



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 11 of 2018

Date of Decision: 04.04.2025

Shri. Wanpynsuk Passah
Prop. M/s Bilsina War Passah
Saw Mill cum Veneer
R/o Lumpyrdi Longpiah, Jowai
West Jaintia Hills District, Meghalaya

.....Petitioner

-Versus-

1. Commissioner & Secretary
Power Department Shillong
Government of Meghalaya
2. Director Commerce and Industries
Shillong, Government of Meghalaya
3. General Manager
District Commerce and Industries Centre, Jowai,
West Jaintia Hills,
Government of Meghalaya
4. Executive Engineer,
Jowai Distribution Division,
Meghalaya Power Distribution Corporation Ltd. (Me.P.D.C.L),
Jowai, West Jaintia Hills,
Meghalaya
5. Assistant Executive Engineer,
Jowai Distribution Sub-Division-I
Meghalaya Power Distribution Corporation Ltd. (Me.P.D.C.L),
Jowai, West Jaintia Hills,
Meghalaya



6. Senior Electrical Inspector,
Government of Meghalaya,
Shillong

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A. Barua, Adv.

For the Respondent(s) : Mr. A. Kumar, Advocate General with
Ms. R. Colney, GA

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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J U D G M E N T

1. The case of the petitioner herein is directed against the alleged illegal construction of a 33 KV/11 KV HT lines over the land of the petitioner situated at Khliehtyrshi Industrial Estate, West Jaintia Hills District, which amounts to encroachment on the said land of the petitioner, thereby violating the fundamental rights of the petitioner as well as the principle of natural justice. Hence this petition.

2. Heard Mr. A. Barua, learned counsel for the petitioner who has submitted that the petitioner is the lease holder of land within the "Khliehtyrshi Industrial Estate" in the West Jaintia Hills District of the State, such lease being allotted and settled by the Directorate of Industries, Government of Meghalaya.



3. The petitioner being allotted the said land on 09.09.1999 to set up a saw mill was issued a Registration Certificate dated 02.11.1999 vide communication No.13/02/0105 dated 12.10.1999. A licence to run the saw mill unit was also issued by the Divisional Forest Officer (T) Jaintia Hills Division, Jowai on 08.11.2005 and 12.06.2006. The petitioner is running the said unit as proprietor of M/s Bilsina War Passah Saw Mill cum Veneer.

4. It is further submitted that vide communication No.J/DIC/Misc1.180/2013-14/59 dated 20.04.2016 the respondent No. 3 had requested the respondent No. 4 to shift the power lines located in the compound of the petitioner's unit at the said Industrial Estate, Khliehtyshi which is said to pose great danger to the nearby constructed shed.

5. In response, the respondent No. 5 vide communication dated 22.04.2016 addressed to the petitioner had made a demand of ₹ 1,51,334/- (rupees one lakh fifty-one thousand three hundred thirty-four) only being the cost of shifting and reconstruction of the said 33 KV line which is passing through the compound of the Industrial Unit of the petitioner.

6. Again, the learned counsel has referred to a communication dated 06.10.2016 sent by the respondent No. 2/Director Commerce and Industries, Government of Meghalaya, Shillong and addressed to the Executive Engineer, Jowai Distribution Division, Me.P.D.C.L./respondent No. 4 to say that the said 33 KV and 11 KV lines which passes through the Khliehtyrshi Industrial Estate in general



and the Industrial Estate Unit of the petitioner in particular, were constructed without prior permission from the Department and as such, it is incumbent upon the Corporation to shift the lines at its own cost. Question of payment by the Department or the Unit does not arise at all.

7. The respondent No. 5 vide communication dated 09.12.2016 issued upon the respondent No. 6 has brought to his notice that the petitioner is constructing a building under the 33 KV line without such line being shifted since the petitioner has failed to make payment of the bill for shifting of the said line, such bill being served to him on 22.04.2016. The action of the petitioner has therefore attracted the application of Section 77, 79, 80 and 82 of the Electricity Rules, 2005 (sic 1956), copy of which was also issued upon the petitioner. In this regard, the respondent No. 5 has also requested the petitioner to stop the construction work immediately till the matter of shifting the 33 KV line is resolved. This was done vide communication dated 07.03.2017.

