



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :11.12.2015
DELIVERED ON :18.12.2015

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CORAM :
THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Writ Appeal(MD) Nos.1343 to 1352 and 1356 to 1358 of 2015
and
M.P(MD)Nos.1 of 2015

N.RAMAN	... APPELLANT/PETITIONER in WA(MD) No.1343/2015
L.AATHAN	... APPELLANT/PETITIONER in WA(MD) No.1344/2015
M.VELLAIYAMMAL	... APPELLANT/PETITIONER in WA(MD) No.1345/2015
A.LAKSHMANAN	... APPELLANT/PETITIONER in WA(MD) No.1346/2015
R.MAHARAJAN	... APPELLANT/PETITIONER in WA(MD) No.1347/2015
A.NAACHAN	... APPELLANT/PETITIONER in WA(MD) No.1348/2015
T.KARUNAI MAHARAJAN	... APPELLANT/PETITIONER in WA(MD) No.1349/2015
C. KATHAKUTTY	... APPELLANT/PETITIONER in WA(MD) No.1350/2015
C.AZHAGUPILLAI	... APPELLANT/PETITIONER in WA(MD) No.1351/2015
P.PARANTHAIVEERAN	... APPELLANT/PETITIONER in WA(MD) No.1352/2015
M. PARIHARAN	... APPELLANT/PETITIONER in WA(MD) No.1356/2015
T.VEERAN	... APPELLANT/PETITIONER in WA(MD) No.1357/2015
K. CHITHIRAN	... APPELLANT/PETITIONER in WA(MD) No.1358/2015

-VS-

- 1 THE DISTRICT COLLECTOR,
DINDIGUL DISTRICT, DINDIGUL.
- 2 THE SUPERINTENDENT ENGINEER,
GENERAL CONSTRUCTION CIRCLE (TANGEDCO)
MADURAI - 625 007.
- 3 THE SUPERINTENDENT OF POLICE,
DINDIGUL (RURAL) DINDIGUL DISTRICT.

... RESPONDENTS/RESPONDENTS
IN ALL W.As

Prayer in WA(MD) No.1343 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12360 of 2015 dated 18.11.2015 and to set aside the same.



Prayer in WP(MD). 12360/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No.48/1C, 48/1H, 63/4A, 63/4C, 63/4E, 63/4F, 63/7B, 63/7K, 66/12, 66/19 & 66/6A in Reddiyapatti Village, Natham Taluk, Dindigul District.

Prayer in WA(MD) No.1344 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12361 of 2015 dated 18.11.2015 and to set aside the same.

Prayer in WP(MD). 12361/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents or their subordinates from in any constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No. 48/1B, 48/3A, 48/5A, 58/2A, 63/2B, 63/5F, 63/7F, 63/7J, 66/13, 68/1I, 68/1S in Reddiyapatti village, Natham Taluk, Dindigul District.

Prayer in WA(MD) No.1345 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12498 of 2015 dated 18.11.2015 and to set aside the same.

Prayer in WP(MD). 12498/ 2015 :

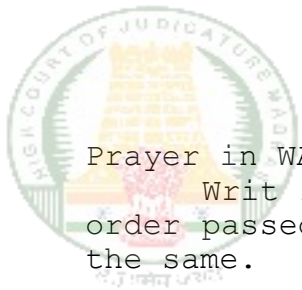
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No. 29/17, in Reddiyapatti Village, Natham Taluk, Dindigul District.

Prayer in WA(MD) No.1346 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12367 of 2015 dated 18.11.2015 and to set aside the same.

Prayer in WP(MD). 12367/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No.63/1B1A, 63/4B1, 63/7L1, 65/4, 66/5B in Reddiyapatti Village, Natham Taluk, Dindigul District.



Prayer in WA(MD) No.1347 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12365 of 2015 dated 18.11.2015 and to set aside the same.

Prayer in WP(MD). 12365/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No.123/11 & 123/12 in Reddiyapatti Village, Natham Taluk, Dindigul District.

