

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.04.2015

DATE OF DECISION: 10.04.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A. No.1681 of 2014 and M.P. No.1 of 2014

1 Mary

2 Kirubamani

3 Manormani

4 S. Anandaraj

5 Thinagaran

6 Nesakumar

vs.

1 The Chairman

Tamil Nadu Generation and Distribution
Corporation Ltd.

Anna Salai

Chennai 600 002

2 The Chief Engineer

Tamil Nadu Generation and Distribution
Corporation Ltd.

Vellore Distribution Circle

Gandhi Nagar

Vellore 632 006

3 The Superintending Engineer

Tamil Nadu Generation and Distribution
Corporation Ltd.

Vellore Distribution Circle

Gandhi Nagar, Vellore 632 005

4 The Divisional Engineer

Tamil Nadu Generation and Distribution
Corporation Ltd.

Katpadi Division

Gandhi Nagar, Vellore 632 006

5 The Executive Engineer/O & M

Tamil Nadu Generation and Distribution
Corporation Ltd.

Katpadi Division, Vellore 632 006

Appellants

- 6 The Assistant Executive Engineer
Transmission Line Construction
Old Katpadi
Vellore 632 007
- 7 The Executive Engineer
Transmission Line Construction
Dharmapuri District 636 705
- 8 The District Collector
Vellore District, Vellore 632 009
- 9 The Chairman
Tamil Nadu Transmission Corporation Ltd.
N.P.K.R. Ramasamy Maaligai
144 Anna Salai, Chennai 600 002
- 10 Power Grid Corporation of India Ltd.
Represented by its Deputy General Manger / CAO
No.765/400 K.V. Thiruvallam Sub Station
K.R. Thangal Village (P.O.)
Katpadi Taluk
Vellore 632 516

Respondents

Writ Appeal preferred under Clause 15 of the Letters Patent challenging the order dated 21.11.2014 passed in W.P. No.18633 of 2014. Petition filed under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the 8th respondent proceedings in K.Dis.C3/11050/2014 dated 19.06.2014 and to quash the same and to forbear the respondents 6 to 9 from in any way interfering with the agricultural activities of the petitioners in respect of the lands in S.Nos. 117/1 to 117/5 at Kandipedu Village, Katpadi Taluk, Vellore District admeasuring 3 Acres and 54 Cents.

For appellants Mr. Richardson Wilson
for M/s. Wilson Associates

For respondents Mr. P.H. Arvind Pandian
Additional Advocate General
assisted by Mr. M. Varun Kumar
for RR 1-7 and R9(R1toR7 &R9)

Mr. N. Sakthivel, Govt. Advocate
for R8

Mr. Jayesh B. Dolia
for R10

JUDGMENT

SATISH K. AGNIHOTRI, J.

The instant writ appeal is directed against the order dated 21.11.2014 passed in W.P. No.18633 of 2014.

2 For the sake of brevity and clarity, the parties are referred to as per their rank in the instant writ appeal.

3 Questioning the validity and propriety of the proceedings dated 19.06.2014 in K.Dis.C3/11050/2014 issued by the Collector, Vellore District, the appellants have come up with the instant writ petition. It appears that the appellants are aggrieved by the order which prescribes as under:

"The project is very much essential to transmit the electric power from Northern States of India to Tamil Nadu and also wind power from Southern region of Tamil Nadu. So, in view of the public interest, by virtue of the powers conferred under Section 16(1) of the Indian Telegraph Act, 1885, read with 10(d) of the said Act, it is hereby ordered to place the towers of 400 KV DC line from MTPS stage III to Thiruvallur 400 KV SS as reported by the Executive Engineer, Transmission Line Construction, Dharmapuri, in the above mentioned lands (other than the survey numbers mentioned in paragraph no.12) subject to condition that the full compensation amount should be paid to the land owners for the damages caused in their respective lands, as per the provisions laid down under Indian Telegraph Act, 1885 and any violation of the said order would invite criminal action against the erring land owners under sec. 16(2) of the said Act."