8. The learned counsel has further submitted that the petitioner has thereafter ceased all activities at the said Industrial Unit since 10.12.2016 and vide letter dated 08.03.2017 issued upon the respondent No. 5 the petitioner has once again, made a request for shifting of the said line at the earliest to allow him to complete the building for the saw mill unit to start functioning.

9. The learned counsel has again submitted that the case and cause of the petitioner is further strengthen by the issuance of a communication No. M/Dind/Genl/78/2007/96 dated 29.11.2017 issued



by the respondent No. 2 to the respondent No. 4 wherein the respondent No. 2 has categorically stated that the MeECL has not obtained NOC/permission from the Department for construction of the 33 KV/11 KV lines passing through the Khliehtyrshi Industrial Estate and secondly that the joint inspection team that had declared the construction of the building of the petitioner within the Industrial Estate as illegal is also not the competent authority to declare any building or structure as legal or illegal.

10. That the refusal of the relevant respondents to remove and shift the said 33 and 11 KV transmission lines from the property of the petitioner has posed a grave danger to life and property which is in violation of the fundamental and legal rights of the petitioner for which adequate compensation is required to be paid to the petitioner and prayer in this respect is made herein, further submits the learned counsel.

11. Per contra, Mr. A. Kumar, learned AG while opposing the contention and submission of the learned counsel for the petitioner, has embarked on a common defence on behalf of all the respondents herein.

12. It is the contention of the learned AG that at the threshold, the issue of maintainability of this instant petition is challenged. In so doing, reference was made to the lease deed dated 17.09.2012 entered into between the Director of Commerce and Industries Department and the petitioner which contained certain clauses or provisions, inter alia, that:

“7. That the Lessee shall not erect or build or permit to be



erected or built on the demised premises any buildings, sheds or other construction other than those approved by the Lessor or his authorized Agent, nor make any subsequent addition or alteration to the existing buildings and sheds at any time except with the written approval of the Lessor or his Authorized Agent.

8. That in the event of the Lessee fails to comply with the terms and conditions hereto set forth, the lease shall be atomically terminated with the right of the Lessor or his authorized agent for re-entry.

10. That in the event of deviation from the plans and specifications as approved by the Lessor or his authorized Agent and non-compliance with any of the terms and conditions hereof, the Lessor or his authorized Agent may upon serving notice, required the Lessee to remedy all such deviations and defects and in the event of failure so to do by the Lessee within 7(seven) days after such notice is served, it shall be lawful for the Lessor or his authorized Agent to remove all such deviation and defects and all costs and expenses of so doing shall be borne by the Lessee on demand with interest thereon accruing from the date of removal to the date of payment at the rate of 12% per annum. The power and liberty herein contained is without prejudice to any other powers, rights and remedies, of the Lessor or his authorized Agent.”

13. The petitioner on being queried by this Court as to the necessary permission granted for erection and construction of his saw mill on the property alleged to be the lease land conveyed to him, has failed to produce the said permission from the Director of Commerce and Industries Department even as he has filed an additional affidavit dated 16.05.2024 in this respect, as such, he can be considered to be in illegal possession of the aforesaid premises, thus no rights of any nature is possessed by him, submits the learned AG.

14. Another ground cited by the learned AG is that the



Meghalaya Electricity Board vide letter dated 22.05.2007 (Annexure-1 to the affidavit of the respondent No. 4 & 5) has informed the Manager, DIC, Khliehtyrshi that the Board will start construction of the said 33 KV line from Khiehtyrshi to Nartiang village, the communication was made much before the grant of lease of the said land to the petitioner and on this ground alone, the petitioner cannot make out a case in his favour.