Prayer in WA(MD) No.1348 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12368 of 2015 dated 18.11.2015.

Prayer in WP(MD). 12368/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No.48/1F & 66/9 in Reddiyapatti Village, Natham Taluk, Dindigul District.

Prayer in WA(MD) No.1349 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12503 of 2015 dated 18.11.2015.

Prayer in WP(MD). 12503/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No. 253/1 and 253/2 in Kesampatti Village, Melur Taluk, Madurai District.

Prayer in WA(MD) No.1350 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12364 of 2015 dated 18.11.2015.

Prayer in WP(MD). 12364/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No.83/4B, 84/2, 84/3A, 85/2, 88/6 & 98/7A in Reddiyapatti Village, Natham Taluk, Dindigul District.

Prayer in WA(MD) No.1351 of 2015:

<https://hcservices.courts.gov.in/hcservices/> Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12363 of 2015 dated 18.11.2015.

Prayer in WP(MD). 12363/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No. 48/1G2, 63/4B2, 63/4D2, 63/6A, 63/6B3 & 65/7 in in Reddiyapatti Village, Natham Taluk, Dindigul District.

Prayer in WA(MD) No.1352 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12366 of 2015 dated 18.11.2015.

Prayer in WP(MD). 12366/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No.150/7A, 161/11, 53/2H, & 53/4 in Reddiyapatti Village, Natham Taluk, Dindigul District.

Prayer in WA(MD) No.1356 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12495 of 2015 dated 18.11.2015.

Prayer in WP(MD). 12495/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No. 123/8 & 123/9 in Reddiyapatti Village, Melur Taluk, Madurai District.

Prayer in WA(MD) No.1357 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12500 of 2015 dated 18.11.2015 and to set aside the same.

Prayer in WP(MD). 12500/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No. 63/1A2, 117/1B, 58/1C, 58/1F, 58/1I, 56/1, 56/6 in Reddiyapatti Village, Natham Taluk, Dindigul District.

Prayer in WA(MD) No.1358 of 2015:

Writ Appeal filed under clause 15 of the Letter Patent against the order passed in W.P(MD)No.12501 of 2015 dated 18.11.2015.

Prayer in WP(MD). 12501/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, forbearing the respondents or their subordinates from in any way constructing high tension electric transmission tower and laying high electric transmission lines through to the petitioner s land in Survey No. 103/2B1, 157/4A,



157/4B, 157/5, 173/1, 173/4, 98/5 and 100/10 in Reddiyapatti Village, Natham Taluk, Dindigul District.

For Appellant : Mr.B.Saravanan
For Respondents 1&3 : Mr.M.Alagadevan,
Special Government Pleader.
For 2nd Respondent : Mrs.S.Srimathy
(In all W.As.)

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JUDGMENT

V. RAMASUBRAMANIAN, J

The writ appeals arise out of a common order passed by the learned Judge dismissing a batch of writ petitions, seeking to prohibit the Tamil Nadu Electricity Board from erecting high tension electric transmission towers and laying high electric transmission lines, through the lands of the appellants herein.

2. We have heard Mr.B.Saravanan, learned counsel for the appellants and Mrs.S.Srimathy, learned counsel for the TANGEDCO.

3. After the advent of the Electricity Act, 2003, the Tamil Nadu Electricity Board was dissolved and two Corporations, one known as Tamil Nadu Generation and Distribution Corporation Limited and another known as Tamil Nadu Electricity Transmission Corporation Limited were floated in the State of Tamil nadu. The Transmission Corporation which is deemed to be a "transmission licensee" in terms of Sections 39 and 40 of the Electricity Act 2003 was entrusted with the work of construction of a 110 KV Double Circuit Transmission Line on DC Tower with Panther Conductor from Alagarkoil-Natham-Sembatty Feeder at Valayapatty Sub Station. The construction of this 110 KV Double Circuit Line was undertaken in the said area for taking continuous supply of electricity to remote villages. The Corporation carried out a detailed survey of the reserve forests, hills, dam sites, human habitation etc., to decide on the choice of places for the erection of the towers. The Corporation also checked vertical and horizontal clearances. After the technical feasibility of the route was examined, the project was approved and it was published in the Government Gazette and in newspapers. The project was supposed to cover a distance of about 13.035 kms at a cost of Rs.25 Crores.

