

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WP(C).No. 11741 of 2015 (P)

PETITIONER(S):

V.GOPINATHAN NAIR, AGED 75 YEARS
S/O.VALAYUDHAN PILLAI,
SHEEJA BHAVAN, PERUMPAZHUTHOOR P.O.
NEYYATTINKARA TALUK.

BY ADV. SRI.G.SUDHEER

RESPONDENT(S):

1. KERALA STATE ELECTRICITY BOARD
REPRESENTED BY ITS SECRETARY
VYDYUTHI BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 001.
2. ASSISTANT EXECUTIVE ENGINEER
KSEB, NEYYATTINKARA - 695 121.
3. RADHAKRISHNAN NAIR,
SREE BHAVAN, PERUMPAZHUTHOOR
PERUMPAZHUTHOOR, P.O., NEYYATTINKARA - 695121.
4. SYAMALA, W/O.RADHAKRISHNAN NAIR
SREE BHAVAN, PERUMPAZHUTHOOR P.O.
NEYYATTINKARA - 695 121.
5. MADHUSOODANAN NAIR, S/O.VELAPPAN NAIR
VASANTHA VILASOM, PERUMPAZHUTHOOR P.O.
NEYYATTINAKARA - 695 121.
6. HEMALATHA, VASANTHA VILASOM,
PERUMPAZHUTHOOR P.O.
NEYYATTINKARA - 695 121.
7. STATE OF KERALA, REPRESENTED BY GOVT. PLEADER
HIGH COURT, ERNAKULAM - 682 031.

R BY GOVERNMENT PLEADER SRI.GIKKU JACOB.

R BY SRI.SAJEEVKUMAR K.GOPAL,SC,KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-06-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.(C) NO.11741 OF 2015

PETITIONER'S EXTS:

- EXT.P1 COPY OF A PHOTOGRAPH PICTURISING THE INCIDENT ON 12.6.2010
- EXT.P2 COPY OF CASH RECEIPT SHOWING PAYMENT OF WORK COST FOR POST SHIFTING.
- EXT.P3 COPY OF THE CERTIFICATE DT. 5/7/2010 ISSUED BY NEYYATTINKARA MUNICIPALITY
- EXT.P4 COPY OF COMMISSION REPORT
- EXT.P5 COPY OF ORDER IN COMPLAINT NO.1632/2010 DATED 23/12/2013 OF HON'BLE LOK AYUKTHA.
- EXT.P6 COPY OF THE COUNTER FILED BY THE SECOND RESPONDENT.
- EXT.P7 COPY OF THE COUNTER FILED BY PETITIONER BEFORE DISTRICT MAGISTRATE IN THE PROCEEDINGS NO.SL.88758/13
- EXT.P8 COPY OF THE ORDER IN THE PROCEEDINGS OF DISTRICT MAGISTRATE AS S1-88753/2013 DT. 18/11/14.

//TRUE COPY//

P.S. TO JUDGE.

'C.R.'

V.CHITAMBARESH, J.

W.P (C) No.11741 of 2015

Dated this the 5th day of June, 2015

J U D G M E N T

Has not the District Magistrate the jurisdiction to direct the shifting of an electricity supply line beyond the boundaries of a property ?

2. A tree fell on the electricity supply line drawn across the property of the petitioner snapping it thus endangering human lives. The petitioner thought it wise to have the post as well as the electricity supply line shifted outside his property. The petitioner made a motion in that regard pointing out the adjacent public road to which it could be shifted. The officials of the Kerala State Electricity Board ['KSEB' for short] tentatively approved the spot. The petitioner was directed to deposit ₹ 2311/- towards labour charges which was readily done. The neighbours of the petitioner however obstructed the work alleging that vehicular traffic would be impeded.