15. Apart from the fact that a joint survey of the officials of the MePDCL (Meghalaya Power Distribution Corporation Ltd.) and the Directorate of Commerce and Industries was carried out in this regard and the report of such survey confirming the fact that the petitioner has made illegal construction on the land in question, the respondent No. 2/Director of Commerce & Industries vide letter No. M/Dind/Genl/78/2007/107 dated 08.07.2019 has recalled and cancelled the earlier letter dated 29.11.2017 thereby confirming that the petitioner has indeed erected illegal constructions on the said land submits the learned AG.

16. It is the further contention of the learned AG that the petitioner, after about 10 years of the existence of the said KV lines came with a request for the same to be shifted and on such request, the petitioner being presented with an estimated amount as the cost of such shifting which is provided under Section 63(1) (2) of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 has failed to make the necessary payment and hence his request cannot be considered.



17. However, the learned AG would maintain that even otherwise, since certain provisions of the Lease Deed dated 17.09.2012 was said to have been violated by the petitioner, such aspect being matter of disputed question of facts, the petitioner is precluded from raising such issue in a writ application. In this regard, the following case has been cited:

- i) Kerala SEB v. Kurien E. Kalathil, (2000) 6 SCC 293, para 10.

18. Reiterating that this writ petition was filed after 10 years of the said KV lines being in existence, there has occurred delay and laches on the part of the petitioner which he has failed to give adequate and sufficient cause for the same. Accordingly, on this ground too, this writ petition ought to be dismissed, urged the learned AG. Authorities in this regard was cited being the following:

- i) City and Industrial Development Corpn. v. Dosu Aardeshir Bhiwandiwalla, (2009) 1 SCC 168, paras 26 & 30.
- ii) Karnataka Power Corpn. Ltd. v. K. Thangappan, (2006) 4 SCC 322, paras 6 & 9.

19. In an attempt to place the proper facts and circumstances of the case of the parties in its proper perspective, this Court is to be satisfied on certain elementary facts. That the grievance of the petitioner stems from the alleged intrusion of the respondent/MePDCL, the erstwhile MeSEB over the plot of land said to belong to the petitioner



by the erection of the said 33 and 11 KV HT lines.

20. The petitioner had maintained that the land belonged to him though in the capacity of a lease holder over the said land which is situated within the Khliehtyrshi Industrial Estate, West Jaintia Hills District. This fact could not be controverted by the respondents since the petitioner has been able to refer to the lease deed executed between him and the respondent No. 2/Director of Commerce and Industries, Government of Meghalaya dated 17.09.2012, the period of which will expire in 30 years' time counting from 25.04.2007. The 30 years' period is yet to expire.

21. The respondent/MePDCL through its officers has also not denied the fact that the petitioner is in possession of the said land wherein his Industrial Unit is located. However, it is the contention of such respondents that the erection of the said HT lines was affected way back in the year 2007, in fact, the source of authority relied upon while asserting this fact is a letter No. MeSEB/JDSD/T-14/2007-08/ dated 22.05.2007 addressed to the Manager, DIC, Khliehtyrshi as well as to the Principal, ITI, Khliehtyrshi and the Headmen of Mukhla, Khliehtyrshi, Ummulong, Wahiajer and Nartiang village wherein it was informed to them that the Electricity Board will soon start the construction of 33 KV line from Khliehtyrshi to Nartiang village. There was no objection raised by any of the parties concerned at that point of time, reiterate the respondent/MePDCL.

22. It was only in the year 2016 when the petitioner vide letter dated 11.03.2016 has requested the office of the respondent No. 4 to



shift the existing line which is passing through his property since he intent to construct a building that the matter come to the fore as far as the issue of payment of the cost of such shifting which was demanded by the Electricity Board from the petitioner, reference being made to Section 63(7) of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010.