4. When the officials of the Transmission Corporation commenced a local inspection of the lands where the towers were proposed to be erected, the land owners came up with a batch of writ petitions in July 2015. The prayer made in all the writ petitions were for the issuance of a writ of mandamus to forbear the respondents from in any way constructing high tension electric transmission towers and from laying high electric transmission lines through their lands. At the time when the writ petitions came up for admission, notices were ordered and an interim order of injunction was granted in favour of the land owners.

5. Subsequently, the Transmission Corporation came up with applications for vacating the interim injunction. Therefore, the learned Judge took up all the writ petitions for final hearing and by a final order dated 18.11.2015, the learned Judge dismissed all the writ petitions. Aggrieved by the said order, the land owners are on appeal



before us.

6. As seen from the order of the learned Judge, the land owners pitched their claim on two grounds namely:-

- (a) that the consent of the owners as required under Section 12(2) of the Indian Electricity Act, 1910 was not obtained and
- (b) that there is alternative route available.

While dealing with these contentions, the learned Judge thought that three questions arose for consideration namely:

"(i) Whether under Section 12(2) of the Indian Electricity Act, 1910, prior consent of the land owners is necessary before laying down and placing electric supply lines?

(ii) Whether consent is required even if the supply is effected for a public purpose? and

(iii) Whether the failure of the licensee to obtain consent of the land owner would deprive the land owner the right to property guaranteed under Article 300-A of the Constitution?"

7. All the three contentions of the land owners were rejected by the learned Judge mainly on the basis of a decision rendered by one of us (VRSJ) in **R.Santhana Raj Vs.The Chief Engineer, 2012 (1) CTC 504**. However, the land owners are before us on the ground that the decision in **R.Santhana Raj** is distinguishable and that the same cannot be invoked so long as the State Government has not issued necessary Rules under section 67 of the Electricity Act, 2003.

8. The main contention of Mr.B.Saravanan, learned counsel for the appellants is that though Section 12 (1) of the Indian Electricity Act, 1910 empowers the licensee to lay down and place electric supply lines and other works in any place within the area of supply, this power is circumscribed by sub-section (2) of Section 12 which makes it mandatory for the licensee to obtain the consent of the owner or occupier concerned, before laying down or placing any electric supply line.

9. But the requirement of obtaining the prior consent, prescribed under Section 12(2) will not apply to cases where a Public Officer or Central Transmission Utility or State Transmission Utility or licensee, is empowered (i) either by the Central Government, in the case of inter state transmission system (ii) or by State Government in the case of Intra State Transmission system, to place electric supply lines or apparatus and appliances for transmission of energy. This was by virtue of Section 51 of the 1910 Act. Section 51 of the 1910 Act specifically contained a non obstante clause and it read "notwithstanding anything contained in Sections 12 to 16 (both inclusive) and Sections 18 and 19".

10. According to Mr.B.Saravanan, learned counsel for the appellants, the Indian Electricity Act, 1910 was repealed by Section 185 (1) of the Electricity Act, 2003. But by virtue of clause (b) of sub-section (2) of Section 185, the provisions contained in Sections 12 to 18 of the 1910 Act would continue to apply until Rules are framed under Sections 67 to 69 of the 2003 Act. Though the Central Government has framed the Works of Licensees Rules, 2006, under section 67 (2) of the 2003 Act, the State Government has not made any similar rules in exercise of powers so conferred by Section 67 (2). Moreover, Section 164 of the 2003 Act, which is in pari materia with Section 51 of 1910 Act, does not contain a non obstante clause just as the one contained in Section 51 of



the 1910 Act.

