

In the High Court of Judicature at Madras

Reserved on : 23.06.2015

Dated : 06.07.2015

Coram:

The Hon'ble Mr. Justice SATISH K. AGNIHOTRI

and

The Hon'ble Mr. Justice M. VENUGOPAL

W.A.No.834 of 2015
and M.P.No.1 of 2015

1. The Government of Tamil Nadu
rep. by its Principal Secretary,
Energy Department,
Secretariat, Chennai-600 009.

2. TANTRANSO
rep. by its Chairman,
10th Floor, BPKRR Maligai,
144, Anna Salai,
Chennai-600 002. ... Appellants

Vs.

1. M. Raghupathy
2. G. Sitrarasu
3. K. G. Rajamanikkam
4. C. Kannabiran
5. Subramani Naicker
6. K. Muthu Naicker
7. A. Kannan
8. P. Dhanasekaran
9. S. Ramalingam
10. K. Devaraj
11. G. Palanivel
12. S. Thulasingham

13. The District Collector,
Collectorate,
Vandavasi Road,
Kancheepuram-631 501.

14.Gammon India Pvt. Ltd.,
rep. by its Authorised representative,
Eswaran Koil Street,
Melmaruvathur-603 319,
Kancheepuram District.

... Respondents

Prayer: Writ Appeals filed under Clause 15 of the Letters Patent Act, against the order dated 10.06.2015 and made in M.P.No.1 of 2015 in W.P.No.16620 of 2015 by the learned Judge of this Court.

Petition praying this court to pass an order of interim injunction, restraining the respondent and their subordinates from in any manner proceeding to take further steps with, the laying of 400 KV transmission lines from Kalivanthapattu to Ottiyampakkam through the Villages of Kayar, Thiruporur Taluk, Kancheepuram District and

(ii) Writ Petition under Article 226 of the Constitution of India, praying that in these circumstances stated therein and in the respective affidavit filed therewith the High Court will be pleased to issue a writ order or direction, in the nature of a writ of mandamus forbearing the respondents and their subordinates from laying the proposed 400 KV transmission lines from Kalivanthapattu to Ottiyampakkam through the Villages of Kayar and Vembedu without complying with the provisions of Sec. 68 of the Electricity Act 2003 and Sec.16 of the Telegraph Act 1885 and other applicable legal provisions as also consider the petitioners alternate proposal for laying the above stated transmission lines. (WP.16620/2015).

For Appellants : Mr.A.L.Somayaji
Advocate General
Asst. by Mr.Abdul Saleem

For Respondent : Mr.K.Balu &
Nos.1, 3 to 12 Mr.M.R.Jothimanian

For Respondent : No Appearance
No.2

For Respondent : Mr.P.S.Siva Shanmugasundaram
No.13 Special Government Pleader

For Respondent : Mr.A.R.L.Sundaresan, SC
No.14 for M/s.Revathi Ramachandran

J U D G M E N T

M.VENUGOPAL, J.

The Appellants/Respondents 1 & 2 have focused the instant Writ Appeal before this Court as against the order dated 10.06.2015 in M.P.No.1 of 2015 in W.P.No.16620 of 2015 passed by the Learned Single Judge

2.The Learned Single Judge while passing the impugned order in M.P.No.1 of 2015 in W.P.No.16620 of 2015 in paragraphs 11 and 12 had observed as under:

"11.In the case on hand, it is the specific case of the petitioners that installation of transmission lines is in complete disregard to the statutory provisions and no approval from the appropriate Government has been obtained. Photographs have also been produced along with the typed set of documents which would disclose that huge pits have been dug resulting in water storage in the pits. This Court, taking into consideration of the averments made in the affidavit filed in support of the writ petition that the petitioners are doing agricultural operations and on account of the acts of the respondents 2 and 4, their livelihood are likely to be affected, is of the view that a prima facie case is made out for grant of interim orders. The present position is that earth has been dug and poles/pylon towers are yet to be erected.

12.In the result, there shall be an order of Status Quo as exists today till 14.07.2015 only with regard to removal of earth and erection of poles/towers in respect of lands owned by the petitioners alone."