23. However, though reference was made by the respondent No. 4 and 5 to the said letter dated 11.03.2016 said to have been issued by the petitioner upon such respondents with a request to shift the said transmission line, the same being found at para 6 of the affidavit-in-opposition dated 13.12.2018 filed by the respondent Nos. 4 and 5 respectively, there is nothing on record to show the existence of such a letter. However, what has been produced by the petitioner at Annexure-A1 of his amended petition is the letter No. J/DIC/Misc1.180/2013-14/59 dated 20.04.2016 issued by the General Manager, District Commerce & Industries Centre, West Jaintia Hills District, Jowai calling upon the respondent No. 4 to “...*shift the power lines located in the compound of M/s B.W Passah Saw cum Veneer Mills, Industrial Estate, Khliehtyrshi, Jowai, which is very close and posed a great danger to the nearby constructed shed*”.

24. Again, what is seen on record is that the then Director of Commerce & Industries, perhaps as a follow-up of the letter dated 20.04.2016, vide letter No.M/Dind/Genl/78/2007/75 dated 06.10.2016 issued upon the Executive Engineer, Jowai Distribution Division, MePDCL has once again called upon the Power Distribution Corporation to shift the said 33 and 11 KV lines which passes through



the Industrial Unit of the petitioner since the same were constructed without obtaining prior permission from the Department. The Corporation is also reminded that they have to bear their own cost for such shifting.

25. Under such circumstances, the letter No. MePDCL/JDSD-I/T-06/2016-17/387 dated 07.03.2017 issued by the Assistant Executive Engineer, Jowai Distribution Sub Division-I, MePDCL calling upon the petitioner to stop his construction work “...*till the matter of shifting the 33kv lines is resolved...*” assumed significance in the light of the subsequent events wherein the Department itself speaking through the respondent Nos. 2 and 3 in the counter affidavit dated 10.07.2019 filed by such respondents has alleged that the “...*undergoing construction of the RCC building in the Lease property undertaken by the petitioner which the HT lines passes...*” was done so without submission of any such proposal to the Department/lessor, thereby occasioning a breach of clause 6 of the lease agreement dated 17.09.2012. Though the petitioner had refuted this allegation, even by documentary evidence produced by way of additional affidavit, this Court would not go into such question of facts which could otherwise be thrashed out in a separate proceeding. Suffice it to say that the admitted position is that there is present the structure of the petitioner within the said Khliehtyrshi Industrial Estate over which the said 33 and 11 KV HT lines of the respondent/MePDCL passes through.

26. As has been pointed out, the respondent/Industries Department vide its many communications has acknowledged the presence of such structure of the petitioner’s Industrial Unit/Saw Mill



within the said Khliehtyrshi Industrial Estate and has also acknowledged that the construction of the said 33 and 11 KV HT lines over the Industrial Estate was done so without due permission or NOC of the Department.

27. However, in course of these proceedings, the respondent Nos. 2 and 3 have realised that the respondent/MePDCL while in the process of construction of the 33 KV line had sought for cooperation from all concerned, including the respondent/Industries Department, prompting the Department to issue the letter dated 08.07.2019 (supra) by which the letter dated 29.11.2017 is recalled and cancelled. This, in the opinion of the Court is an act of collision and switching of sides by the Department which has earlier stood by the petitioner in his endeavour to get the said KV lines shifted but has now obliged the MePDCL to indirectly concede to the erection of the said KV lines and has instead cast the burden of responsibility upon the petitioner. This amounts to changing the rules of the game when the game has already started. The said letter dated 08.07.2019 will not be taken into consideration by this Court at this point of time.

28. This Court need not go any further to answer the proverbial question of which comes first “the chicken or the egg” as far as the case of the parties is concerned, since evidence on record would show that the petitioner had got his building plan ready drawn up by a Junior Engineer, PWD (R) Urban Sub-Division, Jowai, which was countersigned by the Dy. General Manager (Tech), Meghalaya Industrial Development Corporation Ltd., Shillong, dated 04.05.2007 while the said letters of Assistant Executive Engineer, Jowai



Distribution Sub-Division, MeSEB seeking cooperation from the Manager, DIC, Khliehtyrshi among other is dated 22.07.2007.