11. Therefore, the contention of Mr.B.Saravanan, learned counsel for the appellants is two fold namely:-

"(a) That while the requirement under Section 12(2) of the 1910 Act stood excluded by the non abstante clause contained in Section 51 of the 1910 Act, the same is not the position after the advent of the 2003 Act, since Section 12(2) is retained under Section 185(2)(b), but Section 51 which is retained in the form of Section 164 does not contain the non abstante clause and

(b) that in any case, so long as no rules are framed by the State Government, similar to the Works of Licensee Rules, 2006, the State Government cannot avoid the requirement of Section 12 (2) especially in the absence of a provision similar to Section 51 of the the 1910 Act".

12. We have carefully considered the above submissions.

13. Before we deal with the two primary contentions now raised before us, it must be pointed out that in **Bharat Heavy Electricals Ltd., Vs. Tamil Nadu Electricity Board, 2007 (2) MLJ 111**, a learned Judge of this Court took the view that the erection of poles in the property of a person, without obtaining his consent under Section 12(2) was illegal. In **Superintending Engineer Vs. M.Sengu, 2011 (3) MLJ 625**, a Division Bench of this Court also took a similar view.

14. Both these decisions were considered in **R.Santhana Raj**. In **R.Santhana Raj**, this Court was concerned with the very same question as to whether prior consent of the land owner under Section 12(2) was indispensable or not. In paragraphs 15 to 18 of the decision in **R.Santhanaraj**, the history of the evolution of the electricity laws, over a period of more than 9 decades was traced and it was pointed out as follows:

(i) That the 1910 Act merely dealt with the supply and use of electrical energy and the rights and obligations of the licensees.

(ii) That after independence the Electricity (Supply) Act 1948 was enacted, enabling provincial Governments to set up suitable organisations to work out the "grid system"

(iii) that though the 1948 Act did not repeal 1910 Act, Section 42(1) of the 1948 Act declared that notwithstanding anything contained in Sections 12 to 16, 18 and 19 of the 1910 Act, the Board shall have all powers of the Telegraph Authority under Part III of the Indian Telegraph Act, 1885 for the purpose of placing any wires, poles, wall-brackets, stays, apparatus and appliances for the transmission and distribution of electricity and

(iv) that in the year 2003, the Electricity Act 2003 was enacted to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to the development of electricity industry".

15. Though Section 185 (1) of the 2003 Act repealed the 1910 Act as well as the 1948 Act, clause (b) of sub-section (2) of Section 185 declared that notwithstanding the repeal, the provisions of Sections 12 to 18 of the 1910 Act and the rules made thereunder shall have effect until the rules under Sections 67 to 69 of the 2003 Act are made. Clause (b) of sub-section 2 of Section 185 requires reproduction and hence it is reproduced as follows:-



"185(2) Notwithstanding such repeal:-

(a).....

(b) the provisions contained in Sections 12 to 18 of the Indian Electricity Act, 1910 and rules made thereunder shall have effect until the rules under Sections 67 to 69 of this Act are made".

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16. Keeping in mind Section 185 (2) (b), if we have a look at Sections 67 to 69 of the Electricity Act, 2003, it could be seen that these three provisions are grouped together under Part VIII under the broad caption "Works". While Section 67 (1) primarily deals with opening up of streets, railways etc., for the purpose of laying down or placing electric supply lines, Section 68 deals with installation of overhead lines and 69 deals with the requirement of notifying the telegraph authority whenever any installation is to be made within ten metres of any telegraph line etc. Though Sections 67 to 69 are grouped together and placed in Part VIII of the Act and though these three provisions deal respectively with (i) opening up of streets, railways etc., (ii) installation of overhead lines and (iii) laying down of certain works within ten metres of any telegraph line, all these Sections do not confer rule making power upon the Appropriate Government. The rule making power is conferred upon the Appropriate Government only under sub-section (2) of Section 67. Therefore, the phrase "**until the rules under Sections 67 to 69 of this Act are made**" appearing in section 185 (2) (b) is virtually meaningless, at least partially, as no rule making power is conferred by Sections 68 and 69 of the 2003 Act.

