

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 25312 of 2014 (L)

PETITIONER :

GIGI.K.S., AGED 41 YEARS,
S/O SANKARAN, KOONAMPILLY HOUSE, AZHAKAM P.O.,
KARUKUTTY- 683577.

BY ADV. SRI.S.MOHAMMED AL.RAFI

RESPONDENTS :

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1. THE KERALA STATE ELECTRICITY BOARD LTD.,
REPRESENTED BY THE SECRETARY, PATTON,
THIRUVANANTHAPURAM 695004.
 2. THE ASSISTANT EXECUTIVE ENGINEER,
ELECTRICAL SUB DIVISION,
KERALA STATE ELECTRICITY BOARD, ANGAMALY 685561.
 3. THE ADDITIONAL DISTRICT MAGISTRATE,
ERNAKULAM-682030.
 4. A.P.POULOSE,
ARIKUPURATH HOUSE, AZHAKOM P.O, KARUKUTTY,
ERNAKULAM 683577.

R4 BY ADV. DR.K.P.PRADEEP
BY GOVERNMENT PLEADER SRI.REJI JOSEPH
BY SRI.SAJEEV KUMAR K.GOPAL, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27-10-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 25312 of 2014 (L)

APPENDIX

PETITIONER'S EXHIBITS :-

EXHIBIT P1 TRUE COPY OF THE SALE DEED DATED 10-04-2000 IN FAVOUR OF THE PETITIONER.

EXHIBIT P1(a) TRUE COPY OF THE NOTICE DATED 09-06-2014 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER.

EXHIBIT P2 TRUE COPY OF THE ORDER No K. Dis./40088/2014/MS DATED 11-09-2014 ISSUED BY THE 3RD RESPONDENT.

EXHIBIT P3 TRUE COPY OF THE ROUGH SKETCH OF THE PROPERTIES OF THE PETITIONER AND 4TH RESPONDENT.

RESPONDENTS' EXHIBITS :- NIL.

True copy

P.A to Judge

ANIL K.NARENDRA, J.

W.P.(C)No.25312 of 2014

Dated this the 27th day of October, 2015

JUDGMENT

The petitioner, who is in possession and ownership of a property having an extent of 7¾ cents of land comprised in Re.Sy.No.19/3/13 and 19/3/11 of Moothannoor Village covered by Ext.P1 sale deed dated 10.4.2000, has filed this Writ Petition seeking a writ of certiorari to quash Ext.P2 proceedings of the Additional District Magistrate, Ernakulam, the 3rd respondent herein dated 11.9.2014.

2. Going by the averments in the Writ Petition, on the northern side of the petitioner's property the 4th respondent is having more than 1 acre of paddy land. The 4th respondent approached the Assistant Executive Engineer, Electrical Sub Division, Angamaly, the 2nd respondent herein for electricity connection to his motor shed in the aforesaid 1 acre of paddy land for agricultural purpose. When the drawing of line to the 4th respondent's property was objected to by the petitioner and the

neighbouring land owners, the 2nd respondent referred the matter to the 3rd respondent under Section 16(1) of the Indian Telegraph Act, 1885. The 3rd respondent issued Ext.P1(a) notice dated 9.6.2014 to the petitioner, the 4th respondent and also to the neighbouring land owners proposing to conduct a personal hearing on 24.6.2014. After conducting a personal hearing on 24.6.2014, which was followed by a local inspection conducted on 26.8.2014, the 3rd respondent issued Ext.P2 order by permitting the 2nd respondent to draw electric line to the motor shed in the paddy land of the 4th respondent through the route 'ABCD'. It is aggrieved by the aforesaid order the petitioner is before this Court in this Writ Petition seeking various reliefs.

3. By order dated 29.9.2014, this Court issued an interim direction that Ext.P2 shall not be enforced for a period of two weeks, which interim order was extended until further orders on 13.10.2014.

4. I Heard the arguments of the learned counsel for the petitioner, the learned Standing Counsel for the KSEB, the learned Government Pleader appearing for the 3rd respondent and also the learned counsel appearing for the 4th respondent.

5. The sole issue that arises for consideration in this Writ Petition is as to the legality or otherwise of Ext.P2 order passed by the 3rd respondent in exercise of his powers under Section 16(1) of the Act.

6. Section 10 of the Telegraph Act empowers the Telegraph Authority to maintain telegraph line and place under, over, along or across, and posts in or upon, any immovable property. It is in exercise of the powers under Section 10 of the Act respondents 1 and 2 are drawing electric lines. Clause (d) of Section 10 of the Act mandates that in exercise of the powers conferred by Section 10 of the Act, the telegraph authority shall do as little damage as possible. Under Sub-section (1) of Section 16 of the Act, if the exercise of the powers mentioned in Section 10 in respect of property referred to in clause (d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise such powers. It is in exercise of the aforesaid power under Section 16(1) of the Act, the 3rd respondent issued Ext.P2 order by which the 2nd respondent has been accorded sanction to give electric connection to the motor shed in the paddy land of the 4th respondent through the route 'ABCD'.

7. A reading of Ext.P2 order would show that no reasons whatsoever have been stated by the 3rd respondent to overrule the objections raised by the petitioner against the proposal to draw electric line over his property. Ext.P2 order does not reflect an application of mind by the 3rd respondent as to the objections raised by the petitioner and other neighbouring land owners and also the technical feasibility of the routes proposed by the 2nd respondent and other relevant considerations. It is pertinent to note that under clause (d) of Sub-section (1) of Section 4 of the Right to Information Act, 2005, the 3rd respondent being a public authority is duty bound to provide reasons for its quasi-judicial decisions affecting the right of private individuals. In that view of the matter Ext.P2 order passed by the 3rd respondent which does not reflect an application of mind by the said authority on the issues involved in the case and does not state any valid reason for overruling the objections raised by the petitioner and others, cannot be sustained.

8. In the result, Ext.P2 order passed by the 3rd respondent is set aside and the said respondent is directed to reconsider the matter and pass a reasoned order with notice to the petitioner, the 4th respondent and also to others referred to in Ext.P2 order. The 3rd

respondent shall pass appropriate orders in this regard, as expeditiously as possible, at any rate, within a period of two months from the date of receipt of a certified copy of this judgment.

9. The learned counsel for the 4th respondent would submit that in order to minimise the inconvenience/damage caused to the neighbouring land owners the 4th respondent is prepared to meet the additional expenses that may be incurred by respondents 1 and 2 for laying an underground cable in order to provide electric connection to the motor shed in his paddy land. If any such proposal is made by the 4th respondent, the same shall also be dealt with by the 3rd respondent while taking a fresh decision on the matter, subject to technical feasibility.

The Writ Petition is disposed of as above.

Sd/-
ANIL K.NARENDRA, JUDGE

skj

True copy

P.A to Judge