3. This lead to the petitioner filing a complaint before the Kerala Lok Ayuktha which even deputed an Advocate Commissioner. The Advocate Commissioner reported that the public road pointed out

by the petitioner is of varying width. The report indicated that the width of the road adjacent to the house of the petitioner is 1.80 meters. The KSEB in the meanwhile moved the Additional District Magistrate for permission to shift. The Kerala Lok Ayuktha thereupon closed the complaint leaving the Additional District Magistrate to adjudicate.

4. The petitioner filed a counter statement before the Additional District Magistrate reiterating the need for shifting. The petitioner asserted that a shifting of the post and electricity supply line is imminent in the circumstances. The Additional District Magistrate eventually rejected the petition moved by the KSEB by Ext.P8 order. One of the reasons stated is that the Assistant Executive Engineer was not present for hearing. The other reason stated is that no permission could be granted under Section 17 of the Indian Telegraph Act, 1885. Needless to say that the powers of the Telegraph Authority can be exercised by the KSEB by virtue of Section 164 of the Electricity Act, 2003. The petitioner challenges Ext.P8 order as arbitrary and illegal and seeks permission to shift.

5. I heard Mr.G.Sudheer (Karakonam),

Advocate on behalf of the petitioner, Mr.Sajeev Kumar K Gopal, Advocate on behalf of the KSEB and Mr.Gikku Jacob, Government Pleader.

6. It is not as if the Additional District Magistrate has no jurisdiction to order a shifting beyond the boundaries of a property. The power is abundant under Rule 3 of the Works of Licensees Rules, 2006 ['the Rules' for short]. The Rules have been framed under Sections 67(2) and 176(2)(e) of the Electricity Act, 2003. Rule 3 of the Rules is as under:-

"3. Licensees to carry out works:-

(1) A licensee may -

(a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support;

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State

Government in this behalf, for carrying out the works.

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule(1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule(1) shall be subject to revision by the Appropriate commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act."

7. The first proviso to Rule 3(1) of the Rules empowers the licensee (KSEB) to obtain permission in writing from the District Magistrate. The second proviso to Rule 3(1) enables the owner or occupier to make a motion with the District Magistrate for permission in writing. Such permission is for

carrying out the works including removal or alteration of support, stay or strut. The power can be exercised to shift the post and electricity supply line beyond the boundaries of a property even. The restriction to be within the boundaries can be seen under Section 17 of the Indian Telegraph Act, 1885. There is however no such restriction under the Rules which the Additional District Magistrate has lost sight of. It will be atrocious to hold that there is no power to shift beyond the boundaries of a property.

8. I am conscious of the following decisions which delineates the power of the District Magistrate under Section 17 of the Indian Telegraph Act, 1885.

- i) Moan M. Joseph v. The Kerala State Electricity Board [2014 (2) KLT 13]
- ii) Ali v. The Additional District Magistrate [2013 (4) KLT 428]
- iii) Narayanan Nair and another v. Kunchikrishnan Nair and others [2009 (2) KHC 941]

The above decisions were rendered in the context of Section 17 of the Indian Telegraph Act, 1885 and with reference to Rule 3 of the Rules. There is no necessity to call in aid Section 17 of the Indian Telegraph Act, 1885 in the wake of the Rules. The

Rules having been framed under the Electricity Act, 2003 itself should undoubtedly gain precedence.

9. All that the petitioner wants is to shift the post and the electricity supply line to the public road flowing adjacent. Whether the erection of a post on the road would impede the vehicular or pedestrian traffic is a different issue. That is a matter to be decided by the Additional District Magistrate on the basis of the relevant inputs. I am also inclined to grant an opportunity to the parties to place their contentions before the authority.

10. Ext.P8 order declining the request to shift the post and electricity supply line beyond the boundaries of the property is quashed. The Additional District Magistrate is directed to pass orders anew with notice to the interested parties. The needful shall be done within a period of two months from the date of receipt of a copy of this judgment.

The Writ Petition is allowed. No costs.

Sd/-
V.CHITAMBARESH,
Judge.

nj.