29. There is however, no evidence to show that the construction of the petitioner was finally approved, likewise, there is no evidence to show that the necessary No Objection was ever issued by the Manager, DIC, Khliehtyrshi to allow construction of the said 33 KV line over the Khliehtyrshi Industrial Estate. In spite of this, it is evident that as on 20.04.2016 (supra) both the structure of the petitioner and the said 33 KV line are in existence.

30. In this regard, it may not be out of place to refer to the provision of Section 10 of the Indian Telegraph Act, 1885 which reads as follows:

“POWER TO PLACE TELEGRAPH LINES AND POSTS

10. Power for telegraph authority to place and maintain telegraph lines and posts – The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property:

Provided that –

(a) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central Government], or to be so established or maintained;

(b) the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

(c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property



vested in or under the control or management of any local authority, without the permission of that authority; and

(d) in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and, when it has exercised those powers in respect of any property other than that referred to in clause (c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers.”

31. A look at the abovementioned provision would make one to understand that the Telegraph authority is at liberty to place and maintain telegraph lines and posts over any property. However, proviso (c) of the said Section 10 makes it incumbent upon the telegraph authority to seek the permission of the local authority who controls and manage the property over which such telegraph line passes. It may also be mentioned that the power of the telegraph authority conferred by Section 10 of the Telegraph Act, 1885 stand vested in and enjoyed by the State Electricity Corporation (MePDCL) as these wordings are found at para 22 in the case of Power Grid Corporation of India Limited v. Century Textiles and Industries Limited & Ors., (2017) 5 SCC 143, wherein the Apex Court had made such observations as far as the power grid is concerned. By extension and analogy, the same can be said as far as the MePDCL is concerned.

32. It is also seen that this aspect of the matter has also been noticed by their Lordships of the Hon’ble Madra High Court in the case of T. Thirumalai v. District Collector & Ors., 2016 SCC Online Mad 15421, para 14 (iii) which is reproduced below as:

“14....

(iii) that though the 1948 Act did not repeal 1910 Act, Section



42(1) of the 1948 Act declared that notwithstanding anything contained in Sections 12 to 16, 18 and 19 of the 1910 Act, the Board shall have all powers of the Telegraph Authority under Part III of the Indian Telegraph Act, 1885 for the purpose of placing any wires, poles, wall-brackets, stays, apparatus and appliances for the transmission and distribution of electricity.”

33. It is also to be remarked that it is not the petitioner who has initiated the whole process of calling upon the MePDCL to shift the said KV lines, but again, vide the communication dated 20.04.2016 (supra), it was the General Manager, District Commerce & Industries Centre, West Jaintia Hills District who has started the ball rolling. Subsequent events of which has eventually led to the petitioner to approach this Court by way of this instant petition. Therefore, it cannot be said that the petitioner is guilty of delay and laches or that he has no grievance or cause of action to approach this Court upon being served with the notice to pay the amount for the cost of shifting of the said KV lines. The issue of maintainability of this writ petition is also accordingly answered in favour of the petitioner herein. The authorities cited by the learned AG in support of the respondents’ case in this regard are found not to be applicable to the case of the petitioner herein. Hence not required to be discussed.

34. As to the issue of disputed question of facts, what is material to be considered is not the question of title or authority of the petitioner to occupy the said Industrial Unit or whether his structure was constructed legally or illegally, as facts would show it that the petitioner



has occupied the said land under lease. As to violation of the said provision of the lease by the petitioner, it is the opinion of this Court that the relevant respondent ought to have proceeded against the petitioner before the proper forum for the matter to be duly adjudicated. The fact that the said lease has not been terminated as far as the petitioner is concerned would only prove that the petitioner is considered to be the rightful occupier of the said land over which the said KV HT lines passes through.

35. To the extent of repetition, the only issue to be considered by this Court is whether the act of the relevant respondent in presenting the said bill of ₹ 1,51,334/- (rupees one lakh fifty-one thousand three hundred thirty-four) only being the cost of shifting and reconstruction of the said 33 KV line to be paid by the petitioner is justified or not.