3.Assailing the correctness of the impugned order dated 10.06.2015 in M.P.No.1 of 2015 in W.P.No.16620 of 2015 passed by the Learned Single Judge, the Learned Advocate General appearing for the Appellants submits that Writ Petition filed by the Respondents 1 to 12/Writ Petitioners is barred by the Principles of Constructive Res-judicata, as all the issues raised in the present W.P.No.16620 of 2015 were raised before the National Green Tribunal (South Zone) at Chennai, this Court, as well as before the Hon'ble Supreme Court.

4.The Learned Advocate General for the Appellants urges before this Court that National Green Tribunal, Chennai as well as the Hon'ble Apex Court rejected the case of similar petitioners on the very same issues and in reality, the applicant before the National Green Tribunal as well as the Hon'ble Supreme Court had canvassed the case of all the villagers as an agriculturist, social worker, ex councillor, ex-president and his case was cemented on the representations which was signed by the Writ Petitioners 1, 2, 3, 4, 6, 7 & 11 in the above Writ Petition.

5.Advancing his argument, the Learned Advocate General emphatically submits that the plea of approval under Section 68 of the Electricity Act 2003, was specifically considered by the Hon'ble Supreme Court and even before the National Green Tribunal, it was not only environmental issues but other issues including the approval under Section 68 of the Electricity Act 2003 were raised and considered.

6.Expatiating his contention, the Learned Advocate General appearing for the Appellants projects an argument that the Appellants/Respondents 1 & 2 do have the approval in terms of Section 164 of the Electricity Act, 2003 and in any case, approval under Section 68(1) of the Electricity Act, 2003 is required only for an overhead line but not in respect of the dedicated transmission line as held by this Court in W.P.Nos.22967, 23243 to 23246 of 2011 and W.P.No.16799 of 2013.

7.The Learned Advocate General categorically contends that in view of the approval in terms of Section 164 of the Electricity Act, 2003, no notice or consent of the owner/occupier of any land is required for erection of towers.

8.At this stage, the Learned Advocate General adverts to the Rule (3)(4) of the Works of Licensees Rule, 2006 which clearly enjoins that nothing contained in Rule 3 shall affect the power conferred upon any licensees under Section 164 of the Electricity Act, 2003.

9.The Learned Advocate General submits that in fact, the public notice in regard to the route of erection of towers was published in Tamil and English Newspapers as well as a Gazette Publication calling for objections but no objection was received from any one. Further, National Green Tribunal as well as the Hon'ble Supreme Court had considered the report of the District Collector together with other Revenue Officials which contemplates that atmost 80 to 85% of the lands were vacant.

10.The stand of the Appellants is that the villagers which includes the Petitioners had not disputed the report of the District Collector and in fact, ground of cultivation being affected was effectively considered by the National Green Tribunal as well as the Hon'ble Supreme Court and the same was rejected and as such, the same cannot be the basis for grant of interim order in the present Writ Petition. Apart from that, there is no prima-facie case in favour of the Writ Petitioners/Respondents 1 to 12 and the Writ Petition filed by them is per se not maintainable.

11.Added further, on behalf of the Appellants, the plea taken before this Court is that the present project is of Rs.2300 crores and there cannot be any deviation from the actual lay out of the project at the instance of the Petitioners since the project was undertaken after due consideration of various factors which includes the route particulars, environmental impact, infrastructural issues etc., and there cannot be any detour or deviation or moreover, when the entire issue on all grounds raised by the Petitioners had been rejected by the National Green Tribunal, Chennai as well as the Hon'ble Supreme Court.

12.It is represented on behalf of the Appellants that the project has been stalled because of the proceedings initiated by the applicant and in any case, public interest to more important than the private vested interest of certain individuals.

13.The Learned Advocate General appearing for the Appellants cites the decision of the Full Bench in Bharat Plywood and Timber Products Private Ltd., V. Kerala State Electricity Board, Trivandrum and others reported in AIR 1972 Kerala 47 (V 59 C 10) at page 50 and 51 whereby and where-under in para 14, it is observed as follows:

