

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5/11/2015

C O R A M

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.8230 of 2015

a n d

M.P.No.1 of 2015

M/s.Sree Rayalseema Hi-strength Hypo Ltd
rep. By its Authorised Signatory
Shri.K.Gurumoorthy
New No.100 Old No.74, 1st floor
Greenways Road Extension
R.A.Puram
Chennai 600 028. Petitioner

Vs

1. The Chief Engineer
Transmission Projects - I
Tamil Nadu Transmission Corporation Ltd
Chennai 600 032.
2. The Superintending Engineer
General Construction Circle - I
A.10 Thiru-vi-ka Industrial Estate
Guindy
Chennai 600 032.
3. The District Collector-cum-
The District Executive Magistrate
Kancheepuram District
Tamil Nadu. .. 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 21/2/2015 of the second respondent in Lr.No.SE/GCC-I-CNI/AEE/GL/CHD/F Rayalseema/D.290/15 dated 19/2/2015 and quash the same and further forbear the first and second respondent herein from in any way erecting High Transmission tower lines in S.No.217 of Tiruporur Village , Kanchipuram District, Tamil Nadu, belonging to the petitioner herein.

For petitioner	...	Mr.Hari Radhakrishnan
For respondents	...	Mr.P.Gunaraj for R.R.1 and 2.

Mr.R.Vijayakumar
Additional Government Pleader
for R.3.

O R D E R

With the consent of both parties, the writ petition is taken up for final disposal.

2. Heard Mr.Hari Radhakrishnan, learned counsel for the petitioner, Mr.P.Gunaraj, learned counsel for the respondents 1 and 2 and Mr.R.Vijayakumar, learned Additional Government Pleader for the third respondent.

3. The petitioner, which is a Company, registered under the Companies Act, 1956, has filed this writ petition, to quash the order passed by the second respondent, dated 21st February 2015, in and by which, the second respondent, considered the request made by the petitioner for shifting of the foundation and deviation of Siruseri - Nemli 110 KV SC line on DC tower in between location 79 to 81. The impugned order further states that the sanctioned estimate for the above work is Rs.19,22,620/- (Rupees Nineteen lakhs twenty two thousand six hundred and twenty only) and the entire amount has to be remitted by the petitioner, as per the Rules of Tamil Nadu Electricity Board. Therefore, the petitioner was requested to remit the said amount, to enable the second respondent, to proceed with the shifting of the foundation and deviation of the said line. Further, the impugned order states that if the petitioner fails to deposit, action will be taken to execute the line work in the originally proposed route, since the delay is affecting the progress of line work to CMWSSB Desalination Plant. The petitioner was also directed to submit an undertaking on a non-judicial stamp paper of Rs.80/- to solve any problem, if any arises, in the deviated route.

4. The petitioner has no grievance as regards the shifting of the foundation as a consequence of which there will be a deviation of the power line. The only grievance is against the demand of Rs.19,22,620/-. The petitioner would state that they are not liable to pay the said amount demanded, since the power line was initially not proposed to be taken through the petitioner's property and in fact, the present route shown by the second respondent is a deviated route and the petitioner is not seeking for any deviation.

5. However, this issue cannot be considered by this Court as to whether the original proposal was itself is a deviation from the existing proposal or whether the present offer given by the second respondent is a deviation of the original proposal. These issues can be sorted out only by the third respondent.

6. In an identical issue, in T.NOVID Vs. THE DISTRICT COLLECTOR-CUM-DISTRICT MAGISTRATE, PUDUKOTTAI DISTRICT AND SEVEN OTHERS, (W.P.(MD)No.3526 of 2014), the petitioner therein sought for the issuance of a writ of mandamus to forbear the respondents 2 to 4 viz., the Tamil Nadu Generation and Distribution Corporation, from taking the electricity lines through an aquaculture farm of the petitioner. The legal issue which arose for consideration in the said case was whether the petitioner was lawfully entertained to raise such an objection and whether his consent is required under the provisions of the Electricity Act, 1910.

