

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CAV ON 11/08/2014

DATED: 22/09/2015

CORAM

THE HONOURABLE MR.JUSTICE C.S.KARNAN

W.P.No.16703 of 2014 &
M.P.No.1 of 2014

R.Shyamala ... 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.100/1A, 2A, measuring hectare 1 and 83.00 ares and 31.00 ares respectively and other properties in No.155, Payyanur Village, Thirupporur Taluk, Kancheepuram District covered under patta No.1376.

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

O R D E R

The petitioner submits that the property comprised in S.No.100/1A, 2A measuring Hectare 1 and 83.00 acres and 31.00 acres respectively and other properties in No.155, Payyanur Village, Thirupporur Taluk, Kancheepuram District, covered under patta No.1376, belonged to the petitioner. The petitioner further submits that in fact right from the date of purchase under sale deed dated

23.08.1988 bearing Doc.No.629/89, the petitioner is in possession and enjoyment of the same and other properties. The petitioner further submits that while so, the second respondent is attempting to put up high tension towers in his property without his consent and knowledge. There are alternate sites over which, it could be installed. The petitioner has also made representations on 20.05.2014 and on 17.06.2014. 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 Board has approved the proposal for establishment of 230/110/33-11 KV Sub Station with 3x100 MVA auto transformers, 1x16 MVA, 110/33 KV and 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. 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.

3. The respondents further submit that M/s.Omega requested for an initial demand of 50 MVA to meet out their immediate requirement with an ultimate demand of 188 MVA and the said demand could not be catered from the existing Thirukalukundram 110/33-11 KV SS or Thiruporur 110/11 KV SS or Alanthur 110/33-11 KV SS and 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. The respondents further submit that the Government of Tamil Nadu informed that 110 KV SS would be commissioned by 4th quarter of 2013 so that their initial requirement of 50 MVA could be met out and the 230 KV SS would be commissioned in 1st quarter 2014 which would take care of their total requirements and according to load flow study auto loading Veerapuram 230/110 KV SS is reduced by 7 MW due to the establishment of Omega 230/110 KV SS and there will be a line loss saving 0.718 MW with proposed Omega 230/11 KV SS and hence for 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 by the Tamil Nadu Government and published notification dated 20.11.2013 in Government Gazette.

4. 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. 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 is not arbitrary and illegal and not against the principles of natural justice. 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.

5. The respondents further submit that as per Electricity Act 1910, there is no necessity to issue prior notice to the landowner before erecting the proposed tower and tower line and there is no question of natural justice. The respondents further submits that in the erection of 230 KV line from Ottiyampakkam 400 KV SS to Omega 230 KV SS, the foundation for 114 locations out of 166 locations have already been completed and balance work is under progress and more over the foundations in the said petition land have also been completed already and tower erection and line stringing work is under progress.

6. The respondents further submit that the petition land is hard salty clay sand and it is neither useful to construct a building nor to cultivate in the above said land in question and the Board has already erected the base of the tower in the said land by spending huge money and hence, the stopping of the above said work will affect the transmission of the electricity for the purpose of public at large and the Board will face huge financial loss. 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.100/1A, 2A measuring hectare 1 and 83.00 acres and 31.00 acres situated at Payyanur Village. The Revenue Authority also had issued patta in the name of the petitioner. The said property had been purchased under a sale deed dated 23.08.1988. 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 auto transformers, 1x16 MVA, 110/33 KV and 1x16 MVA, 110/11 KV power transformers at the OMEGA Industrial Estate near Mahabalipuram in Chennai Operation Circle, Changlepattu 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 licence 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 Kunnappattu 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 114 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.

+3 cc to Mr.P.Gunaraj, Advocate sr.51140

+1 cc to Mr.N.A.Nissar Ahmed, Advocate sr.51831

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