"14.At the outset it has to be mentioned that any public officer, licensee or any other person on whom the powers of a telegraph authority under Part III of the Telegraph Act have been conferred by the State Government acting under Section 51 of the Electricity Act has no power to take initiative for the acquisition of land under the Land Acquisition Act by virtue of the conferment of such power. We must also point out that there is no acquisition or requisition of land involved when the powers under Section 10 of the Telegraph Act are exercised. This is clear from proviso (b) to Section 10 which we have already read. The only right involved is a right of user of the property for the purposes mentioned in the section. The fact that an authority on whom powers under Section 10 of the Telegraph Act have been conferred may have certain rights and that certain other authorities may take steps for acquisition of land for public purposes under the Land Acquisition Act cannot be the criterion for deciding whether the statutory provision in Section 51 of the Electricity Act, or that in Section 10 of the Telegraph Act is discriminatory. (see State of Gujarat V. Shantilal Mangaldas. AIR 1969 SC 634, para 34)"

14.On behalf of the Appellants, the Learned Advocate General relies on the Division Bench decision of this Court in Union of India, Ministry of Petroleum, rep. by its Secretary to Government of India, 207-A, Shastri Bhavan, New Delhi-110 001 V. Government of Tamil, rep. by its Principal Secretary and Chairman for all State Transport Undertakings, Transport Department, Fort St. George, Chennai-600 009 & 3 others reported in 2013 (3) LW 201 at special page 212 wherein in paragraphs 23 & 24 it is observed and held as follows:

"23.In the present case, the interim order passed by the learned single Judge, though does not finally decide a issue, but materially and directly affects the appellant, as the Oil Marketing Companies, which supply diesel to the first respondent herein, would be required to supply diesel at the rate at which they are supplying to the retail consumers thereby causing daily loss to the Oil Marketing Companies running into several crores of rupees, and thus burdening the appellant in grant of subsidy. The view, which we are taking, is in lines with the principles

laid down by the Honble Supreme Court in Shah Babulal Khimji vs. Jayaben D.Kania and another (supra) (which has been followed by the Honble Supreme Court in the case of Midnapore Peoples Coop.Bank Ltd., (supra), wherein the Honble Supreme Court, while considering the scope of Clause 15 of the Letters Patent had held that every interlocutory order cannot be regarded as a judgment, but only those orders would be judgments, which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.

24. Thus, the appeal preferred under Clause 15 of the Letters Patent by the appellant is maintainable."

15. Also in the aforesaid decision, the Learned Advocate General relies on paragraphs 8 and 11 at page 207 & 208 which reads as follows:

"8. The learned Advocate General raised a preliminary objection with regard to the maintainability of the writ appeal. According to him, the impugned order passed by the learned single Judge does not amount to a judgment, and hence no appeal would lie under Clause 15 of the Letters Patent. In support of the same, he has relied upon the decisions of the Honble Supreme Court in the case of Midnapore Peoples Coop.Bank Ltd. vs. Chunilal Nanda reported in 2006 (5) SCC 399, and a Division Bench Judgment of this Court in the case of Green Peace Construction Pvt.Ltd. vs. R.Shivakumar reported in 2011 (1) CTC 48.

11. He, further submitted that by passing an order of temporary injunction, the learned single Judge had, in effect, granted the final relief, as claimed for by the Government of Tamil Nadu, which could not have been done. He has relied upon the decisions of the Honble Supreme Court in the case of Special Director and another vs. Mohd. Ghulam Ghouse and another reported in 2004 (3) SCC 440; State of U.P. and others vs. Ram Sukhi Devi (supra) and State of U.P. and others vs. Modern Transport Company, Ludhiana and another (supra). According to him, if the learned single Judge was inclined to pass an order of interim injunction in favour of the Government of Tamil Nadu, on its application, pending writ petition, he ought to have protected the interests of the respondents, in case the writ petition ultimately fails. In support of this submission, he relied upon the decision of the Honble Supreme Court in the case of Mahanadi Coalfields Ltd. vs. Orient Paper and Industries Ltd and others reported in 1995 Supp (2) SCC 717.

Learned Additional Solicitor General of India also submitted that supply of diesel by the oil companies to the State Transport Undertakings, owned by the Government of Tamil Nadu, fall under the realm of contract and the Court cannot alter the terms of the contract or re-write the contract. For this submission, he relied upon the decision of the Honble Supreme Court in the case of Union Territory of Pondicherry and others vs. P.V.Suresh and others reported in 1994 (2) SCC 70. In any event, he submitted that the policy decision taken by the Government of India on 17th January, 2013 to sell diesel to all consumers taking bulk supplies directly from the installations of the oil marketing companies at the non-subsidized market determined price with immediate effect, and that the oil marketing companies will not be eligible to any subsidy on such direct sale of diesel to bulk consumers, was in the interest of the nation so as to reduce the burden of subsidy provided by the Central Government to the oil marketing companies and to undertake other welfare schemes, and as such the same cannot be questioned in any court of law."

