

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

TUESDAY, THE 2ND DAY OF JUNE 2015/12TH JYAISHTA, 1937

WA.No. 338 of 2014 () IN WP(C).11005/2013

AGAINST THE ORDER/JUDGMENT IN WP(C) 11005/2013 of HIGH COURT OF KERALA
DATED 16-07-2013

APPELLANT(S)/PETITIONERS:

1. EMILY SELINA, AGED 55 YEARS,
W/O JOSE, CHIRAMEL HOUSE
AVOLICHAL, OONNUKAL P.O., ERNAKULAM DISTRICT.
2. JULIE JOHNSON
PALICKAMALIL, MUTTUKADU, BISON VALLEY P.O.
IDUKKI DISTRICT.

BY ADVS.SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN

RESPONDENT(S)/RESPONDENTS:

1. THE KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VYDYUTHIBHAVANAM, PATOM
THIRUVANANTHAPURAM-695 001.
2. THE ASSISTANT
EXECUTIVE ENGINEER, ELECTRICAL SUB DIVISION
K.S.E.BOARD, KOTHAMANGALAM-686 666.
3. THE ADDITIONAL
DISTRICT MAGISTRATE, ERNAKULAM, CIVIL STATION
KAKKANAD, ERNAKULAM-682 030.
4. ANISH BABY
S/O BABY ALEX, KANIYAMPALACKAL HOUSE, OONNUKAL P.O.
PIN-686 693.
5. BABY JACOB
PALAKKOTTIL HOUSE, AVOLICHAL, NERIAMANGALAM P.O.
ERNAKULAM DISTRICT-686 630.
6. AJI
ANTHIYATTU HOUSE, AVOLICHAL, NERIAMANGALAM P.O.
ERNAKULAM DISTRICT-686 630.
7. THOMAS
MADAPPILLYKUNNEL HOUSE, AVOLICHAL, NERIAMANGALAM P.O.
ERNAKULAM DISTRICT-686 630.

R1,R 2 BY ADV. SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 02-06-2015,
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. 338 of 2014

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Dated, this the 2nd day of June, 2015

JUDGMENT

P.R. Ramachandra Menon, J.

Interference declined by the learned Single Judge in granting the relief sought for by the petitioner, to draw electric line through the alternate route suggested by the appellant for providing power connection to the residence of the 4th respondent is under challenge in the writ appeal.

2. The 4th respondent submitted an application for providing electric connection to his residence, for which line had to be drawn through the property of others. The proposal was sought to be resisted from the part of the respondents. In the said circumstances, the matter referred to the competent authority/Additional District Magistrate under Section 16 (1) of the Indian Telegraphic Act.

3. The first appellant approached this Court by filing W.P.(C) No. 9712 of 2013 referring to the representation/alternate proposal, also producing draft sketch as Ext. P2 therein. The said writ petition was disposed as per Ext. P5 judgment directing the competent authority to consider the same after affording an opportunity of hearing. The matter was considered by the competent authority,

who passed Ext. P6 order on 06.04.2013, whereby the feasibility aspect in respect of various routes including the alternate route suggested by the appellants herein was considered. The proposal submitted by the respondent Board vide 'ABCD' was found as the most suitable and feasible route, with reference to the economic aspect as well. This made appellants to approach this Court by filing W.P.(C) No. 11005 of 2013.

