

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 11/08/2014

DATED: 22/09/2015

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THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.15356 of 2014 &
M.P.No.1 of 2014

Chandrakala ... Petitioner

Vs.

1.The Tamil Nadu Electricity Board,
Represented by its Chairman,
Anna Salai, Chennai.

2.The Superintending Engineer,
General Construction, Circle II,
Tantrans Co., Guindy,
Chennai-32.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for a Writ of Mandamus, to direct the respondents to forthwith remove high tension tower installed in the petitioner's property and consequently forbear from installing any high tension tower in the petitioner's property comprised in S.No.119, measuring 37 acres 32 cents in No.155, Payyanur Village, Thirupporur Taluk, Kancheepuram District, covered under patta No.699.

For Petitioner : Mr.N.A.Nissar Ahmed
For Respondents : Mr.P.Gunaraj (TNEB)

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O R D E R

The petitioner submits that the property comprised in S.No.119, measuring 37 acres 32 cents in No.155, Payyanur Village, Thirupporur Taluk, Kancheepuram District, covered under Patta No.699, belongs to the petitioner and other co-owners. The petitioner further submits that in fact right from the date of purchase under sale deeds dated 09.02.1996 and 07.04.1995 bearing Doc.Nos.964/96, 965/96 and 216/95, the petitioner and other co-owners are armed with a civil Court decree dated 30.04.2010 made in O.S.No.86 of 2004. The

petitioner further submits that while so, the second respondent is attempting to put up high tension towers in their property without their consent and knowledge. There are alternate sites over which, it could be installed. The petitioner has also made representations on 19.05.2014, 31.05.2014 and on 05.06.2014. Hence, the petitioner entreats the Court to allow the above writ petition.

2. The respondents have filed a counter affidavit and resisted the above writ petition. The respondents submit that the Tamil Nadu Electricity Transmission Corporation Limited is a "State Transmission Utility" under the Ministry of Power, entrusted with statutory power of established Inter-State Transmission System spread across the State. The company is a deemed Transmission Licensee in the capacity of State Transmission Utility as envisaged under Sections 39 and 40 of Electricity Act, 2003. The Company has become a deemed "Transmission Licensee" under the Electricity Act, 2003. The respondents further submit that the Tamil Nadu Electricity Board has approved the proposal for establishment of 230/110/33-11 KV Sub Station with 3X100 MVA, 230/110 KV Auto Transformers, 1X16 MVA, 110/33 KV & 1X16 MVA, 110/11 KV Power Transformers at the OMEGA Industrial Estate near Mahabalipuram in Chennai Operation Circle Chengalpattu Electricity Distribution Circle of Chennai South Region at an estimated cost of Rs.11,555.27 lakhs vide Permanent (FB) TANTRANSCO Proceedings No.58, dated 30.11.2012.

3. The respondents further submit that by virtue of the provisions contained in Sub Section (2)(a) of Section 185 of the Electricity Act, 2003, the Board being the Transmission utility and Licensee will exercise the powers of the Telegraph Authority under the provisions of Section 164 of the Electricity Act, 2003 which have already been conferred upon the Board under Section 51 of the Indian Electricity Act, 1910. The respondents further submit that M/s.Omega have proposed to develop an integrated township at OMEGA Industrial Estate in Kunnappattu Village near Mahabalipuram in Kanchipuram District. They may have requested for an initial demand of 50 MVA to meet out their immediate requirement with an ultimate demand of 188 MVA. The respondents further submit that as per CEA norms, the maximum demand at 110 KV level/power transformer capacity in a 110 KV SS should not exceed 132 MVA. Hence, the above said demand requested by M/s.OMEGA could not be catered from the existing facility near Thirukkalukundram 110/33*11 KV SS or Thiruporur 110/11 KV SS or Alanthur 110/33-11 KV SS. The respondents further submit that since there is no possibility to manage the proposed load with the existing grid arrangement in and around the proposed township, in order to provide a reliable and quality supply to the proposed new HT & LT Services in the OMEGA Township, it becomes necessary to propose a new 230/110 KV SS and 110/33-11 KV SS.

4. The respondents further submit that during the review meeting of the Tamil Nadu Industrial Guidance & Export Promotion Bureau conducted by the Chief Secretary / Government of Tamil Nadu,

it was informed that 110 KV SS would be commissioned by fourth quarter of 2013 so that their initial requirement of 50 MVA could be met and the 230 KV SS would be commissioned in the first quarter of 2014 which would take care of their total requirement. The respondents further submit that according to Load Flow study, due to the establishment of OMEGA 230/110 KV SS, auto loading Veerapuram 230/110 KV SS is reduced by 7 MW. There will be a line loss saving 0.718 MW with proposed OMEGA 230/110 KV SS. The respondents further submit that the establishment of OMEGA 230 KV SS the transmission line of Erection of 230 KV DC line from the Ottiyampakkam (Sholinganallur) 400 KV SS has been proposed. The respondents further submit that the Gazette Notification had been published on 20.11.2013 in this regard and after an inordinate delay of 6 months after Gazette Notification dated 20.11.2013, the writ petitioner challenged the above said notification itself and on the above ground, the writ petition is not maintainable and the above application is liable to be dismissed on this short ground in limini. The respondents further submit that the erection of 230 KV Double Circuit line from Ottiyambakkam 400 KV SS to the proposed Omega 230 KV SS is a Tamil Nadu Government Scheme and it was published in Tamil Nadu Government Gazette on 20.11.2013 and local newspapers (Indian Express and Dhinamani) on 04.03.2013 under the Electricity Act 2003.