16.The Learned Advocate General seeks in aid of the judgment of the Hon'ble Supreme Court in State of Karnataka and another V. All India Manufacturers Organisation and others reported in 2006 (4) Supreme Court Cases 683 and at special page 684, wherein in paragraphs 20 and 21, it is observed and held as follows:

"20.Even while the said writ appeals filed in the land acquisition matters were pending before the High Court, a second round of writ petitions challenging the Project itself was filed before the High Court. Despite the High Court's go-ahead for the Project in 1997, and after seven years of implementation, suddenly in the year 2004, these petitions were filed against it in so-called "public interest" by two Members of the Legislative Assembly (hereinafter "MLAs") and a "social worker" (i.e. Mr. J.C. Madhuswamy and others). This petition prayed for a CBI enquiry and to restrain the State Government from continuing with the Project or acquiring any further land thereunder. Perhaps inspired by Mr. J.C. Madhuswamy and others, and also in the so-called "public interest", All India Manufacturer's Organisation, as well as two ex-Mayors of Mysore (Mr. Dakshinamurthy and another), moved the High Court for a direction to the State Government to implement the Project according to the FWA.

21.The High Court in the impugned judgment (vide Paragraph 18) raised the following two questions for consideration in the three writ petitions:

(1) Whether the FWA entered into between the Government of Karnataka and Nandi was a result of any fraud or misrepresentation as alleged by J.C. Madhuswamy and others and the State Government?

(2) Whether any excess land than what is required for the Project had been acquired by the State Government and whether it is open to it to raise such a plea?"

17.The Learned Advocate General by means of reply submits that "this is a transmission line and there is no necessity to obtain approval under the Indian Electricity Act and further, prima facie no approval is necessary". That apart, neither Section 68 nor Section 164 of the Electricity Act contemplates public hearing. In fact, no rights of the individuals are affected. Also that, it is represented on behalf of the Appellants that the TANTRANSCO had sanctioned for erection of transmission lines mentioned in the Letter No.Se/GCC-I/CNI/Tech/CHD/F.t&d/Notification/D.1031/2011 and only in the year 2014, A.No.33 of 2014 was projected before the National Green Tribunal by one K.G.Mohanaraman.

18.The Learned Advocate General for the Appellants submits that only out of total distance of 780 kms from kayathar, a distance of 730 kms was covered and 237 towers were erected.

19.Lastly, it is submitted on behalf of the Appellants that the project is of great importance for the public and the State as it transmits the wind energy from Kayathar to Ottiyambakkam (Chennai City) which can be tapped in large quantity from June to November.

20.Per contra, it is the submission of the Learned counsel for the Respondents 1, 3 to 12 that the Appellants seek to project an alarming situation as if the entire transmission scheme from Kayathar to Sholinganallur would be in jeopardy if the interim order is not vacated. Furthermore, it is represented on behalf of the Respondents that a perusal of the policy note of the Government of Tamil Nadu for 2015-16, the transmission line from Kalivanthapattu to Ottiambakkam is just a sub component of the entire project which would not affect the transmission of power from Kayathar to Kalivanthapattu. Moreover, the Kalivanthapattu to Ottiyambakkam sub component of the transmission line is basically intended to serve the requirements of the software companies in and near the Sholinganallur and would not affect the wind power transmission to the rest of the city.

21.The Learned counsel for the Respondents 1, 3 to 12 contends that the Learned Single Judge had rightly passed an order of status quo in M.P.No.1 of 2015 in W.P.No.16620 of 2015 and in fact, the Appellants would exhaust their remedy before the Learned Single Judge by taking necessary steps to vacate the interim order and in reality, they should not approach this Court to interfere with the said order of the Learned Single Judge in the present Writ Appeal.

22. According to the Learned counsel for the Respondents 1, 3 to 12 that the Principle of Constructive Res-judicata has no application to the facts of the present case. To apply the said principle, it is to be noted that the Respondents in this case must have also been parties to the earlier litigation. Inasmuch as the fundamental requirement has not been fulfilled, the Appellants' plea of Constructive Res-judicata has no application in the instant case on hand as per decision of Indian Oil Corporation Ltd., V. State of Bihar and others reported in 1986 (4) SCC 146.

