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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1717 OF 2015

M/s.Indira Horticulture Pvt.Ltd. ...Petitioner
vs.
1 Power Grid Corporation of India Ltd
2 Union of India ...Respondents

Ms Jai Kanade i/b Ms Shruti Tulpule for the
Petitioner
Mr.Mahadeo Choudhari for the respondent No.1
Mr.M.S.Bhardwaj for respondent No.2

CORAM : A.S.OKA, &
REVATI MOHITE DERE, JJ.
DATE : JUNE 9, 2015

P.C.:

1 Heard the learned counsel for the petitioner and the learned counsel for the first respondent as well as the learned counsel for the second respondent. At the outset, we must state that the learned counsel for the petitioner is not pressing the challenge to the notification dated 24th December 2003. Therefore, prayer clauses (a) and (a-1) do not survive for consideration.

2 The first respondent is the Power Grid Corporation of India Limited which is a Government of India Enterprise. The controversy in this petition arose in view of the order passed by the Sub Divisional Magistrate, Igatpuri on 31st March 2015. This order is made in exercise of powers under section 16 of the Indian Telegraph Act, 1885 (for

short 'the Telegraph Act'). An application was made by the first respondent before the Sub Divisional Officer who is empowered to exercise the powers of the District Magistrate. In the said application, the first respondent relied upon the notification dated 24th December 2003 issued by the Government of India in exercise of powers under section 164 of the Electricity Act. Under the said notification, the first respondent was authorised to exercise all the powers vested in or possessed by the Telegraph Authority under the Telegraph Act. It is pointed out in the said application that with the prior approval of the Government of India under section 68 of the Electricity Act, 2003 (for short "the Electricity Act"), the first respondent was doing the work of laying Extra-high voltage 400 KV D/C Aurangabad – Boiser (Quad) Transmission Line under system strengthening in western part of WR for IPP generation projects in Chattisgarh. It was stated that the said scheme would immensely benefit and boost the agriculture, industry, commercial establishment and the household consumers and cater to their need of power. It was contended that the work of execution of the said transmission line was sought to be made on the property claimed by the petitioner covered by the location No.141/3 which is bearing Gat No.266 of Village Velunje, Taluka Trambakeshwar, District Nashik. It is stated that an obstruction was raised by the petitioner. Therefore, the first respondent prayed for the exercise of the power of the District Magistrate under section 16 of the Telegraph Act.

3 The said application was opposed by the petitioner. It was contended in the reply filed by the petitioner that the property of the petitioner has not been acquired by the respondents. It was contended that the provisions of the Telegraph Act are applicable only to the electricity transmission lines. It was contended that no notice was served to the petitioner prior to the commencement of work.

4 By order dated 31st March 2015, the Sub Divisional Magistrate allowed the application made by the first respondent and directed the petitioner not to obstruct the work proposed to be carried out by the first respondent. The Sub Divisional Magistrate directed the first respondent to pay compensation to the petitioner in accordance with law. The Sub Divisional Magistrate observed that if compensation offered was not acceptable to the petitioner, recourse can be taken to sub-section (3) of section 16 of the Telegraph Act.

5 The substantive challenge in this petition is to the constitutional validity of section 10 of the Telegraph Act. The second challenge is to the order dated 31st January 2015. As stated earlier, the challenge to the notification dated 24th December 2003 though incorporated in the petition, has not been pressed.

6 The learned counsel for the petitioner has invited our attention to section 10 of the Telegraph Act as well as the relevant provisions of the

Electricity Act. She invited our attention to the provisions of section 164 of the Electricity Act and what is stated in the notification dated 24th December 2003. Her submission is that in view of the last part of the said notification, while exercising the power under section 10 of the Telegraph Act, the first respondent is under an obligation to comply with all other provisions of the Electricity Act and the Rules/Regulations framed thereunder. She invited our attention to section 67 of the Electricity Act. She pointed out that the second respondent has not framed Rules as required by sub-section (2) of section 67. She pointed out that in view of the last part of the notification dated 24th December 2003, the first respondent is under an obligation to follow the provisions of section 67 of the Electricity Act. She urged that in absence of any statutory Rules being framed under sub-section (2) of section 67, recourse cannot be taken to section 67 and in view of the aforesaid notification, the first respondent is bound to implement the provisions of section 67. Her submission is that the compensation payable in terms of section 67 will be much higher than the compensation payable under the Telegraph Act. She invited our attention to the provisions of section 185 of the Electricity Act and in particular clause (b) of sub-section (2) thereof. Her contention is that as the first respondent is bound to follow the said provision, while taking action under section 10 of the Telegraph Act, in view of clause (b) of sub-section (2) of section 185 of the Electricity Act,

