

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2015
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.19929 of 2015
And
M.P.No.1 of 2015

1.S.Sekar
2.K.S.Ravikumar
3.S.Chander
4.Mrs.Kumari Narasingam
5.Mrs.Praba Sadagoban ... Petitioners

Vs.

- 1 The Chief Engineer
Transmission Project-I TAN TRANSCO
Tamilnadu Electricity Board A 10 Thiru.Vi.
Ka. Industrial Estate Guindy Chennai-32.
- 2 The Superintendent Engineer
TAN TRANSCO Tamilnadu Electricity Board A
10 Thiru.Vi.Ka. Industrial Estate Guindy
Chennai-32.
- 3 The Director
Transmission Projects TAN TRANSCO X Floor
NPKRR Maligai 144 Anna Salai Chennai-2. ... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents to remove the existing foundation of transmission tower situated on the South-Western portion of the property of the petitioners and consequently restrain the respondents from laying the foundation of the transmission towers directing the transmission towers in such a way are living the high intensity electrical transmission lines to pass through the property of the petitioner comprised in (i) Survey No.421/1 of an extent of acre 1.44 cents, Survey No.421/2 land of an extent of acre 2.13 cents, Survey No.421/3 land of an extent of acre 0.25 cents in all an extent of acre 3.82 cents (ii) Survey No.423 land of an extent of acre 1.92 cents, comprised in Patta No.863 (iii) Survey No.421/1A and 1B, land of an extent of acre 0.70 cents, Survey No.421/2 (Part) land of an extent of acre 0.64 cents and Survey No.421/3(Part) land of an extent of acre 0.10 cents in all an extent of acre 1.44 cents, bearing Patta No.466, (iv) Survey No.421/1A and 421/1B(Part) land of an extent of acre 0.39 cents,

Survey No.421/2 (part) land of an extent of acre 0.82 cents and Survey No.421/3 (Part) land of an extent of 0.04 cents in all an extent of acre 1.25 cents, bearing Patta No.2046, (v) Survey No.421/1A and 421/1B (Part) land of an extent of acre 0.35 cents, Survey No.421/2 (part) land of an extent of acre 0.67 cents and Survey No.421/3 (part) land of an extent of acre 0.11 cents in all an extent of acre 1.13 cents all the said lands situated in Perumbakkam Village, Nukampalayam Hamlet, Tambaram Taluk, Kancheepuram District.

For Petitioners : Mr.A.Palaniappan
For Respondents : Mr.P.Gunaraj

O R D E R

By consent, the writ petition is taken up for final disposal.

2.The petitioners would state that their father has purchased larger extent of property through a registered sale deed dated 27.09.1968 admeasuring to an extent of 3.82 acres situated in Perumbakkam Village, Nukampalayam Hamlet, Tambaram Taluk, Kancheepuram District and also another set of properties through registered sale deed dated 21.02.1985 registered as document no.1099 of 1985 on the file of the Sub Registrar Office, Tambaram in the name of the first, second and third petitioners in S.No.423 admeasuring to an extent of 1.92 acres comprised in Patta No.863 situated in the very same place.

3.The Petitioners also claim right, title and possession in terms of the two settlement deeds dated 19.01.2001 registered as document nos.151 of 2001 and 152 of 2001 on the file of the Sub Registrar Office, Tambaram. Petitioners after obtaining necessary permission promoted layout for house-sites in S.No.414/2B6, 2B7, 2B8 Part, 2B10, 2B12, 415/1B, 1C, 2, 416/1, 2, 6, 7, Survey No.417/1, 2, Survey No.420/2, Survey No.421/1, 2, 3, Survey No.423, Survey No.513 and Survey No.519, situated in Perumbakkam Village, Nukampalayam Hamlet, Tambaram Taluk, Kancheepuram District and adjacent to the property, some of the areas are also falling under the poromboke reserve forest area.

4.The grievance of the petitioners is that the respondents sought to lay a transmission line right across the above said house-site layout without putting the petitioners on notice and alternatively without getting any permission from the jurisdiction District Magistrate had commenced laying down the foundation for the transmission tower pillars and in this regard the petitioners have submitted a representation dated 15.05.2014 to the second respondent and though it was received and acknowledged on 18.08.2014 no response is forthcoming, hence came forward to file this writ petition. It is also stated that in the interregnum, the respondents are taking emergent steps to put up electric poles/ pillars across the petitioners land and in that case the petitioners would be put to grave hardship as well as financial crises for the reason that after

obtaining necessary and proper approval from the concerned authorities, the petitioners had promoted the layout for house-sites.

5.The learned counsel appearing for the petitioners has also drawn the attention of this Court to the various provisions of The Indian Telegraphic Act, 1885, The Indian Electricity Act, 1910 as well as the Tamil Nadu Electricity Act 2003 and would submit that as per Section 185 of the said Act supply as otherwise provided in the Indian Electricity Act 1910 Electricity Supply Act 1948 and the Electricity Regulatory Commissions Act 1998 have been repealed as per Section 2, notwithstanding such repeal would as per subsection (b) the provisions contained in 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 made.