23. The Learned counsel for the Respondents 1, 3 to 12 proceeds to project an argument K.G.Mohanaraman before the National Green Tribunal in A.No.33 of 2014 had not claimed that he had filed the application on behalf of the villagers and as such, by no stretch of imagination, the applicant before the National Green Tribunal could be taken as representing the interest of the Respondents.

24. The Learned counsel for the Respondents 1, 3 to 12 submits that the National Green Tribunal in para 37 of its orders had rightly refused to go into issues relating to Section 68 of the Electricity Act and in fact, the applicant therein had not challenged any of the proceedings/Government order or notification in respect of erecting a transmission line etc., and inasmuch as the National Green Tribunal had refused to go into this issues the principles of res-judicata cannot apply.

25. Yet another stand of the Respondents 1, 3 to 12 is that the Electricity Act, 2003 has not mentioned in Schedule I of the National Green Tribunal Act 2010 and in fact, the National Green Tribunal Act 2010 speaks of only seven legislations in respect of which the Tribunal would have jurisdiction and as such, even if the National Green Tribunal Act had proceeded to decide the issue still it could be a decision without jurisdiction.

26. The Learned counsel for the Respondents 1, 3 to 12 brings it to the notice of this Court that the Appellants had failed to consider the following facts pertaining to the alternate route:

a) The land use maps obtained from the Institute of Remote Sensing, Anna University clearly indicates the availability of Eriporamboke (250 acres), Mei Kalporamboke (200 acres) forming a distance of about 5.5 kms.

b) The route map obtained by Tan Transco from a Private company shielded the facts mentioned at (a) above showing Eriporamboke as Bushes and Mei Kalporamboke as Reserve Forest to misguide the authorities.

c) The Forest Clearance for Linear Infrastructure Projects is possible and upto 40 hectares collector has a say and the local committee can clear the same.

d) In the present project, the crossing through forest will be less than 10 hectares and a distance of only around 2 kms.

e) A similar clearance obtained for 2.58 kms by Power Grid Corporation around the same Kalivanthapattu location has been produced before the Learned Single Judge.

f) If the entire route from Kalivanthapattu to Ottiyambakkam is adopted as suggested by Institute of Remote Sensing, Anna University, the project could have been completed in 18 kms instead of 24 kms avoiding Reserve Forest, Plantation Lands and Hamlets completely by taking the line through Government Lands predominantly.

27. Apart from the above, the Learned counsel for the Respondents 1, 3 to 12 contends that no approval was given by the appropriate Government under the provisions of Section 68(1) of the Electricity Act, 2003 that this provision deals with the requirement of obtaining route approval for 'overhead lines' was not complied with. Furthermore, the project involves as transmission line to be erected as overhead line in excess of 11KV and as such, the permission from the State Government is mandatory. In effect, the stand of the Respondents is that the Appellants cannot proceed with the proposed permission lines since no approval from the appropriate Government was obtained under Section 68 to lay the lines in question.

28. The Learned counsel for the Respondents 1, 3 to 12 categorically put forward the argument that approval under Section 68 of the Electricity Act, 2003 and an order of empowerment under Section 164 of the Electricity Act, 2003 serve two different purposes and one is not a substitute for the other.

29. The Learned counsel for the Respondents 1, 3 to 12 submits that an endeavour by the Appellants to erect transmission towers without obtaining owners' consent is an invalid one. Furthermore, by a conjoint reading of Section 12(1) and 12(2) of the Indian Electricity Act, 1910 it is quite clear that there is a prohibition on a licensee namely, the First Appellant/Government of Tamil Nadu from erecting transmission lines without obtaining the approval of the owner. That apart, Section 185(2)(b) of the Electricity Act makes it clear that the provisions of Sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under Sections 67 to 69 of the Act are made. Although rules were made under Section 67, no rules have been made under Sections 68 and 69.

30. The Learned counsel for the Respondents 1, 3 to 12 invites the attention of this Court to Section 67 of the Electricity Act which deals with laying of transmission lines underground and Section 68 deals with 'overhead transmission lines'. The forceful plea of the Respondents is that inasmuch as no rules are made under Sections 68 & 69, the provisions of Section 12(1) & Section 12(2) of the Electricity Act, 1910 would continue to apply and since these provisions require the permission of the owners and when this was not obtained, the Appellants cannot proceed with the works.