without the consent of the petitioner, the work of laying down electrical lines could not be undertaken in the property of the petitioner in the light of provisions of sections 12 to 18 of the Indian Electricity Act, 1910. She pointed out that in view of the fact that Rules under sub-section 2 of Section 67 of the Electricity Act have not been framed, the provisions of sections 12 to 18 of the Indian Electricity Act, 1910 will continue to apply and, therefore, without consent of the petitioner, the first respondent has no right to commence the work. She invited our attention to section 164 of the Electricity Act and urged that if the power under section 10 of the Telegraph Act will be exercised in this fashion, the section will become vulnerable. She pointed out the stand taken in the affidavit-in-reply filed by the first respondent Shri N.P.Singh, the Assistant General Manager, Power Grid Corporation of India and in particular paragraph 17 thereof in which it is stated that the transmission line requires clear corridor of 46 mtrs i.e 23 mtrs on either side from the center of the transmission line. She urged that by exercising the power under section 10 of the Telegraph Act, the petitioner is being deprived of valuable property without acquiring the same. She urged that under section 10 there is no power to grant compensation in relation to the area affected by the corridor and, therefore, the issue of validity of section 10 of the Telegraph Act would certainly arise. She pointed out that a prayer is made for seeking a direction against the second respondent to exercise

its Rule making power. In any event, she submitted that in view of the clear terms of the notification, without following provisions of the Electricity Act, the first respondent cannot exercise the power under section 10 of the Telegraph Act and that is how the exercise of power under section 10 by the first respondent and exercise of power by the Sub Divisional Magistrate under section 16 of the Telegraph Act becomes bad in law.

7 We have considered the submissions. We must note here that this Court in the case of Vivek Brajendra Singh Vs. State of Maharashtra and others¹ has already upheld the constitutional validity of section 10 of Telegraph Act and section 164 of the Electricity Act. Nevertheless, we proceed to consider the submissions. Section 10 of the Telegraph Act reads thus:

“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

¹ 2012 (4) Bom.C.R. 116

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.

A power has been conferred by section 10 on the Telegraph Authority to place and maintain telegraph line under, over, along or across, and posts in or upon any immovable property. Clause (b) of section 10 makes it clear by virtue of exercise of such power, the Central Government shall not acquire any right in respect of the property 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. Clause (d) of section 10 provides that if by the exercise of power under section 10, any damage is caused to the property, the Telegraph Authority shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers. Sub-section (3) of section 16 of the Telegraph Act provides that if any dispute arises regarding the compensation to be paid under section 10 and in particular clause (d) thereof, a remedy is available to make an application to the District Judge who is empowered to determine the issue of sufficiency of compensation payable as provided in sub-section (4) of section 16. As per sub-section (5) of section 16, the determination made by the District Judge is made final. Hence, there is an adequate provision made for payment of full compensation to all persons interested in the property on account of damage sustained by them by exercise of the power under section 10. Moreover, by exercise of the power, merely because a telegraph line or a post is placed on a property, the owner thereof is not divested of his right, title or interest.

8 It will be necessary to make a reference to section 164 of the Electricity Act which reads thus:

"164 Exercise of powers of Telegraph Authority in certain cases – The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for

the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained."

9 In the present case, the power under section 164 of the Electricity Act has been exercised by issuing the notification dated 24th December 2003. Therefore, the first respondent is entitled to exercise the powers of the Telegraph Authority under section 10.

10 Thus, even if the power is exercised by the Authority concerned, by virtue of section 164 of the Electricity Act, the owner of the property on which the electricity transmission line is placed is not divested of his right, title or interest in the property and the licensee or any other person authorised under section 164 gets a limited right in the property on which electricity transmission lines are placed in accordance with clause (b) of

section 10. Moreover, the person interested in the property on which electricity transmission line is placed is entitled to compensation. Under clause (d) of section 10 of the Telegraph Act, for any damage caused on account of the exercise of power under section 10, there is a provision for payment of full compensation to all the persons interested. The compensation is payable for any damage sustained by such persons. A remedy is available under sub section (3) of section 16 to the persons interested to apply to the District Court if they are of the view that the compensation offered is insufficient.

11 The second argument is based on the interpretation of the notification dated 24th December 2003. The contention raised by the learned counsel for the petitioner on the basis of the last part of the said notification is that while exercising the power under section 10 of the Telegraph Act, the first respondent is under an obligation to follow other provisions of the Electricity Act. This submission is made in the context of section 67 as well as clause (b) of sub-section (2) of section 185 of the Electricity Act by contending that on account of failure to frame Rules under sub-section (2) of section 67, the said Act of 1910 will apply and the first respondent cannot proceed without the consent of the petitioner.

