

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

FRIDAY, THE 9TH DAY OF JANUARY 2015/19TH POUSHA, 1936

WP(C).No. 474 of 2015 (H)

PETITIONER(S):

G.SUNIL KUMAR, AGED 48 YEARS,
ANANDA BHAVAN, VENKATTAMOODU, KALLARA,
NEDUMANGAD, THIRUVANANTHAPURAM.

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

RESPONDENT(S):

1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY, VIDHYUTHI BHAVAN
THIRUVANANTHAPURAM-695001.
2. DISTRICT COLLECTOR
COLLECTORATE, THIRUVANANTHAPURAM-695001.
3. THE DEPUTY CHIEF ENGINEER
KERALA 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.

R BY SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB
R BY GOVT. PLEADER SRI.S.JAMAL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
09-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT-P1: A TRUE COPY OF REPRESENTATION DATED 26.04.2010 MADE BEFORE THE 3RD RESPONDENT.

EXHIBIT-P2: A TRUE COPY OF REPRESENTATION DATED 26.04.2010 MADE BEFORE THE 4TH RESPONDENT.

EXHIBIT-P3: A TRUE COPY OF COMPLAINT DATED 13.05.2010 FILED BEFORE THE 2ND RESPONDENT.

EXHIBIT-P4: A TRUE COPY OF REPORT DATED 15.05.2010 OF VILLAGE OFFICER, KALLARA.

EXHIBIT-P5: A TRUE COPY OF ORDER NO.S1-41675/10 DATED 25.09.2010 OF THE 2ND RESPONDENT.

EXHIBIT-P6: A TRUE COPY OF DECREE DATED 08.11.2010 IN OS.324/10 ON THE FILE OF THE ADDL.MUNSIFF'S COURT, NEDUMANGAD.

EXHIBIT-P7: A TRUE COPY OF COMPLAINT FILED BEFORE THE HON'BLE LOK AYUKTA.

EXHIBIT-P8: A TRUE COPY OF ORDER DATED 21.11.2012 OF HON'BLE LOK AYUKTA IN COMPLAINT NO.19/2011 B.

EXHIBIT-P9: A TRUE COPY OF PHOTOGRAPHS DEPICTING THE EXISTENCE OF TRANSFORMER IN FRONT OF PETITIONER'S PROPERTY.

EXHIBIT-P10: A TRUE COPY OF JUDGMENT DATED 06.01.2014 IN W.P.(C) 31953/13 OF THIS HON'BLE COURT.

EXHIBIT-P11: A TRUE COPY OF ORDER DATED 01.02.2014 IN PROCEEDINGS NO.2/2014 OF THE 4TH RESPONDENT.

EXHIBIT-P12: A TRUE COPY OF APPEAL DATED 01.12.2014 FILED BEFORE THE 2ND RESPONDENT WITHOUT ANNEXURES.

RESPONDENT(S)' EXHIBITS : NIL.

//TRUE COPY//

P.S. TO JUDGE.

'C.R.'

V.CHITAMBARESH, J.

W.P (C) No.474 of 2015

Dated this the 9th day of January, 2015

J U D G M E N T

The petitioner contends that the value of his property has been materially diminished (blocking its ingress and egress as well) owing to the erection of a transformer and electric posts. It is however conceded that the transformer and the electric posts have been erected outside his property on the poramboke land on the side of the road. The first prayer in the writ petition is for an expeditious disposal of an application pending with the District Magistrate for shifting the transformer and the electric posts. The second prayer in the writ petition is for a direction to the Kerala State Electricity Board and its officials to assess the damages and pay compensation.

2. The petitioner maintains that the transformer and the electric posts were erected on the poramboke land along side the road notwithstanding his objection evidenced by representations. The suit filed by the petitioner as O.S.No.324/2010 seeking a decree of prohibitory injunction against the erection was admittedly dismissed for default. The District

collector refused to intervene in the erection of the transformer and the electric posts despite the report of the village officer favourable to the petitioner. The petitioner did move the Lok Ayuktha which directed the Kerala State Electricity Board and its officials to take a decision on the request of the petitioner to shift the transformer and the electric posts. But the Assistant Executive Engineer turned down the request of the petitioner on the ground that such shifting would cause substantial drop in the voltage of electricity. It was under these circumstances did the petitioner move the District Magistrate by an application under Section 17(3) of the Indian Telegraph Act, 1885 ['the Act' for short] seeking shifting and compensation.

3. I heard Mr. George Varghese Perumpallikuttiyil, Advocate on behalf of the petitioner and Mr. Sajeev. K. Gopal, Standing Counsel on the behalf of the Kerala State Electricity Board.

4. The relevant provisions in the Act which have a bearing on the case in hand are 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) x x x x
- (b) x x x x
- (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.

16. Exercise of powers conferred by section 10, and disputes as to compensation, in case of property other than that of a local authority:-

- (1) x x x x
- (2) x x x x
- (3) If any dispute arises concerning the sufficiency of the compensation to be paid under section 10, clause (d), it shall, on application for that purpose by either of

the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

17. Removal or alteration of telegraph line or post, on property other than that of a local authority:- (1) when, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in from, he may require the telegraph authority to remove or alter the line of post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District

Magistrate within whose jurisdiction the property is situate to order the removal or alteration.” (emphasis supplied)

5. The power of the telegraph authority to place and maintain a telegraph line under, over, along, or across, and posts in or upon any immovable property is under Section 10 of the Act. A person interested is entitled to be paid full compensation for any damage sustained by him under Section 10(d) of the Act by reason of the exercise of such power. Therefore the pre-requisite is that the telegraph line should have been placed under, over, along, or across and posts erected in or upon his immovable property. The same wording can be found in Section 17 of the Act relating to the power of the District Magistrate to order removal or alteration of telegraph line or post. The restriction is ofcourse only for making an application under Sections 10, 16 or 17 of the Act to the District Magistrate or the District Judge as the case may be. I am fortified in this view by the decision in Sudeesh v. K.S.E.B [2009 (3) KLT 860] which dealt with an application under Section 16 of the Act to remove an obstruction for installation on the side of a road.

6. The petitioner has no case that the telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon his property. The petitioner has also no case that the telegraph authority has exercised the powers in respect of the property vested in any local authority without obtaining its permission. The only case of the petitioner is that the transformer and the electric posts have been erected outside his property diminishing its value and affecting its access. The remedy if any of the petitioner is to move the civil court only for a decree of mandatory injunction or for damages in the alternative. The irresistible conclusion therefore is that the application filed by the petitioner with the District Magistrate for shifting or for compensation is not maintainable. No direction could be issued to the District Magistrate to consider an application not maintainable in law or to award compensation in the circumstances.

7. The petitioner contends that his right as an owner of the property adjacent to a street cannot be invaded relying on P.K.Wariyar v. State of Kerala and others [AIR 1990 Kerala 218]. The petitioner adds that

he should have an unhindered right of passage from his property to the public street relying on B.Govinda Rao v. District Collector and others [AIR 1983 Kerala 10]. These are matters to be addressed by the civil court as and when the petitioner institutes the proceedings and not for the District Magistrate to ponder over in a situation like this. 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. Resultantly this writ petition is dismissed without prejudice to the right if any of the petitioner to move any forum other than the District Magistrate as per law.

The Writ Petition is dismissed. No costs.

V.CHITAMBARESH,
Judge.

nj.