4. A statement was filed from the part of the Board, also producing copy of the sketch as Annexure R2(a). The factual aspects have been narrated by the Board also giving particulars of the alternate route suggested by writ petitioners, in paragraph 2, which is extracted below for convenience of reference :

2. The rough sketch of the route is produced herewith and marked as **Annexure R2(a)**, which shows the route approved by the Additional District Magistrate as well as the alternative route suggested by the petitioners herein. 'ABCD' is the route proposed and approved by the Additional District Magistrate. The said route is having a distance of 135 meters and at 'A' an electric post is existing. The northern side of the properties of the petitioners and the respondents 4 and 5 are forest land. Hence the electric line can be drawn only

through private property. The proposed electric line can be drawn from the existing electric post marked as 'A' through their land to the private road and then along the northern border of the property of the petitioners without any damage to the rubber plants and other trees in the petitioners property. The details of the alternative route suggested by the petitioners are given below :

- | | | |
|------------|---|-----------|
| (1) NMLKE | - | 209 metre |
| (2) JGFE | - | 347 metre |
| (3) IGFE | - | 297 metre |
| (4) HGFE | - | 238 metre |
| (5) OPSCDE | - | 335 metre |

All these routes are considered by the Additional District Magistrate while passing the impugned order. The impugned order does not suffer any infirmity and hence it may be dismissed.

5. The writ petitioners filed a reply affidavit, also producing copy of the receipt with regard to payment of application fee for causing the electric line to be shifted. After hearing both the sides, the challenge raised against the impugned order was repelled, however making it clear that, if the writ petitioners approach the appropriate authority for causing the line to be shifted the same shall be considered on merits under Section 17 (1) of the

Indian Telegraph Act. The petitioners were also alerted about the appellate remedy available under Section 17 (2) of the Act, if aggrieved of the orders to be passed under Section 17 (1) of the Act.

6. After hearing both the sides and on going through the materials on record, this Court does not find any illegality or impropriety in the course and proceedings sought to be pursued by the respondents. The feasibility aspect was well considered while passing Ext. P6 order and the same was subjected to further scrutiny at the hands of this Court. Considering the various aspects pointed out in the statement filed from the part of the respondent Board, the route suggested by the Board as 'ABCD' was found to be the shortest and the most feasible one, having a distance of 135 m., whereas the route suggested by the writ petitioners vide 'NMLKE' is having a distance of 209 m.

7. Nature of the contentions raised by the appellant in the reply affidavit is discernible from paragraphs 3 and 4, which are extracted below :

"3. It is submitted that in R2(a), the location of the post 'A', is shown as near to the eastern boundary of the petitioners' property. That is not correct.

The house is situated approximately thirty meters from the northern boundary. The electric post is situated approximately twenty meters to the south of the house. An application has already been submitted for shifting the post from the present position to the eastern boundary of the property. That application was made even prior to the application made by the 4th respondent.

4. A copy of the receipt for payment of the application fee is produced herein and marked as EXHIBIT P7. However no action has been taken in that application. If the post is shifted to the boundary as applied on behalf of the petitioners, the electric connection can be drawn for the 4th respondent through the boundary of the petitioner's property."

8. It is seen that location of the post, as shown in Ext. R2(a) sketch, was disputed from the part of the writ petitioners stating that the same is not actually planted/installed on the eastern boundary of the property of the petitioners. It is stated that an application has been preferred for causing the post to be shifted to the eastern side of the property of the petitioners and necessary fee has also been remitted, as discernible from Ext. P7 receipt. It was with reference to the said circumstances, that the learned

Judge made it clear (in paragraphs 5 & 6 of the judgment) that it was open for the petitioners to pursue the matter for causing the line to be shifted, u/s 17(1) of the Act, also alerting the petitioner about the appellate remedy available u/s 17 (2) of the Act.

8. The learned counsel for the appellant/writ petitioner submits that, despite the direction of the learned single Judge as above, the application for shifting the post filed by them as early as in 2012 is still to be considered. In the said circumstances, the competent authority is directed to finalize the application forming the subject matter of Ext. P7, after hearing the appellants and pass appropriate orders thereon, at the earliest, at any rate, within one month from the date of receipt of a copy of this judgment.

The Writ Appeal is disposed as above.

sd/-

**P. R. RAMACHANDRA MENON,
(JUDGE)**

sd/-

**BABU MATHEW P. JOSEPH,
(JUDGE)**

kmd