12 Firstly, it must be stated here that the first respondent is not seeking to exercise the powers under section 67. Provisions of section 67 will

apply provided section 67 is invoked. The last part of the notification under section 164 cannot be construed to mean that the licensee is bound to comply with section 67 though the licensee has not exercised power under the said section. As far as section 185 is concerned, the same incorporates repeal and saving provisions. Clause (b) of sub-section (2) of section 185 provides that notwithstanding the repeal of the Indian Electricity Act, 1910, so long as the Rules under section 67 to 69 are not framed, provisions contained in sections 12 to 18 of the said Act of 1910 will continue to apply. Even the said provision will not help the petitioner. It is obvious that the petitioner can invoke the said provision provided action is sought to be taken in accordance with section 67 or section 68. Only when the action is taken in accordance with section 67 or 68, the provisions of section 69 can be invoked. Sections 67 and 68 of the Electricity Act confer separate and distinct power as distinguished from the power under section 10 of the Telegraph Act. A licensee under the Electricity Act can exercise powers under section 10 provided there is a notification under section 164 of the Electricity Act. Therefore, even the said submission is not worthy of acceptance. Moreover, in the case of Vivek Singh, the same challenge has been negatived. The Division Bench in paragraph 24 held thus:

"24...When such a notification is issued under the Electricity Act, 2003 in terms, the

person authorised exercises powers of a Telegraph authority under the provisions of the Indian Telegraph Act, 1885 and not powers under sections 12 to 18 of the old Act, 1910 which are temporarily saved. It is obvious that after such authorization under section 164 of the new Act, 2003, the Transmission Company is bound to exercise the powers of a Telegraph Authority with respect of placing of telegraph lines and posts for the purpose of placing of an electric line for the transmission of electricity. These powers are found in Part-III of the Indian Telegraph Act, 1885 vide sections 10 to 16. None of these provisions provide for obtaining consent of an owner or occupier of the land."

13 It will be necessary to make a reference to paragraph 17 of the affidavit-in-reply which reads thus:

"17 I say that while fixing the transmission route only the most techno-economically physical route is chosen causing list damage after complying with all necessary required statutory clearances from authorities concerned and avoiding places of inhabitation, worship and densely populated areas. I say that under the scheme of the Respondent No.1 the transmission lines requires the clear corridor of 46 mtrs only i.e 23 mtrs on either side from the center of

transmission line. I further submit that all crops can be cultivated."

14 The argument is that in view of the requirement of keeping a clear corridor, the respondent No.1 should have acquired the said land or at least a portion of the said land. Paragraph 17 itself records that all crops can be cultivated on the said land. Moreover, if any damage is sustained by virtue of exercise of power under section 10 of the Telegraph Act, under clause (d) of section 10, the full compensation for any damage by reason of exercise of such power is payable. In paragraph 18 of the said affidavit, an assurance is incorporated to pay compensation.

15 In paragraph 20 of the said affidavit, it is stated that the cost of the project is Rs.2127.51 crores which has a time bound schedule. It is stated that the foundation work of transmission line in all the adjoining locations has already been completed and the towers have been erected. It is pointed out that the project will benefit the public at large.

16 As far as the order dated 31st January 2015 is concerned, all that the said order holds is that the petitioner cannot obstruct the exercise of power under section 10 of the Telegraph Act by the first respondent. A specific direction has been issued by the Sub Divisional Magistrate to the first respondent to pay compensation to the petitioner in

accordance with law. Therefore, there is no reason to interfere with the said order. The action is sought to be taken on the basis of the notification issued under under section 164 of the Electricity Act which is not under challenge.

17 As far as the quantum of compensation is concerned, it is not necessary for us to decide this this question as the petitioner has remedy available if there is any grievance regarding its adequacy. Therefore, all contentions as regards the compensation payable to the petitioner can be considered in accordance with law at appropriate stage in appropriate proceedings.

18 In view of the notification issued in exercise of power under section 164 of the Electricity Act, as provided in section 164 of the Electricity Act, the first respondent has been empowered to exercise the powers of the Telegraph Authority under section 10 of the Telegraph Act. Under clause (d) of section 10 of the Telegraph Act, it is an obligation of the Telegraph Authority to carry out work with as little damage as possible. The Authority is under an obligation to pay full compensation to all persons interested on account of any damage sustained by them by reason of the exercise of those powers. That is how under the order dated 31st January 2015, the first respondent has been directed to pay compensation to the petitioner. Though we are not inclined to interfere, we propose to fix an outer limit for payment of compensation by the first

respondent.

19 Accordingly, we pass the following order:

(I) Writ Petition is rejected;

(II) We direct the first respondent to pay compensation to the petitioner as directed under order dated 31st January 2015 in accordance with clause (d) of section 10 of the Telegraph Act within a period of four months from the date on which the work proposed to be carried out on the land of the petitioner is completed;

(III) All concerned to act upon an authenticated copy of this order.

20 At this stage, the learned counsel for the petitioner seeks continuation of ad-interim relief granted on 17th February 2015. The said prayer is opposed by the learned counsel for the first respondent.

19 We direct that ad-interim relief granted on 17th February 2015 shall continue to operate for a period of four weeks from today.

(REVATI MOHITE DERE, J.)

(A.S.OKA, J.)