7. This Court, in the aforesaid case, by an order dated 9th September 2014, has disposed of the writ petition, directing the TANGEDCO to file an application before the District Collector, placing on record the objection raised by the petitioner and the counter objections of the third party as well as their report and the District Collector was directed to consider the matter, after affording an opportunity of personal hearing to all parties. At this stage, it would be relevant to refer to the operative portion of the order dated 9th September 2014 passed in the said writ petition and the same is as follows:-

22. On the contrary, the petitioner, by referring to certain records, would state that he is lawfully entitled to the land and therefore his objection ought to have been considered by the Board and without removal of obstacle/objection, the poles cannot be erected and the lines cannot be drawn. The legal issue as regards this aspect has been considered by this in a recent decision in the case of R.Santhana Raj (cited supra), wherein, a prayer was made to issue a writ of mandamus to forbear the respondents from erecting high tension electric towers through the petitioner's property violating the provisions of Indian Electricity Act. The

petitioners contended that their consent, as required under Section 12(2) of the Indian Electricity Act, 1910, was not obtained and that there is an alternative land is available in the form of public road, through which high tension line can be carried. The respondent Board contended that the petitioners cannot place reliance upon Section 12(2) of the Indian Electricity Act, since the 1910 Act was repealed by Section 185 of the Electricity Act, 2003 and the only right that the petitioners have is to claim compensation and that the question of consent did not arise after the advent of the 2003 Act. The respondent Board relied on the decision of the Honourable Supreme Court in the case of Daulat Sing Surana V. First Land Acquisition Collector, reported in (2007) 1SCC 641 and the decisions of this Court in the cases of R.Kannan v. Power Grid Corpn.(India) Ltd., reported in (2008)4 MLJ 892 and T.Narayanan v. Dist. Executive Magistrate-cum-Dist.Collector. Reported in (2008) 4MLJ 1024.

23. Mr. V.Ramasubramanian, J., by Order dated 08.11.2011, while considering the said writ petition, first took note of the fundamental question as to whether the benefit of Section 12(2) of the Electricity Act is available as on date. After referring to the various provisions of the Act, held that it is clear that prima facie the licensee has the power to lay down and place electrical lines and other works in any place within the area of supply or transmission. However, this power can be circumscribed only by the rules framed by the

appropriate Government in terms of sub-section (2). Answering the question as to whether prior consent of the owners is necessary before erecting poles, towers or supply lines, on a private land, held that it depends upon the licensee under Section 164 of the Electricity Act, 2003.

24. By referring to B.P.(CH) No.368, Technical Branch, dated 25.08.2010, it was held that the appropriate Government had already conferred powers upon the Electricity Board to exercise the powers of the Telegraph Authority under the Telegraph Act, 1885. This conferment had been made by the Government, in terms of Section 51 of the Electricity Act, 1910, much before than the 2003 Act was issued. This conferment made under Section 51 of the 1910 Act should be deemed to be a conferment under the corresponding provision of the 2003 Act, namely Section 164, since it is not inconsistent with any of the provisions of the 2003 Act. It was further held that the electricity board has been conferred with the powers exercisable by the Telegraph Authority in terms of Section 10 of the Telegraph Act 1885. Therefore Rule 3(4) of the Works of Licensees Rules, 2006 would come into play in the case on hand. Consequently, the requirement of prior consent of the owner or occupier, prescribed under Rule 3 (1)(a) of these Rules will not affect the powers deemed to be conferred upon the respondents under Section 164 of the 2003 Act, by virtue of Section 185(2)(a) of the 2003 Act read with Section 51 of the 1910 Act. In conclusion it was held as follows :

"58.

(ii) Primarily Rule 3(1)(a) the Works of Licensees Rules, 2006 requires the licensee to obtain the prior consent of the owner or occupier of any building or land on which it is proposed to carry out certain works.

(iii) If the owner or occupier refuses to give consent and raises objections, the licensee may obtain permission in writing from the District Magistrate or the Commissioner of Police, in terms of the first provision under Rule 3(1).