31. The Learned counsel for the Respondents 1, 3 to 12 contends that the Appellants were proceeding to erect the transmission towers without the consent of the Respondents is in violation of Rule 3(1) of the Works of Licensee Rules, 2006. Also that the

Appellants cannot act in defiance to Section 16 of the Indian Telegraph Act, 1885, in and by which, permission from the District Magistrate has to be obtained. Moreover, the Respondents had violated Article 300(A) of the Constitution of India, in and by which, the Respondents do have a right to hold the property.

32.The Learned counsel for the Respondents 1, 3 to 12 submits that ingredients of Sections 64 & 65 of the Central Electricity Authority (Measures relating to Safety and Electricity Supply) 2010, impose restrictions of transporting and dumping of materials near transmission lines and also impose severe restrictions on agriculture, thereby damaging the livelihood of the farmers. Besides this, it is represented on behalf of the Respondents that the District Collector/Thirteenth Respondent had ignored the provisions mentioned in Ordinance No.9 of 2014 of the Government of India which contains a new provision, removing the exemption previously granted under the Electricity Act for acquisition.

33.The Learned Senior counsel for Fourteenth Respondent contends that numerous persons claim to be agriculturists and social workers of Kayar village and Vembedu village, projected applications before the National Green Tribunal (South Zone), Chennai restraining the Fourteenth Respondent and the Second Appellant from laying the High Tension Transmission Lines through the agricultural lands of K.G.Mohanaraman and other agriculturists of Kayar Village and Vembedu village destroying the ecological balance of the said villages.

34.At this stage, the Learned Senior counsel for the Fourteenth Respondent refers to the order of the National Green Tribunal, South Zone at Chennai in A.No.33 of 2014 dated 22.04.2015 wherein it was observed that the Tribunal was unable to notice any ground urged, would cause degradation to environment and damage to ecology and dismissed the said application. Further, even on the other issues including the Government approval under Section 68 of the Electricity Act, 2003 and Rules 64 and 65 of the Central Electricity Authority Regulations were raised and consequently, the same was rejected by the National Green Tribunal, South Zone, Chennai. Assailing the order passed in A.No.33 of 2014 dated 22.04.2015 passed by the National Green Tribunal, South Zone, Chennai, one K.G.Mohanaraman projected W.P.No.13844 of 2015 before this Court and on 30.04.2015, the Division Bench of this Court had dismissed the said Writ Petition as withdrawn.

35.Even the appeal preferred by the said Mohanaraman before the Hon'ble Supreme Court praying to set aside the order dated 22.04.2015 passed by the National Green Tribunal, South Zone, Chennai was dismissed by the Hon'ble Supreme Court.

36.The Learned Senior counsel for the Fourteenth Respondent submits that numerous persons from the same village had filed W.P.No.16620 of 2015 before this Court, claiming the same relief and in fact, the said Writ Petition is hit by the 'Principles of Constructive Res-judicata'. In this regard, the Learned Senior

counsel for the Fourteenth Respondent relies on the decision of the Hon'ble Supreme Court in Forward Constructions Co., and others Vs. Prabhat Mandal and others reported in AIR 1986 SC 391 and at special page 397 whereby and where-under it is observed as follows:

"So far as the first reason is concerned, the High Court in our opinion was not right in holding that the earlier judgment would not operate as res judicata as one of the grounds taken in the present petition was conspicuous by its absence in the earlier petition. Explanation IV to s.11 C.P.C. provides that any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. An adjudication is conclusive and final not only as to the actual matter determined but as to every other matter which the parties might and ought to have litigated and have had it decided as incidental to or essentially connected with the subject matter of the litigation and every matter coming within the legitimate purview of the original action both in respect of the matters of claim or defence. The principle underlying Explanation IV is that where the parties have had an opportunity of controverting a matter that should be taken to be the same thing as if the matter had been actually controverted and decided. It is true that where a matter has been constructively in issue it cannot be said to have been actually heard and decided. It could only be deemed to have been heard and decided. The first reason, therefore, has absolutely no force.

The second reason given by the High Court however, holds good. Explanation VI to s.11 provides :

"Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section be deemed to claim under the persons so litigating."