4 The brief facts in nutshell, relevant for adjudication of the dispute are that the appellants, claiming to be owners of the agricultural lands in Survey Nos.117/1 to 117/5 at Kandipedu Village, Katpadi Taluk, Vellore District, measuring 3 acres and 54 cents, questioned the construction of transmission line passing through their lands by erecting transmission towers. The challenge of the appellants to the said order is on the grounds that the respondents have not followed the procedure as laid down in Section 10 of the Indian Telegraph Act, 1885 (for short "the Telegraph Act"), without acquiring land and making payment of compensation in lieu thereof. It was further contended that the respondents ought to have chosen the adjacent poramboke land for erecting transmission towers to save agricultural activities carried out by the appellants in their lands. The respondents have not drawn straight transmission lines, which has resulted in irreparable loss to the appellants. The Tamil Nadu Transmission Corporation Ltd. (for short "the TANTRANSCO") is

proceeding with the project without the prior approval of the Government as required under Section 68 of the Electricity Act, 2003 (for short "the Electricity Act"). The impugned order also suffers from vice of non-compliance of principles of natural justice as the appellants, after sending objections, appeared on the day fixed for enquiry and asked for some more time to file a detailed objection, after taking legal advice from their counsel. Without considering their request for grant of time, their objection was rejected, which is violative of basic principles of natural justice. It is further contended that the 8th respondent has exceeded his jurisdiction in passing the impugned order as enshrined under Section 16 read with Section 10(d) of the Telegraph Act. The entire exercise of drawing transmission line without the prior approval has been done with oblique motive in collusion with some influential persons in the locality.

5 The stand of the seventh respondent, viz., the Executive Engineer of TANTRANSCO before the learned Single Judge was that the Electricity Board has all the powers under provisions of Section 164 read with Section 185(2)(a) of the Electricity Act, as authorised under the provisions of the Telegraph Act. There is no necessity to give any prior notice before drawing overhead lines or erecting towers for transmission of electricity. The entire project was duly approved as required under Section 68 of the Electricity Act. The appellants are only entitled to compensation for loss and damages. The TANTRANSCO has examined all aspects regarding environmental considerations, road crossings, river crossings, reserve or protected forests, villages, bulk storage oil tank, oil pipeline, airports and cluster of hamlets to avoid or to minimize the damages. The route is duly approved and out of the proposed 484 towers, 440 towers had already been erected. The petitioners are entitled to compensation and the same will be paid for damages and loss caused at the time of execution. The entire project is for the benefit of the public at large. It was further contended that the legality of the said route came into consideration in W.P. Nos.6803 and 6804 of 2012 (Bhavesh R. Shah and S.Ravi vs. The Superintending Engineer, TNEB, Guindy, Chennai 32 and another). The said writ petitions were dismissed by order dated 25.04.2013 and the writ appeals filed against the same in W.A. Nos.1013 and 1014 of 2013 were also dismissed.

6 The learned Single Judge, having considered the dispute from all angles, held as under:

"17. As regards the contention of the petitioners that the tower lines were sought to be erected in some other route by the influence of the vested interested persons, it was categorically denied by the respondents in their counter by contending that the tower line works were carried out only on the approved route. It was reiterated in the counter that there was no scope for any deviation or

alteration of the original route proposed and the petitioners have not specifically brought out the alleged manner in which the plan was deviated. In order to substantiate this contention, the petitioners did not produce any evidence relating to the alleged deviation in the originally proposed route map. In the absence of the same, the averment of the petitioners have to be rejected.

18 As mentioned supra, mere technical defects or defects will not be ground for interference by this Court in exercise of its power under Article 226 of the Constitution of India. In order to fortify this conclusion, it may be useful to refer to the decision of the Hon'ble Supreme Court reported in Laxmibai vs. Bhagwantbuva (2013) 4 SCC 97 relied on by the learned Additional Advocate General wherein it was held that "when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred and the courts may in the larger interests of administration of justice may excuse or overlook a mere irregularity or a trivial breach of law for doing real and substantial justice to the parties and pass orders which will serve the interest of justice best." The said ratio laid down by the Honourable Supreme Court is applicable to this case. In the present case, the project sought to be executed by the respondents is in the interest of public at large. It is well settled that public interest will always outweigh private interest. The project sought to be implemented is a very essential one to transmit the electric power from Northern States of India to Tamil Nadu and also wind power from Southern region of Tamil Nadu to tide over the burgeoning power crisis. It is also stated in the counter that about 80% of the project work has been completed. It is further stated that due to the pendency of this writ petition, the project has been stalled and it could not be completed. Even though there are some technical flaws committed by the respondents, it cannot be a ground for interference. In any event, it is stated that the line proposed to pass through the land of the petitioners will not, in any manner, affect their cultivation. As mentioned above, the project is being implemented in the larger public interest to tide over the power shortage witnessed in the State. While executing such project of greater importance, the respondents have complied with all the formalities under law. In those circumstances, I am not inclined to interfere with the order passed by the second respondent."