6.It is the submission made by the learned counsel appearing for the petitioners that admittedly rules under Section 62 to 67 of the Act have not been followed and further inviting attention of this Court to Section 51 of the Indian Electricity Act and would submit that the said Section start with non obstante and it was consciously omitted under Section 164 of the Tamil Nadu Electricity Act 2003 for the reason that unless and until the rules are framed, the purport of Section 51 of the Old Act continues to stay and in that event, they have to obtain permission from the land owner before putting power line and the said Act has not been taken into consideration.

7.The learned counsel appearing for the petitioners has also drawn the attention of this Court to the judgment reported in 2011 SCC OnLine APTEL 144 equivalent to [2011] APTEL 145 (Maharashtra State Electricity Transmission Company Limited Vs. Vikram Sunderdas Setiya) and would submit that in similar facts and circumstances that the Appellate Tribunal for Electricity has considered the very same issue and has held that provisions of Sections 67 and 68 of the new Act is applicable to all the assesseees whether they are empowered under Section 164 of the Act or not and also given various finding in favour of the land owners like the petitioners and hence prays for appropriate orders.

8.Per Contra, Mr.P.Gunaraj, learned Standing Counsel who accepts notice on behalf of the respondents would submit, in the light of Section 164 of the Act, powers of the Telegraphic Authority has been conferred on certain Officials and therefore it is not necessary on the part of the respondents to put the land owners on notice and they are entitled to only for compensation and it will be paid to them in accordance with law as expeditiously as possible and would further contend that laying of power lines is in public interest and therefore, it cannot be stalled for the provisions of the petitioner and prays for dismissal of the writ petition.

9.This Court heard the rival submissions and also perused the materials placed before it.

10. In the considered opinion of this Court, the said legal explanation lodged on behalf of the petitioners cannot be gone into at this stage for the reason that the petitioners have submitted a representation dated 15.05.2014 to the second respondent, raising their objections and though it was received and acknowledged on 18.08.2014, no disposal has been given and the apprehension expressed by the petitioners is that in the interregnum, emergent steps are taken to erect the electric poles/ pillars.

11. In the light of the above facts and circumstances, this Court without going into the merits of the submission made by the learned counsel appearing for the petitioners, directs the second respondent to consider and dispose of the representation dated 15.05.2014 which was received and acknowledged on 18.08.2014 on merits and in accordance with law after giving an opportunity of personal hearing to the petitioners and pass orders within a period of six weeks from the date of receipt of a copy of this order and inform the decision taken, to the petitioners and till then, shall defer further action with regard to the erection of electric poles/ pillars on the lands of the petitioners.

12. The questions of law raised by the petitioners are left open to be decided in an appropriate case.

13. The writ petition is disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

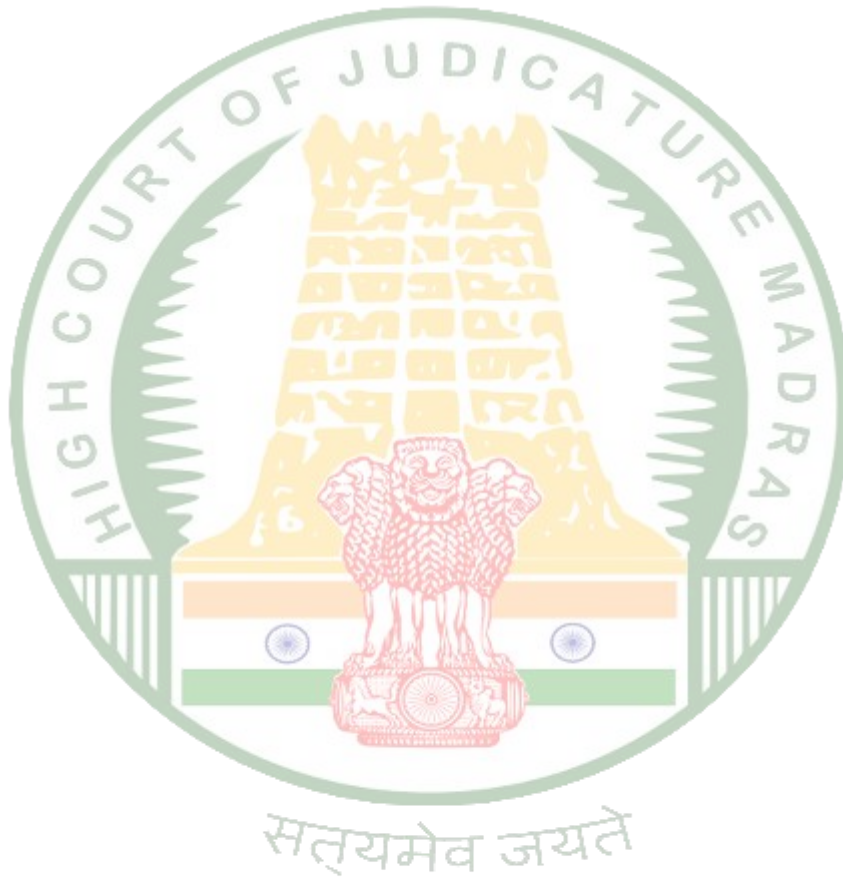
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+1 cc to Mr.A.Palaniappan, Advocate, SR.34232.

Scd(co)
krd 20/7

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