17. The scheme of Sections 67 and 68 were analysed in paragraphs 21 to 23 of the decision in **R.Santhana Raj** as follows:

"21. Section 67 (1) of the 2003 Act, empowers the licensee to carry out, within his area of supply or transmission, several works such as (i) opening and breaking up the soil of any street (ii) opening and breaking up of any sewer, drain or tunnel (iii) altering the position of any line or pipe (iv) laying down and placing electric lines and other works (v) repairing, altering or removing the same and (vi) doing all other acts necessary for the transmission or supply of electricity.

22. Sub-Section (2) of Section 67 empowers the appropriate Government to frame rules specifying several matters listed in clauses (a) to (q). Sub-Section (3) obliges the licensee to grant compensation for any damage, detriment or inconvenience caused while exercising any of the powers conferred by this Section. Sub-Section (4) provides for the reference of any dispute arising under that Section, to the appropriate Commission and Sub-Section (5) empowers the appropriate Commission to impose a penalty, in addition to any compensation.

23. Just as Section 67 (1) empowers the licensee to carry out certain items of work at the ground level, Section 68(1) empowers the installation of overhead lines, with the prior approval of the appropriate Government. The distinction between Section 67 (1) and Section 68 (1) is (i) that the former deals with the works to be carried out on or under the earth, but the latter deals with the work to be carried out above the ground level in the form of overhead lines and (ii) that the former does not speak about prior approval of anyone, while the latter mandates the prior approval of the appropriate Government".



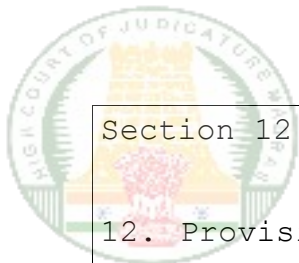
18. The fact that the State Government, which happens to be the Appropriate Government insofar as Intra State Transmission Lines are concerned, has not issued any rules in exercise of the power conferred under Section 67(2) of the 2003 Act, cannot really save the situation for the appellants.

19. Section 12 (2) of the 1910 Act which is sought to be projected as the ventilator through which the case of the appellants breath, gets disconnected, the moment certain rules are made in terms of Section 67 (2). Admittedly, the Central Government is the appropriate Government in so far as inter-state transmission is concerned. The Central Government has already framed the Works of Licensees Rules, 2006 in exercise of the power conferred by section 67(2). Therefore, section 12(2) now stands repealed, even indisputably, by the very language employed in section 185 (2)(b), at least in so far as inter-state transmission is concerned. Once this is accepted, it will be easy to appreciate that section 12(2) cannot be taken to survive only in respect of intra state transmission, even while taking it have perished in respect of inter-state transmission. To say on the one hand that due to the issue of the Works of Licensees Rules, 2006, Section 12(2) stands repealed, insofar as Inter-State Transmission are concerned, but to say on the other hand, that due to the failure of the State Governments to frame rules under Section 67(2), Section 12(2) will continue to exist only insofar as Intra State transmission is concerned, will not be a meaningful understanding of a clause concerning repeal.

20. This is why it was pointed out in paragraph 28 of the decision in **R. Santhana Raj** that the moment the Works of Licensees Rules, 2006 were issued by the Central Government with effect from 18.04.2006, the umbilical chord that connected Section 12(2) of the 1910 with the Electricity Act, 2003 got disconnected. The life line provided under Section 185 (2)(b) for the survival of Section 12(2) was broken, the moment the Works of Licensees Rules, 2006 were issued.

21. In paragraphs 29 and 30 of the decision in **R. Santhana Raj**, it was pointed out that Section 12(1) of the 1910 Act had been adapted with a slight modification in Section 67 (1) of 2003 Act. Section 51 of 1910 Act was adapted to become Section 164 of the 2003 Act.

