

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

W.P.No.33127 of 2015

and

M.P.No.1 of 2015

Dr.B.Shivkumar ... Petitioner
Vs

1. Tamil Nadu Transmission Corporation Limited
(TANTRANSCO)
rep. by its Chairman,
10th Floor, NPKRR Maaligai,
No.144, Anna Salai,
Chennai-2.
2. The Chief Engineer,
Transmission,
NPKRR Maaligai,
No.144, Anna Salai,
Chennai-2.
3. The Chief Engineer,
TANTRANSCO (TNEB),
Transmission Projects 1,
Industrial Estate, Guindy,
Chennai-600 032. ... Respondents

Writ Petition filed to issue a Writ of Mandamus, forbearing the respondents from in anyway shifting the existing SP Koil Taramani - 230 KV DC HT line, running for the past 15 years in another land, into the petitioner's land at S.No.17/2B in Pudupakkam Village.

For Petitioner : Mr.V.G.Suresh Kumar

For Respondents : Mr.Abdul Saleem

O R D E R

The petitioner is the owner of the property to an extent of 8 acres and 40 cents comprised in Survey No.17/2B, Pudupakkam Village, Chengulpet Taluk, Kancheepuram District. The said land has been purchased for setting up of a joint venture with the Italian company and it is in the process.

2. When things stood so, the respondents entered into the property for the purpose of erecting HT lines in the petitioner's property. Immediately, the petitioner objected the attempt of the respondents by making a representation to the Chairman directly on 03.10.2015 and also sent a representation through post. In spite of that, without following the procedure, the respondents are attempting to erect a tower. Therefore, the petitioner has come before this Court with this Writ Petition.

3. The learned Counsel for the petitioner would submit that when the petitioner made objection, the respondents are bound to follow the procedure adopted in Indian Electricity Act and Indian Telegraph Act. However, without following the procedure, the respondents are proceeding with the erection. The learned Counsel referred to the rules framed thereunder, namely, 'The Works of Licensees Rules, 2006' and a specific reference has been made to Rule 3 to insist upon the point that the licensees, namely, respondents shall obtain permission by writing to District Magistrate. Without obtaining any permission, the respondents are proceeding with the erection of towers. Therefore, the petitioner sought for a direction as stated above.

4. On the other hand, the learned Standing Counsel appearing for the respondents would submit that only one tower has been erected and there is no proposal to shift the existing line from the opposite side to the petitioner's property and it is only a new line which is being laid and already tower has been erected and sinking process has to be done.

5. When this Court wanted to know whether any permission has been obtained from the owner, the learned Standing Counsel would refer Section 17 of the Indian Telegraph Act, 1885, and submit that only the land owner has to approach the authorities for removal of the towers erected.

6. Section 16 of the Indian Telegraph Act, 1885 states that if any objection is received, it is the bounden duty of the authorities, namely, respondents to get permission from the District Magistrate and number of judgments have been given by this Court. It is a settled law.

7. The learned Counsel for the petitioner rightly relied upon Rule 3 of the Works of Licensees Rules, 2006. The same is extracted hereunder :

"3. Licensee to carry out works:(1) A licensee may:

(a) carry out works, lay down or place any electric supply line or other works, in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;

(b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support;

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works;

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

(2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix, after considering the representations of the concerned persons, if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.

(3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule(1) shall be subject to revision by the Appropriate Commission.

(4) Nothing contained in this rule shall effect the powers conferred upon any licensee under Section 164 of the Act.''

The proviso to Section 3(1) would make it very clear that it is the licensee who shall apply permission by writing from the District Magistrate.

8. Coming to the facts of the case, it is evident that the petitioner gave objection by way of representation dated 03.10.2015 and was served upon the 1st respondent on 05.10.2015 as evident from the seal as seen in page 13 of the typed set and through post on 09.10.2015 as revealed in page 17 of the typed set and also further representation on 12.10.2015 to the 2nd respondent and the Superintending Engineer, GCC-2, Chennai.

9. Having received the objections, at least, the respondents should have looked into that and rejected the said representations going through it. Neither representations were considered and rejected or some order has been passed nor should have stopped the work for the purpose of obtaining permission from the District Magistrate. Even from the facts, it is known that the respondents have not acted upon as per law. Therefore, it is clear that in spite of objections, the respondents are proceeding with the erection of towers without following the procedure as an authority as defined under Article 12 of the Constitution of India and as a State Instrumentality, the respondents have to follow the procedure as per law. But the respondents have not followed it. This Court is also aware that the erection of towers and laying wires are in the interest of the Nation and public. At the same time, the interest of the individual also should be considered. When a procedure is contemplated as per law, the act has to be done as per the said procedure. In this case, the respondents miserably failed to follow Section 16 of the Indian Telegraph Act, 1885 and also the Works of Licensees Rules, 2006.

10. If the respondents proceed in accordance with law, there would not have been any occasion for this Court to grant any order in favour of the petitioner. Only when it is found that there is a violation, left with no other go, knowing that it would go against the public interest, this Court is constrained to pass orders. This case is one such case.

11. Though the Writ Petition has been filed for issuance of a Writ of Mandamus, forbearing the respondents from in anyway shifting the existing SP Koil Taramani - 230 KV DC HT line, running for the past 15 years in another land, into the petitioner's land at S.No.17/2B in Pudupakkam Village, it is brought to the notice of this Court that the said line is going to be shifted and it is only a new line which is being laid and therefore, this Court taking into account the aforesaid fact

moulds the prayer and prohibits the respondents from proceeding with the work, either completing the erection of towers or stringing process, except by getting statutory permission as stated in the Statute of Rules. Accordingly, the Writ Petition is allowed as prayed for by moulding the prayer. No costs. Consequently, connected Miscellaneous Petition is also closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Chairman,
Tamil Nadu Transmission Corporation Limited
(TANTRANSCO)
10th Floor, NPKRR Maaligai,
No.144, Anna Salai, Chennai-2.
2. The Chief Engineer,
Transmission,
NPKRR Maaligai,
No.144, Anna Salai, Chennai-2.
3. The Chief Engineer,
TANTRANSCO (TNEB),
Transmission Projects 1,
Industrial Estate, Guindy,
Chennai-600 032.

+1 cc to Mr.J.Srinivasa Mohan Advocate sr.56962

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