

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.K.MOHANAN

&

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 5TH DAY OF MARCH 2015/14TH PHALGUNA, 1936

WA.No. 538 of 2015 () IN WP(C).474/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 474/2015 of HIGH COURT OF KERALA
DATED 09-01-2015

APPELLANT(S)/WRIT PETITIONER:

G.SUNIL KUMAR
ANANDA BHAVAN, VENKATTAMOODU, KALLARA
NEDUMANGAD, THIRUVANANTHAPURAM

BY ADVS.SRI.GEORGE VARGHESE (PERUMPALLIKUTTIYIL)
SRI.A.R.DILEEP
SRI.MANU SEBASTIAN
SMT.PARVATHY NAIR

RESPONDENT(S)/RESPONDENTS IN WRIT PETITION:

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1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VIDHYUTHI BHAVAN
THIRUVANANTHAPURAM 695001
 2. DISTRICT COLLECTOR
COLLECTORATE, THIRUVANANTHAPURAM 695001
 3. THE DEPUTY CHIEF ENGINEER,
KERALAL STATE ELECTRICITY BOARD, KATTAKKADA 695572
 4. THE ASSISTANT EXECUTIVE ENGINEER
KERALA STATE ELECTRICITY BOARD, VENJARAMOODU 695607
 5. THE ASSISTANT ENGINEER
KERALA STATE ELECTRICITY BOARD, KALLARA 695608

R2 BY ADV. SRI. JOBY JOSEPH - GOVERNMENT PLEADER
R1 TO R4 BY SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
05-03-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

acd

V.K. MOHANAN & P.D. RAJAN, JJ.

Writ Appeal No. 538 of 2015

Dated this the 5th day of March, 2015

JUDGMENT

V.K.Mohanana,J.

The appellant is the writ petitioner in W.P.(C) No.474/2015 and the learned Single Judge by the impugned judgment dated 9.1.2015 dismissed the writ petition, whereby the petitioner's claim for compensation under the provisions of the Indian Telegraph Act, 1885 was declined. Hence the above writ appeal.

2. The case of the appellant/writ petitioner is that the respondent Kerala State Electricity Board erected three electric posts for the purpose of installation of transformer in road margin, in front of the property of the appellant, which having an extent of 7.5 cents, as a result thereof, the

appellant/petitioner lost his road frontage. By Ext.P3 request, he approached the 2nd respondent for shifting the place for the installation of the transformer. As no action was taken, he approached the Lok Ayuktha, upon which Ext.P8 order was passed by the Lok Ayuktha, wherein it is observed that the installation of the transformer has resulted in great inconvenience and hardship to the appellant/petitioner. The Lok Ayukthga passed such an order on the basis of Ext.P4 report of the Village Officer and the Lok Ayuktha directed the competent authority to consider the request of the appellant afresh. However, by Ext.P11 order, the 4th respondent rejected the request of the appellant for shifting the transformer. Thereafter, the appellant had preferred Ext.P12 appeal before the 2nd respondent under Section 7(2) of the Indian Telegraph Act. While the above appeal pending before the 2nd

respondent, the appellant, as indicated earlier, preferred the above writ petition with the following prayers:

- "i) issue a writ in the nature of mandamus or any other writ, order or direction, directing the 2nd respondent to consider and pass orders on Ext.P12 within such time as may be fixed by this Hon'ble Court; or in the alternative.
- ii) issue a writ in the nature of mandamus or any other writ order or direction, directing respondents 1, 3, 4 & 5 to assess the damages sustained to the petitioner on account of erecting transformer and three electric posts at the road porampoke land in front of petitioner's property in Re.Sy.No.2831/303 of Kallara Village, Nedumangad Taluk and pay compensation in terms of Section 10(d) of the Indian Telegraph Act;
- iii) issue such other writ, direction or order as deemed fit;"

The learned Single Judge by the impugned judgment rejected those prayer and dismissed the writ petition.

3. Heard the learned counsel for the appellant and Sri. Sajeev Kumar K. Gopal, the learned counsel appearing for respondents 1, 3 and 4.

4. The learned counsel for the appellant vehemently submitted that in view of the various

provisions contained under Section 10 of the Indian Telegraph Act and as the consequence of erecting electric posts for the purpose of installation of the transformer, the value of the property of the appellant is diminished, though the proposed site for establishment of the transformer is not in his property. In support of the above contention, it is pointed out that Ext.P4 report of the Village Officer as well as Ext.P8 order of the Lok Ayuktha specifically pointing towards the said facts. Therefore, the appellant is entitled to get compensation under Section 16(1) of the Indian Telegraph Act. But, the learned Single Judge overlooking the above provisions of the Act, rejected the prayers and dismissed the writ petition. Whereas the learned Standing Counsel for the Kerala State Electricity Board submitted that as the site proposed for the installation of the transformer is not on

the property of the appellant, the appellant is not entitled to get the compensation as contemplated under the provisions of the Indian Telegraph Act. While repelling the contention of the appellant before the learned Single Judge, the learned Single Judge has found that the District Magistrate is clothed with jurisdiction only if the telegraph line or post has been placed under, over, along, across, in or upon the property of the petitioner. The said finding is absolutely correct and does not call for any interference in this appeal, in view of Section 10 of the Indian Telegraph Act, 1885, which reads as follows:

"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 purpose 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."

[Emphasis supplied]

Thus, on a close perusal of Section 10, it is crystal clear that the powers given to the telegraph authority under Section 10 of the Act are only to place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property. The telegraph authority or the electricity authority as the case may, is bound to compensate the land owner, only if, by the said act,

anything happened adversely to the said land.

5. In the present case, even the admitted case of the appellant is that the proposed site for installation of the transformer is not in the property of appellant. The only case of the appellant is that by installing the transformer, the access to his property will be interrupted. If that be so, we are of the view that the Collector, who is authorised under Section 16, has no jurisdiction to order to pay compensation to the appellant as the property of the appellant was used for any such purpose. Thus, we find no merit in this writ appeal.

Accordingly, upholding the judgment of the learned Single Judge, this writ appeal is dismissed.

V.K. MOHANAN, JUDGE.

P.D. RAJAN, JUDGE.