36. The respondent/MePDCL has referred to the provision of Section 63(1) (2) of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010 to compel the petitioner to defray the cause of shifting of the said KV lines on the ground that his structure is situated beneath the said lines. This provision reads as follows:

“63. Erection or alteration of buildings, structures, flood banks and elevation of roads.—[(1) If at any time subsequent to the erection of an overhead line, whether covered with insulating material or not or underground cable, any person proposes to erect a new building or structure or flood bank or to raise any road level or to carry out any other type of work whether permanent or temporary or to make in or upon any building, or structure or flood bank or road, any permanent or temporary addition or alteration, such person and the



contractor whom he employs to carry out the erection, addition or alteration, shall, give intimation in writing of his intention to do so, to the supplier or owner and to the Electrical Inspector and shall furnish therewith a scale drawing showing the proposed building, structure, flood bank, road or any addition or alteration and scaffolding thereof required during the construction.

(2) On receipt of such intimation, the supplier or owner shall examine,—

(a) whether the line or underground cable under reference was laid in accordance with the provisions of these regulations and any other law for the time being in force;

(b) whether it is technically feasible;

(c) whether it meets the requirement of Right of Way (ROW);

(d) whether such person was liable to pay the cost of alteration of the overhead line or underground cable and if so, issue a notice within a period of thirty days, to such person together with an estimate of the cost of the expenditure likely to be incurred to so alter the overhead line or underground cable and require him to deposit, within thirty days of the receipt of the notice, with the supplier or owner, the amount of the estimated cost.”

37. However, since this Court is of the view that the structure of the petitioner was in existence prior to the construction of the said 33 KV line, reliance upon the said provision of 63(1) and (2) will not help the respondents.

38. Section 10 (d) of the Indian Telegraph Act, 1885 provides for payment of compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers, meaning that the laying of any telegraph line or post causing prejudice, loss or danger to the occupier of the land would enable such occupier to be compensated.



39. As to the cost of shifting of the said Industrial Unit of the petitioner, the Hon'ble Supreme Court in the case of Power Grid (*supra*) at para 23 of the same has held as follows:

“23. Section 10 of the Telegraph Act, 1885 empowers the Telegraph Authority to place and maintain a telegraph line under, over, along or across and posts in or upon any immovable property. The provision of Section 10(b) of the Telegraph Act, 1885 makes it abundantly clear that while acquiring the power to lay down telegraph lines, the Central Government does not acquire any right other than that of user in the property. Further, Section 10(d) of the Telegraph Act, 1885 obliges the Telegraph Authority to ensure that it causes as little damage as possible and that the Telegraph Authority shall also be obliged to pay full compensation to all person interested for any damage sustained by them by reason of the exercise of those powers.”

40. Be that as it may, under the peculiar facts and circumstances of the case of the parties herein, in an equitable approach to the case of the parties herein, this Court finds it proper to allow the said 33 and 11 KV HT lines to remain as it is in the same place since shifting of the same would entail an enormous amount of cost, which would not be payable by the petitioner under the circumstances as has been indicated herein above. However, to prevent any danger posed to the structure of the petitioner or to the lives of the people occupying the said structure, the authorities in the Commerce and Industries Centre are directed to offer a suitable alternative accommodation to the petitioner for setting up of his Industrial Unit.

41. To assess and quantify the extent of compensation to be awarded to the petitioner, the District Collector/Deputy Commissioner, West Jaintia Hills District is hereby directed to take on this task by



conducting an enquiry, including inspection of the affected portion of the unit of the petitioner, and after hearing the parties concerned, to draw up the award due and payable to the petitioner. This exercise is to be completed within 3(three) months from the date of receipt of this order.

42. Registry to send copy of this order upon the District Collector/Deputy Commissioner, West Jaintia Hills District, the Director Commerce and Industries Shillong, Government of Meghalaya, Director (Distribution), Meghalaya Power Distribution Corporation Ltd. (Me.P.D.C.L), Shillong, Shri. Wanpynsuk Passah/petitioner for information and necessary action.

43. With the above, this petition is hereby disposed of.

Judge