7 Feeling aggrieved, the appellants are before us in the instant writ appeal, challenging the legality and validity of the said order dated 21.11.2014 passed by the learned Single Judge in the writ petition.

8 In addition to what has been urged before the learned Single Judge, the learned counsel for the appellants would submit that the provisions, as enshrined under Article 300-A of the Constitution of India, have also been violated. The appellants are being deprived of enjoyment of right of their lands fully and as such, the minimum requirement of affording an opportunity of hearing ought to have been extended to them before taking a decision for proceeding with the laying down of transmission line and erection of towers. Even if public purpose is involved, the appellants' Constitutional right as enshrined under Article 300-A of the Constitution of India cannot be taken away.

9 Further, according to the learned counsel, the transmission route was initially approved, but, the land in question was taken into consideration subsequently by making diversion in the route, which was not approved as required under Section 68 of the Electricity Act and this is evident from the fact that in the public notice, the survey numbers in question were not indicated. Even if a substantial portion of the project has been completed, the Constitutional right of the appellants cannot be taken away on the ground that the project has been completed substantially.

10 Per contra, Mr. Arvind Pandian, learned Additional Advocate General would submit that there is no diversion of the route. The original route, as approved by the Government, as required under Section 68 of the Electricity Act, is being followed. The authorities have taken full care and caution to minimise losses. The appellants are entitled to only compensation for loss and damages, caused on account of construction of transmission line and erection of towers for the same.

11 It was further pointed out by the learned Additional Advocate General that some of the villages, which could not find place in the notification of the scheme, as published in the Tamil Nadu Government Gazette, Part VI Section 3(b) dated 24.02.2010 and in the Hindu dated 27.12.2009 and also in Dhina Malar dated 27.12.2009, have approached this Court in writ petitions in W.P. Nos.6803 and 6804 of 2012, and on dismissal of the said writ petitions, writ appeals were preferred in W.A. Nos.1013 and 1014 of 2014. In the said writ appeals, a Division Bench of this Court had clearly held that mere non-mentioning of the villages of the appellants therein in the notification itself will not vitiate the action of the respondent Board, more particularly, when the notification referred to only the route and not the villages covered in the route. Likewise, in the instant case, if certain survey

numbers are not mentioned in the notification, the notification cannot be held as vitiated as the law in this regard is well settled by the Division Bench of this Court in the aforesaid cases.

12 Heard the learned counsel for the parties and perused the documents and pleadings appended thereto.

13 For better appreciation, it is apt to extract relevant provisions of law in regard to the issue on hand.

"Section 10 of the Telegraph Act:

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 the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the Central Government or to be so established or maintained.

b The Central Government shall not acquire any right other than that of user only in the property under, over, along, across, in or upon which the telegraph authority places any telegraph line or post; and

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.

Section 68 of the Electricity Act:

Overhead lines:

1 An overhead line shall, with prior approval of the Appropriate Government, be installed or kept installed above ground in accordance with the provisions of sub-section (2).

2 The provisions contained in sub-section (1) shall not apply

a in relation to an electric line which has a nominal voltage not exceeding 11 kilovolts and is used or intended to be used for supplying to a single consumer;

b in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or

c in such other cases, as may be prescribed.

3 The Appropriate Government shall, while granting approval under sub-section (1), impose such conditions (including conditions as to the ownership and operation of the line) as appear to it to be necessary.

4 The Appropriate Government may vary or revoke the approval at any time after the end of such period as may be stipulated in the approval granted by it.

5 Where any tree standing or lying near an overhead line or where any structure or other object which has been placed or has fallen near an overhead line subsequent to the placing of such line, interrupts or interferes with, or is likely to interrupt or interfere with, the conveyance or transmission of electricity or the accessibility of any works, an Executive Magistrate or authority specified by the Appropriate Government may, on the application of the licensee, cause the tree, structure or object to be removed or otherwise dealt with as he or it thinks fit.

