of the notification issued by the State Government under Section 51 of the 1910 Act read with Section 10 of the Telegraphs Act, the respondents have the power to install the towers on the land owned by a person.

6. Similarly the **Madras High Court, in E. Venkatesan & Ors. Vs. Chairman, Tamil Nadu Electricity Board, Madras & Ors., AIR 1977 Madras 64** while dealing with the powers under Section 51 of the Act of 1910, also observed :-

"From the above settled position of law, it is clear that when the Electricity Board exercises power under Section 51 of the Electricity Act read with Section 10 of the Telegraphs Act, they

are not acquiring any land. They are only making use of the land for the purpose of laying electricity lines for which full compensation is given for the damage caused. It is also clear therefrom that no notice is required to the owner before laying the poles or constructing any tower, nor any consent is required from them."

7. This Court, in **Writ C No.29995 of 2016 (Pooran Singh and 30 others vs. State of UP and 3 ors)** decided on 5.7.2016, has observed that the construction of transmission power service lines cannot be stopped for want of payment of compensation. However, an appropriate direction can be issued to the competent authority for determining the compensation in accordance with law and pay the same to the tenure holders over whose land the towers are being erected.

8. We accordingly dispose of this petition, with liberty to the petitioner to move an appropriate application before the concerned District Magistrate with regard to his claim alongwith certified copy of this order and other supported materials, whereupon the District Magistrate shall pass appropriate orders on the claim of the petitioner in accordance with law within three months from the date of production of a certified copy of this order.

Order Date :- 30.11.2023

S.P.