But it is only when the conditions of Explanation VI are satisfied that a decision in the litigation will bind all persons interested in the right litigated and the onus of proving the want of bona fides in respect of the previous litigation is on the party seeking to avoid the decision. The words "public right" have been added in Explanation VI in view of the new s.91 C.P.C. and to prevent multiplicity of litigation in respect of public right. In view of Explanation VI it cannot be disputed that s. 11 applies to public interest litigation as well but it must be proved that the

previous litigation was the public interest litigation not by way of a private grievance. It has to be a bonafide litigation in respect of a right which is common and is agitated in common with others.

The High Court in the earlier writ petition had recorded a finding that it was not a bona fide litigation and that Shri Thakkar, the petitioner in that case, had been put up by M/s. Western Builders. This finding excludes the application of s.11 C.P.C. in the present case. The possibility of litigation to foreclose any further enquiry into a matter in which an enquiry is necessary in the interest of public cannot be overruled. In view of the finding of the High Court that the previous writ petition was not a bona fide one, the present writ petition would not be barred by s.11 of the C.P.C. and the High Court was justified in so holding but not because of the first reason but because of the second reason."

37.The Learned Senior counsel for the Fourteenth Respondent strenuously contended that Section 68 of the Electricity Act, 2003 applies only to the 'over head lines' but not to a dedicated transmission line as determined under Section 2(16) of the Electricity Act, 2003. Therefore, an approval of the State Government under Section 164 of the Tamil Nadu Electricity Act, 2003 alone is sufficient in such matters.

38.In this connection, the Learned Senior counsel for the Fourteenth Respondent refers to the order of this Court in P.Nachimuthu & others Vs. District Collector & others [in W.P.Nos.22967, 23243 to 23246 of 2011], whereby and where-under it is held as follows:

"23.A conjoint reading of the above said provision would show that Section 2(16) of the Electricity Act, 2003 deals with dedicated transmission lines which is a separate category. The said dedicated transmission lines are confined to a generation station referable to section 10 of the Act. Section 2(72) of the Electricity Act, 2003 deals with all other transmission lines other than dedicated transmission lines. Overhead lines have been specifically dealt with under Section 2 (48) of the Electricity Act, 2003. A combined and conjoint analysis of above three Sections would lead to the conclusion that they operate on their own distinct and separate fields. In other words, a dedicated transmission line as defined under Section 2(16) of the Electricity Act, 2003 is not a transmission line provided under Section 2(72) or a overhead line under Section 2(48) of the Electricity Act, 2003.

27. Section 68 of the Electricity Act, 2003 mandates that an overhead line shall be installed only with the prior approval of the appropriate Government. This Section has to be read with the definition of overhead line as provided under sub-clause 48 of Section 2. As discussed above, the definition of sub-section 48 of Section 2 would certainly exclude the dedicated transmission line as provided under sub-section 16 of Section 2 of the Electricity Act, 2003.

31. ... in the light of the discussions made above, particularly with reference to the definition under Sections 2(16), 2(48) and 2(72), this Court is of the view that the said contentions raised by the learned counsels for the petitioners cannot be countenanced as the third respondent has been laying a dedicated transmission line and not overhead line as defined under Section 2(48) of the Electricity Act, 2003."

In view of the aforesaid decision of this Court, the approval under Section 68(1) of the Electricity Act, 2003 is not necessary.

39. The Learned Senior counsel for the Fourteenth Respondent submits that even as per the report of the District Collector/Thirteenth Respondent and Revenue Divisional Officer, it is seen very well that majority of the lands were vacant lands and further, no cultivation is being carried out in majority of the lands. Also, the fact of the matter is that laying of transmission towers and erecting electric towers uses the most advanced technology and there is a comfort zone of 4 metres radius from the transmission wires wherein if any object, tree and any living beings which have earth, contact comes within the said radius area, then the line is tripped instantly and electricity gets shut down automatically.

40. The Learned Senior counsel for the Fourteenth Respondent draws the attention of the Court that the subject project is worth more than Rs.2300 crores. The transmission path is of total 748 kms and for laying of transmission towers and lines through out 748 kms, it requires 2058 towers in total. Continuing further, out of the said 2058 towers, erection of 2036 towers had already been completed and the project is in its final stage and nearing completion.