6 When disposing of an application under sub-section (5), an Executive Magistrate or authority specified under that sub-section shall, in the case of any tree in existence before the placing of the overhead line, award to the person interested in the tree such compensation as he thinks reasonable, and such person may recover the same from the licensee.

Section 164 of the Electricity Act

Exercise of powers of Telegraph Authority in certain cases:

The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper coordination of works, confer upon any public

officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained."

14 On a bare perusal of the aforestated provisions of law, it is evident that TANTRANSCO is competent to draw transmission lines or erect transmission towers. By drawing transmission lines or erecting transmission towers, the TANTRANSCO does not acquire any right, other than the user only in the property in question, keeping in view, causing little damages as possible.

15 Section 68 of the Electricity Act requires prior approval of the Government before installation of a transmission line or erection of a transmission tower and the owner of the area in question has no right to interrupt or obstruct, except to claim damages or loss on account of drawing the transmission line or erection of transmission tower.

16 Section 164 of the Electricity Act empowers the Government and TANTRANSCO, in the case on hand, to exercise the powers of the Telegraph Authority in such cases. There is no dispute, much less any serious dispute, on the aforestated provisions.

17 Applying the aforestated provisions to the facts of the instant case, the appellants have failed to produce any document or material to substantiate their contention that no prior approval was obtained, when, admittedly, prior approval of the route was pleaded by the authorities, which was upheld by this Court in W.A. Nos.1013 and 1014 of 2013.

18 In respect of violation of principles of natural justice, the learned Single Judge has examined elaborately and also, it is the specific case of the appellants that they appeared before the authorities on the date fixed for appearance and also, made certain objections, however, sought time to file their detailed objection on the ground of consultation with their legal consultant, which was denied. In the facts of the case, when the appellants could have raised objection only in respect of grant of compensation or quantum of compensation, it cannot be held that the proceedings of the District Collector suffers from vice of violation of principles of natural justice.

19 Insofar as the contention of the appellants in respect of Constitutional right as enshrined under Article 300-A of the Constitution of India, admittedly, right and ownership of the appellants over the land in question have not been taken away. The rights of the appellants to enjoy the land in question substantially, without any hindrance, remains intact and as such, the aforesaid contention of the appellants does not have legs to stand. In the case on hand, there is no deprivation of ownership and enjoyment of the property, and as such provisions of Article 300-A is not attracted.

20 In respect of compensation, to which the appellants are entitled to, the Supreme Court in Kerala State Electricity Board V. Livisha and others¹, held as under :

"9. Both telegraph lines and electrical lines are required to be drawn over the agricultural lands and/or other properties belonging to third parties. In drawing such lines, the entire land cannot be acquired but the effect thereof would be diminution of value of the property over which such line is drawn. The Telegraph Act, 1885 provides for the manner in which the amount of compensation is to be computed therefor. Section 10 of the Act empowers the authority to place and maintain a telegraph line under, over, along or across, or posts in or upon any immovable property. Section 11 empowers the officers to enter on property in order to repair or remove telegraph lines or posts. Section 12 empowers the authority to grant permission for laying down such lines to a local authority in terms of Clauses (c) and (d) of the proviso to Section 10 of the Act subject to reasonable conditions as it may think fit. x x x x x x x

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10. The situs of the land, the distance between the high voltage electricity line laid thereover, the extent of the line thereon as also the fact as to whether the high voltage line passes over a small tract of land or through the middle of the land and other similar relevant factors in our opinion would be determinative. The value of the land would also be a relevant factor. The owner of the land furthermore, in a given situation may lose his substantive right to use the property for the purpose for which the same was meant to be used."

Thus, the authorities are directed to keep in mind the above authoritative pronouncement of the Supreme Court while determining the compensation.

21 For the foregoing reasons and analysis, we do not find any irregularity, illegality or irrationality in the impugned order dated

21.11.2014, rendered by the learned Single Judge, warranting interference.

22 As a sequel, the writ appeal fails and is accordingly dismissed. Costs made easy. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Chairman
Tamil Nadu Generation and Distribution
Corporation Ltd.
Anna Salai, Chennai 600 002
- 2 The Chief Engineer
Tamil Nadu Generation and Distribution
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- + 1 cc to Mr.M. Varunkumar, Advocate SR.19913
+ 1 cc to Mr.P. Wilson, Associates Advocate SR.19979
- SAI (CO)
EU 20.04.2015

W.A. No.1681 of 2014

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