5. The respondents further submit that there is no suitable / adequate poramboke land available to erect this 230 KV DC line and in the erection of 230 KV line from Ottiyambakkam 400 KV SS to Omega 230 KV SS, the foundation for 106 locations out of 166 locations have already been completed and balance work is under progress and moreover the foundations in the disputed land have already been completed. The respondents further submit that by virtue of the provisions contained in Electricity Act 2003 i.e, Sub Section (2)(a) of Section 185, the Board being the transmission utility and licensee will exercise the powers of the telegraphy authority under Section 164 of the Electricity Act 2003 which have already been conferred upon the Board under Section 51 of the Indian Electricity Act 1910 and hence, the provision of this transmission line through the petitioner's property is not arbitrary and illegal and it is also not against principles of natural justice.

6. The respondents further submit that the proposed line is crossing the OMR which is nearer to the existing 110 KV Omega line and it is the only option to cross the above road considering BEE line as per the approved route and hence, the Tamil Nadu Electricity Board does not acquire any private land, but it utilizes only the land of the writ petitioner for providing power transmission line under the approved scheme. The respondents further submit that since the notification in this regard was published in Tamil Nadu Gazette on 20.11.2013 and the same had been published in local newspapers Indian Express and Dhinamani on 04.03.2013 under the Electricity Act 2003 as per the Electricity Act, 1910, there is no necessity to issue prior notice to the writ petitioner (landowner) about the proposed

line. Hence, the respondents entreat the Court to dismiss the above writ petition.

7. The highly competent counsel Mr.N.A.Nissar Ahmed appearing for the petitioner submits that the petitioner is the owner of the landed property comprised in Survey No.119 to an extent of 37 acres 32 cents situated at Payyanur Village. The Revenue Authority also had issued patta on 25.02.1997 in the name of the petitioner. The said property had been purchased under different sale deeds dated 09.02.1996. Under these circumstances, the second respondent herein is attempting to put up high tension towers in the subject lands without consent of the petitioner. Further, alternative sites are available, which belongs to the Government. The highly competent counsel further submits that the respondent had installed high tension towers on the subject lands. As such, the respondents trespassed into the petitioner's lands and forcibly occupying lands. As such, the petitioner's civil rights is prejudiced. Hence, the highly competent counsel entreats the Court to protect the petitioner's property by way of preventing the respondents from erecting high tension towers.

8. The highly competent counsel Mr.P.Gunaraj appearing for the respondents submits that the Tamil Nadu Electricity Transmission Corporation Limited is a State Transmission Utility under the Ministry of Power, entrusted with statutory power of established interstate transmission system spread across the State. The highly competent counsel further submits that the Tamil Nadu Electricity Board has approved the proposal for establishment of 230/110/33-11 KV Sub Station with 3X100 MVA, 230/110 KV Auto Transformers, 1X16 MVA, 110/33 KV & 1X16 MVA, 110/11 KV Power Transformers at the OMEGA Industrial Estate near Mahabalipuram in Chennai Operation Circle, Chinglepattu Electricity Distribution Circle of Chennai South Region at an estimate cost of Rs.11,555.27 lakhs. Further, the Board being the transmission utility and licensee will exercise the powers of the Telegraph Authority under the provision of Section 164 of the Electricity Act.

9. The highly competent counsel appearing for the respondents further submits that OMEGA had purchased to develop an integrated township at Kunnapattu Village. Hence, they requested for an initial demand of 50 KVA to make out their immediate requirement with an ultimate demand of 188 MVA. The demand of M/s.OMEGA could not be catered from existing 110/33-11 KV SS, since there is no possibility to manage the proposed load with the existing grid arrangement in and around the proposed township. Therefore, it becomes necessary to propose a new 230/110 KV SS and 110/33-11 KV SS. The highly competent counsel further submits that for the establishment of OMEGA Township, there is a proposal to take high tension line. To that effect, gazette notification has been issued. Therefore, the above writ petition is not maintainable. Further, there is no suitable lands available to erect the towers. The

foundation for 106 locations out of 166 locations have already been completed and the balance work is under progress. Moreover, the foundations in the disputed lands have already been completed.

10. The highly competent counsel appearing for the respondents further submits that the erecting of transformers is not prejudicial to the petitioner. Hence, the highly competent counsel entreats the Court to dismiss the above writ petition in order to execute the transmission scheme by considering the very importance of the transmission scheme in order to effectively utilize the wind power energy which is generated from the Tirunelveli Region and also considering the benefits of the general public.

11. On considering the facts and circumstances of the case and arguments advanced by the highly competent counsels on either side and on perusing the typed-set of papers, it is seen that the subject matter of the land belongs to the petitioner, wherein the respondents made foundation, without consent or knowledge of the petitioner. The kind of activities of the respondent is violating the principles of natural justice. Besides, the petitioner's civil rights have been affected over the said property. Therefore, this Court directs the respondents to issue statutory notice to the petitioner and conduct an enquiry on this issue and only after consent of the petitioner, go further in execution of transmission scheme in the originally approved route made by the Government. Till such time, this Court directs the respondents to maintain status-quo.

12. Accordingly, the above writ petition is disposed of. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Chairman,
Tamil Nadu Electricity Board,
Anna Salai, Chennai.

2.The Superintending Engineer,
General Construction, Circle II,
Tantrans Co., Guindy,
Chennai-32.

+1 cc to Mr.N.A.Nissar Ahmed, advocate sr.51830

+1 cc to Mr.P.Gunaraj Advocate sr.51140

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