

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/11/2015

C O R A M

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.7391 of 2015

a n d

M.P.No.1 of 2015

A. Meenakshiammal ... Petitioner

Vs

1. The District Magistrate and
District Collector
Erode District
Erode 638 011.

2. The Superintending Engineer
General Construction Circle
182 Dr. Subbarayan Road
Tatabad
Coimbatore 641 012.

3. The Assistant Divisional Engineer
Tower Lines office
E.V.N.Road
Erode District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned order dated 17/2/2015 made in R.Dis.No.12613/2014/K4 passed by the first respondent, quash the same and consequently forbearing the respondents from in any way erecting electric poles or drawing electric lines in and across the petitioner's land measuring an extent of 3.05 ½ acres being in old S.F.No.539 corresponding to R.S.Nos.844/1 and 844/2 in Kanchi Kovil Village, Erode District.

For petitioner ...
For respondents ...

Mr.N.Manokaran
Mr.P.H.Aravind Pandian
AAG
assisted by
Mr.R.Vijayakumar,
Additional Government Pleader
for R.1

Mr.P.H.Aravind Pandian
AAG
assisted by
Mr.S.K.Rameshwar
for R.R.2 and 3.

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O R D E R

With the consent of the learned counsel appearing for the parties, this writ petition is taken up for final disposal.

2. Heard Mr.N.Manokaran, learned counsel for the petitioner, Mr.P.H.Aravind Pandian, learned Additional Advocate General assisted by Mr.R.Vijayakumar, learned Additional Government Pleader for the first respondent and Mr.S.K.Rameshwar for the respondents 2 and 3.

3. The petitioner has filed this writ petition, challenging the order dated 17/2/2015 passed by the first respondent/District Magistrate and District Collector, Erode.

4. By the impugned order, the petitioner's objection to the erection of the high tension tower in his land was rejected.

5. The petitioner has alleged certain mala fides for deviating the route and he has named the person on whose behest the deviation is alleged to have taken place.

6. A google map was produced before this Court by the learned Additional Advocate General. On a perusal of which prima facie appears that the shortest distance between LOC No.42 and LOC No.40 is a straight line, whereas now, the proposed route is via LOC No.41. The point of issue is location of the tower LOC No.41.

7. The petitioner's specific case is that this re-positioning has been done in order to help a very big political person and the petitioner has also named the person in the representation.

8. The Collector, who is the District Magistrate, exercises power under Section 16 (1) of the Indian Telegraph Act, 1885 (hereinafter referred to as "the Act"), which has been made applicable to these proceedings.

9. In exercising the aforesaid power, the Collector has to decide whether the obstruction or resistance by the land owner, the petitioner in this case was justified. The nature of the enquiry though may be summary, it cannot be without considering the facts of the case. This is so because, in terms

of Section 10 (d) of the said Act, the authority, who seeks to draw the electric line or places electric pole upon any immovable property and exercises such power shall do as little damage as possible and when it is exercised, it shall pay full compensation to all persons, interested for any damage sustained by them by reason of the exercise of those powers.

10. The District Magistrate, by the impugned order has not dealt with those specific objections, but has rejected the petitioner's contentions, by observing that he is not satisfied with the land owners objections as the same are quite devoid of merits and not genuine. It is incumbent on the District Magistrate to give reasons though not as in a judgment of a Court, the reasons should speak for itself and the order should say as to why the objections raised by the petitioner are devoid of merits and not genuine. This is not forthcoming in the impugned order. Therefore, the impugned order has held to be arbitrary and unreasonable.

11. The counter affidavit filed by the District Magistrate also does not take the matter any further.

12. The learned Additional Advocate General appearing for the respondents sought to impress upon the Court that there is no deviation of the route. In this regard, reference was made to paragraph 5 of the counter affidavit. On a reading of paragraph 5 of the counter affidavit, it does not specifically state that what was the original proposed route as to whether the Board initially proposed a straight line from LOC 42 to LOC 40 and why the deviation has occurred by erecting another tower. Thus the averment in the aforesaid paragraph deserves to be rejected as vague.

13. The learned Additional Advocate General further submitted that he is ready and willing to place all the documents before this Court, to establish that Board has acted in a proper manner. Further, it is submitted that the District Collector cannot recommend for any change of route or deviation of the route. The submission is not acceptable for more than one reason.

(i). Firstly, the validity of the impugned order can be decided only based on the reasons assigned therein. It is the settled legal position that the impugned order cannot be improved by way of a counter affidavit.

(ii). Secondly, this Court is conscious of the various decisions on the point as regards the jurisdiction of the District Collector to recommend for change of route. However, in the case on hand is actually different. The specific allegation of the petitioner is that the route of the high

tension wires is not as per the original proposed route. This issue could have been addressed by the Board very easily either by stating that there is no change of route and producing the documents to that effect before the District Collector. Secondly, even assuming there was a change of route, still the Board could have taken a stand as to why for good and sufficient reasons, there was a change of route. Either of these options has not been exercised by the respondent Board.

14. In view of the above, this Court is inclined to quash the impugned proceedings, as the same is not sustainable in the eye of law.

15. Accordingly, the writ petition is allowed, the impugned order is quashed and the matter is remanded to the District Collector, Erode to take decision afresh, after issuing notice to the petitioner as well to the respondent Board and after considering all these objections, pass a speaking order, on merits and in accordance with law.

16. It is seen that from 17/3/2015, there is an order of interim stay. The learned Additional Advocate General submits that immediately steps have to be taken for erecting the tower, but it is yet to be energised.

17. Be that as it may, the District Collector, Erode is directed to decide the matter, as expeditiously as possible, preferably within a period of ten days, from the date of receipt of a copy of this order and the petitioner shall extend her full cooperation in the enquiry. Since the petitioner is aged about 90 years, she will be entitled to appear before the District Collector for personal hearing through her authorised representative.

18. This writ petition is allowed on the above terms. No costs. Consequently, the connected Miscellaneous Petition is closed.

mvs.

-s/d-
Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

To

1. The District Magistrate and District Collector
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3. The Assistant Divisional Engineer
Tower Lines office
E.V.N.Road
Erode District.

+ 1 cc to Mr.S.K.Rameshwar, Advocate SR 65167

+ 1 cc to Mr.N.Manokaran, Advocate SR 65117

+ 1 cc to Govt.Pleader SR 65262

vs (co)
prk1/12

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