(iv) But in cases, where powers are conferred upon the licensee under Section 164 of the Electricity Act, 2003, the provisions of Rule 3(1) to (3) of the Works of Licensees Rules, 2006 will not apply. In other words, where the appropriate Government had conferred upon the licensee, the powers of a Telegraph Authority under the Telegraph Act, 1885, the licensee need not take recourse to the procedure prescribed by Rule 3(1) to (3) of the Works of Licensees Rules, 2006. But the licensee shall take recourse to the provisions of the Telegraph Act, 1885.

(vii) Though Section 10 of the Telegraph Act, 1885, does not make it incumbent upon the licensee to obtain permission of the owner or occupier; it does not also reduce his ownership or right of possession into something farcical. The right of the owner or occupier to resist or obstruct any act undertaken under Section 10, is recognised indirectly in Section 16(1), which requires the licensee to obtain an order of the District Magistrate, in such circumstances. A careful reading of Section 16(1) would show two things viz., (a) that the District Magistrate exercises his

power under this Section, in his discretion and (b) that what the District Magistrate does under Section 16(1) is akin to the removal of obstruction as ordered by an Executing Court in terms of Order XXI, Rules 97 and 98 of the Code. Any resistance on the part of the owner or occuier after an order is passed by the district Magistrate becomes a punishable offence under Section 188 of the Indian Penal Code, by virtue of Section 16(2) of the Telegraph Act, 1885.

(viii) The words "resisted or obstructed" appearing in Section 16(1) of the Telegraph Act, 1885 have to be given their ordinary meaning..... Therefore, a dignified protest, even in the form of a formal letter, notice or telegram, would amount to obstruction within the meaning of lincesees should seek an order from the District Magistrate."

25. In terms of the above decision, a dignified protest would amount to obstruction within the meaning of Section 16 (1) of the Telegraph Act, 1885 and once such a protest is lodged, the licensee should seek an order from the District Magistrate.

26. In the light of the above legal position, the petitioner having raised objection, which is in fact an obstruction, should be considered in the manner provided under the statute as held in the above referred decision. In that process, the authority namely the District Collector/District Magistrate would be in a position to decide who is the lawful owner of the property, whether the property in question is a government land, even assuming it

is a private patta land there was pole in existence even much earlier through which a single phase connection was given to the eighth respondent premises, whether the pole, which now shown as a Pole No1. Is erected in a place, which is a unobjectionable and such other matters. Therefore, unless the District Magistrate adjudicates the claim in the manner provided the issue cannot be resolved.

27. In the result, the writ petition is disposed of with a directive to the respondents 3 and 4 to file an application before the first respondent placing on record the objection raised by the petitioner and the counter objection of the eighth respondent as well as their report in the matter and on placing of the materials before the first respondent, the first respondent shall issue notice to the petitioner, eighth respondent as well as the electricity Board and consider the objection raised by the petitioner after affording an opportunity of personal hearing to the parties and pass orders on merits and in accordance with law, within a period of eight weeks from the date receipt of a copy of this Order."

8. Accordingly, there will be a direction to the second respondent to file an appropriate application before the third respondent to enable them to complete the project in question. On such an application being filed by the third respondent, the third respondent shall issue notice to the petitioner as well as to the second respondent and consider the objections raised by the petitioner and pass a reasoned order, on merits and in accordance with law, within a period of six weeks from the date of filing the petition before the third respondent.

9. The learned counsel appearing for the petitioner, on instruction, submits that the petitioner will appear

through its authorised representative before the third respondent and cooperate for the expeditious disposal of the petition.

10. With the above direction, this writ petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Chief Engineer
Transmission Projects - I
Tamil Nadu Transmission Corporation Ltd
Chennai 600 032.
2. The Superintending Engineer
General Construction Circle - I
A.10 Thiru-vi-ka Industrial Estate
Guindy
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3. The District Collector-cum-
The District Executive Magistrate
Kancheepuram District
Tamil Nadu.

+1 cc to Mr.Hari Radhakrishnan, Advocate, sr.61350
+1 cc to Mr.P.Gunaraj, Advocate, sr.60873
+1 cc to Government Pleader, sr.61790

ug co
kra 21.03.2016

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