41. The Learned Senior counsel for the Fourteenth Respondent submits that Fourteenth Respondent had incurred deductions of Rs.6.36 Crores, which is increasing day by day and also that he had incurred overhead expenses due to delay till May 2014 amounting to Rs.2.94 Crores. Besides this, due to price variation because of increase in prices, the Fourteenth Respondent had incurred loss on escalated prices of Rs.3.30 Crores approximately.

42. On behalf of the Fourteenth Respondent, it is brought to the notice of this Court that only 11 poles are to be erected.

43. It is to be borne in mind that granting of an interim order is a matter of discretionary action within the domain of a Competent Court, as opined by this Court. However, the 'Discretion' is not meant to be an arbitrary or capricious one. In fact, the manner of exercise of discretion in granting an interim order will depend upon the precise nature of the facts and circumstances of a given case and also that an interim order is not to be granted merely on the ground that it can do no harm. Of course, for granting an interim order in favour of a litigant, it is for him to make out a case showing a clear necessity for its exercise. It is the duty of a Court of Law to protect an acknowledge rights than to establish a new and doubtful ones.

44. It is to be noted that no interlocutory order/injunction is granted as a matter of fact of routine by a Court of Law. However, the said interim order/interim injunction is ordinarily granted when three primordial tests are satisfied i.e., 1) prima facie 2) balance of convenience and 3) irreparable loss or serious injury. In respect of prima facie case, it is not necessary that a Court of Law ought to find a case. It is not necessary that a Court of Law finds a case which would entitle the petitioner/plaintiff and it is enough/sufficient for a Court of Law, finds a case which shows that there is substantial question to be investigated and the matters should be preserved in status quo until the issue can be finally disposed of.

45. Apart from that, the onus of proof that the inconvenience which a litigant would suffer by refusal of interim order/injunction order is greater than that which the Respondents would suffer if it is granted lies on the concerned Petitioner in the considered opinion of this Court.

46. Be that as it may, on a careful consideration of respective contentions, this Court, also bearing in mind all the attendant facts and circumstances of the case in an encircling fashion and on going through the impugned order dated 10.06.2015 in M.P.No.1 of 2015 in W.P.No.16620 of 2015 passed by the Learned Single Judge wherein an order of status quo as it existed on 10.06.2015 was granted till 14.07.2015 only with regard to removal of earth and erection of poles/towers in respect of lines owned by the Respondents 1 to 12/Petitioners, this Court without expressing any opinion on the merits of the matter simpliciter is of the considered view that the Learned Single Judge in the impugned order had only opined that a prima facie case was made out but the other primordial tests for grant of an interim order viz., balance of convenience and irreparable loss or serious injury were not adverted to. To put it precisely and succinctly, a 'prima facie case' alone is not sufficient for grant of interim order/injunction order/status quo order. As such, this Court is of the considered opinion that the impugned order dated 10.06.2015 in M.P.No.1 of 2015 in W.P.No.16620 of 2015 was only a tentative one and not a

final conclusion in the subject matter in issue. Furthermore, M.P.No.1 of 2015 in the main Writ Petition was directed to be called on 14.07.2015. Viewed in that perspective, this Court without analysing the pros and cons of merits of the matter in detail and also not delving deep, permits the parties to approach the Learned Single Judge and seek for an early final disposal of the M.P.No.1 of 2015 in W.P.No.16620 of 2015 in the interest of Equity, Fair Play, Justice, Good Conscience and even as a matter of Prudence for resolving the issue as expeditiously as possible. It is open to the Appellants to file a counter to the M.P.No.1 of 2015 in the Writ Petition. Liberty is also granted to the respective parties to raise all factual and legal pleas in the subject matter in issue.

47.With the above said observations and directions, this Writ Appeal stands disposed of. However, there shall be no orders as to costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Principal Secretary,
Government of Tamil Nadu
Energy Department,
Secretariat, Chennai-600 009.

2.The Chairman,
TANTRANSCO
10th Floor, BPKRR Maligai,
144, Anna Salai,
Chennai-600 002.

3.The District Collector,
Collectorate,
Vandavasi Road,
Kancheepuram-631 501.

+1 cc to Mr.K.abdul Saleem, advocate, Sr.33817

+1 cc to Mr.K.babu, advocate, sr.33690.

Nm(co)
krd 16/7

W.A.No.834 of 2015
and M.P.No.1 of 2015