

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

FRIDAY, THE 27TH DAY OF FEBRUARY 2015/8TH PHALGUNA, 1936

WP(C).No.451 of 2013 (F)

PETITIONER :

K.C.VARGHESE, AGED 82 YEARS,
S/O.LATE CHANDIPILLAI, KUMARAMTHARA HOUSE, PERUNNA.P.O.,
CHANGANACHERRY, KOTTAYAM DISTRICT-686 102.

BY ADVS.SRI.JOMY GEORGE
SRI.SEBASTIAN THOMAS

RESPONDENTS:

1. THE DISTRICT COLLECTOR,
COLLECTORATE.P.O, KOTTAYAM. 686 001.
2. THE TAHSILDAR,
CHANGANACHERRY. 686 121.
3. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION, CHANGANACHERRY. 686 121.
4. NABEESA BEEVI,
THOPPIL IDICHANDIPPARAMBIL HOUSE, PERUNNA.P.O.,
CHANGANACHERRY, KOTTAYAM DISTRICT. 686 121.

R4 BY ADV. SRI.RAJ MOHAN R.PILLAI
R4 BY ADV. SRI.P.BANI
BY SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
27-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :-

- EXT.P1 : COPY OF THE ROUGH SKETCH AND REPORT OF THE 3rd RESPONDENT DTD.23.5.2011.
- EXT.P2 : COPY OF THE NOTICE DTD.22.9.2011 ISSUED FROM THE COLLECTORATE, KOTTAYAM TO THE PETITIONER.
- EXT.P3 : COPY OF THE DETAILED AND MODIFIED REPORT DTD.8.2.2012 WITH A PROPOSED SKETCH FILED BY THE 3rd RESPONDENT BEFORE THE 1st RESPONDENT.
- EXT.P4 : COPY OF THE ORDER No.K'Dis.23292/11/H6 DTD.19.12.2012 OF THE ADDITIONAL DISTRICT MAGISTRATE, KOTTAYAM.
- EXT.P5 : THE PHOTOGRAPHS OF THE SITE SHOWING THE EXISTING LINE AND THE PATHWAY.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C).No.451 of 2013

Dated this the 27th day of February, 2015

JUDGMENT

The petitioner has filed this writ petition seeking a writ of certiorari to quash Ext.P4 order passed by the Additional District Magistrate, Kottayam, by which permission has been granted to the 4th respondent to shift the existing electric line passing over her residential building. A writ of mandamus has also been sought for, directing respondents 1 to 3 not to take any steps to shift the line from the present route to that proposed in Ext.P4.

2. I heard the learned counsel for the petitioner and also the learned Standing Counsel appearing for the respondent/Board. Though notice has been served on the 4th respondent, there is no appearance for her.

3. The issue raised in the writ petition is the legality of Ext.P4 order passed by the Additional District Magistrate, by which the permission has been granted for shifting the electric line passing over the residential building of the 4th respondent through the property owned by the petitioner. In **Moan.M.Joseph Vs. Kerala**

State Electricity Board [2014 (2) KLT 13] a Division Bench of this Court has held that shifting of a line or post that is permissible under the Indian Telegraph Act, 1885 can only be from one part of the property, through which the line is passing, to another part and not outside the property. Paragraph 4 of the judgment reads thus:-

"4. Reading of the above provision shows that the removal or alteration of the telephone line or post that is permissible under this provision is to shift it to another part of the property through which the line is passing or the post is laid or to alter the line or the post to higher or lower level or alter in form. In other words, shifting of a line or post that is permissible under this provision can only be from one part of the property through which the line is passing to another part and not outside the property. If that be so, Ext.P3 order permitting shifting of the line to the adjacent pathway, which is, outside the property of the 5th respondent, is clearly beyond the scope of S.17."

4. If that be so, the direction of the Additional District Magistrate contained in Ext.P4 granting the permission to shift electric line passing over the residential building of the 4th

respondent, outside to her property is beyond the powers of the District Magistrate under Section 17 of the Indian Telegraph Act. On that sole ground Ext.P4 order passed by the Additional District Magistrate, Kottayam, cannot be sustained.

In the result, this writ petition is allowed setting aside Ext.P4 order passed by the Additional District Magistrate, Kottayam.

ANIL K.NARENDHAN, JUDGE

skj