

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON
&
THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

WEDNESDAY, THE 20TH DAY OF MAY 2015/30TH VAISAKHA, 1937

WA.No. 716 of 2009

IN

WP(C).6857/2009

AGAINST THE JUDGMENT IN WP(C) 6857/2009 of HIGH COURT OF KERALA
DATED 05-03-2009

APPELLANT/PETITIONER:

K.C. BALAGOPAL,
S/O. LATE K.A. CHANDRASEKHARA MENON, NARAYANI VILAS
NEAR I.R.B PETROL PUMP, K.M.K JUNCTION
NORTH PARAVUR - 683 513.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS/RESPONDENTS:

1. THE ADDITIONAL DISTRICT MAGISTRATE,
O/O. ADDITIONAL DISTRICT MAGISTRATE, COLLECTORATE
ERNAKULAM.
2. SHRI. BIJUMON,
ASSISTANT EXECUTIVE ENGINEER
SUB STATION - SUB DIVISION, KURUMASSERY K.S.E.B
MANNAM.P.O, NORTH PARAVUR.
3. THE EXECUTIVE ENGINEER,
T.C DIVISION, K.S.E.B, ALUVA.
4. THE KERALA STATE ELECTRICITY BOARD,
REP. BY ITS SECRETARY, VYDHUTHI BHAVAN
THIRUVANANTHAPURAM.

R,R3 & R4 BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB
R, BY ADV. SMT.R.PADMAKUMARI(ADVOCATE COMMISSIONER)
R,R1 BY GOVERNMENT PLEADER SRI. P.P. PADMALAYAN
R2 TO 4 BY ADV. SRI.P.SANTHALINGAM (SR.)
R2 TO 4 BY ADV. SRI.S.SHARAN,SC,K.S.E.BOARD

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 20-05-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON
&
BABU MATHEW P. JOSEPH, JJ.**

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W.A. No. 716 of 2009

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Dated this the 20th day of May, 2015

JUDGMENT

P.R. Ramachandra Menon,J.

The issue involved in this writ appeal is in relation to drawing of a 33 KV electric line through the property concerned and the grievance is that it is not in conformity with the actual facts and figures and the the materials on record.

2. Sequence of events reveals that the drawing of the line was objected to; when a reference was made under Section 16 of the Indian Telegraph Act. After considering the facts and figures and after hearing the parties concerned, Ext.P12 order was passed by the Additional

District Magistrate on 22.09.2008, granting permission to draw the line along the route 'ACD' using high posts. It is seen that the said order was subjected to challenge by one Sri. K.C. Ramesh in W.P.(C) No. 29972 of 2008, wherein interference was declined and the writ petition was dismissed. The above verdict was confirmed by a Division Bench of this Court as per judgment passed in W.A. No. 10 of 2009.

3. After culmination of the proceedings as above, the appellant approached this Court by filing W.P.(C) No. 6857 of 2009. The contention raised was that there was a move, not to go by the plan 'ACD' as mentioned above. Some new proposals were also referred to. After hearing both the sides, a learned Judge of this Court recorded the contention of the petitioner in paragraph 2 of the judgment, that according to the petitioner, the line 'ACD' was to be drawn as a straight line. After considering the nature of contentions raised, the learned Judge observed that when permission was granted by the Magistrate

under Section 16, the line must be drawn strictly as permitted by the Magistrate. It was accordingly that the writ petition was disposed of making it clear that the line could be drawn strictly as permitted by Ext.P12 order. To remove the apprehension of the petitioner, the learned Judge also directed that the line should be drawn under supervision of the third respondent, the Executive Engineer. The said verdict has now been chosen to be challenged by filing this appeal by the writ petitioner.

4. Heard the learned counsel for the appellant and the learned Senior Counsel appearing for the respondents, Kerala State Electricity Board.

5. It is seen that this Court had appointed an Advocate Commissioner, who has filed a report as to the facts and figures. When the matter came up for consideration before this Court on 22.05.2009, the petitioner was set at liberty to approach the first respondent within one week, upon which a local inspection was ordered to be conducted with regard to the

suggestion put forward as to the shifting of the line towards the north-east, at point 'C', so as to minimise the adverse consequences, in the event the line was drawn as mentioned in the impugned order. The learned Senior Counsel appearing for the Board submits that in furtherance of the said order, a further inspection was conducted and the feasibility was found against the suggestion made by the petitioner/appellant. Learned Senior Counsel also asserts that the line was drawn strictly in conformity with Ext.P12 order and it was based on the report submitted by the Additional District Magistrate, pursuant to the interim order mentioned above. This was done as early as on 24.08.2009. It is also brought to the notice of this Court that other interested parties were not brought on record.

6. From the report dated 20.06.2009 submitted before this Court, along with the memo dated 20.06.2009, it is revealed that the inspection was conducted on 19.06.2009 in presence of the parties concerned. The crux

of the report is in the following terms:

“On site inspection, it was found that, if the already drawn electric line is shifted slightly towards northeast at point 'C' as suggested by the appellant, the line will go across two other properties and which will affect those two other properties adversely. During the site inspection the aforementioned two neighbouring property owners have objected against shifting the already drawn line as suggested by the appellant. Moreover, if the line is shifted, the already drawn all lines and erected posts have to be changed. The line already drawn is strictly in accordance with the Ext.P12 order i.e. in accordance with the order of the Additional District Magistrate, Ernakulam vide order No. KDis/61059/07/M5 dated 22/09/2008. Side-arms have also been used to minimise the inconvenience of the appellant. So it is seen that the already dawn route is the most feasible route than the route suggested by the appellant.”

After hearing both the sides, this Court finds that there is no tenable ground to call for any interference in

the verdict already passed by the learned single Judge, declining interference with the order passed by the Additional District Magistrate. The course pursued by the respondent Board is well supported and vindicated by the subsequent inspection conducted pursuant to the interim order of this Court. The appellant is not entitled to get any relief. Interference is declined and the appeal stands dismissed.

Sd/-

**P.R. RAMACHANDRA MENON
JUDGE**

Sd/-

**BABU MATHEW P. JOSEPH
JUDGE**

ks.

True copy

P.S. (Hr.Gr.)To Judge