22. It would be useful to present in a tabular form Section 12 (1) of the 1910 Act vis-a-vis Section 67 (1) of the 2003 Act, and Section 51 of the 1910 Act, vis-a-vis Section 164 of the 2003 Act as follows:



Section 12 (1) of 1910 Act:-

12. Provision as to the opening and breaking up of streets, railways and tramways:-

(1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or, when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area-

(a) Open and break up the soil and pavement of any street, railway or tramway;

(b) Open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) Lay down and place electric supply-lines and other works;

(d) Repair, alter or remove the same; and

(e) Do all other acts necessary for the due supply of energy.

Section 67 (1) of 2003 Act:-

Section 67.(Provisions as to opening up of streets, railways, etc):-

(1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as -

(a) to open and break up the soil and pavement of any street, railway or tramway;

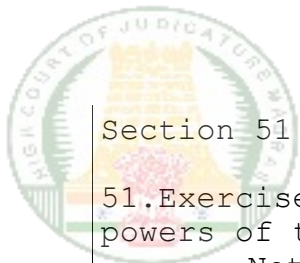
(b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;

(c) to alter the position of any line or works or pipes, other than a main sewer pipe;

(d) to lay down and place electric lines, electrical plant and other works;

(e) to repair, alter or remove the same;

(f) to do all other acts necessary for transmission or supply of electricity.



Section 51 of the 1910 Act:-

51. Exercise in certain cases of powers of telegraph authority. - Notwithstanding anything in Sections 12 to 16 (both inclusive) and Sections 18 and 19, the State Government may, by order in writing, for the placing of electric supply-lines, appliances and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying energy to the public under this Act, subject to such conditions and restrictions (if any) as the State Government may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph-authority possesses under that Act, with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained by the Government or to be so established or maintained.

Section 164 of the 2003 Act:-

Section 164. (Exercise of powers of Telegraph Authority in certain cases):-

The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.

23. The above tabulation would show that Section 12(1) of the 1910 Act contained five clauses namely, (a) to (e). Section 67(1) of the 2003 Act contains six clauses namely (a) to (f). Clauses (a) to (e) of Section 12 (1) of the 1910 Act have now become clauses (a), (b) and (d) to (f) of Section 67(1) of the 2003 Act. A new addition is made in the form of clause (c) under sub-section (1) of Section 67, though such a provision was not there in Section 12(1) of the old Act.

24. The Parliament which took care to adapt Section 12(1) of the 1910 Act, into Section 67(1) of the 2003 Act, carefully chose to do two things namely:-

- (i) to improve upon the Section 12(1) by adding one more clause in the form of clause (c) and**
- (ii) to delete in entirety sub-section (2) of Section 12 together with the provisos therein.**

These two things establish without any pale of doubt, that Parliament did not wish to retain sub-section (2) of Section 12, which made it mandatory for the licensees to obtain the consent of the owners.

25. A valiant attempt was made by Mr. B. Saravanan, learned counsel for the appellants that the absence of a non abstante clause in Section 164 of the new Act, which corresponds to Section 51 of the Old Act, would show that 2003 Act did not seek to keep the requirement of Section 12(2) of the 1910 Act out of its purview. But we do not think that the absence of non abstante clause in Section 164 was due to the intention of the

Parliament to retain the requirement under Section 12(2) of the 1910 Act.

26. On the contrary, the Parliament which chose to adapt Section 12 (1) of the 1910 Act into Section 67(1) of the 2003 Act deliberately chose not to adapt sub-section (2) of Section 12 into the 2003 Act. This is why there was no necessity for the Parliament to retain the non abstante clause while adapting Section 51 into Section 164.

27. The question as to whether the Appropriate Government ought to have framed rules, under Section 67(2), to erase the requirement of consent under Section 12(2) of 1910 Act, was answered in **R.Santhana Raj** in paragraph 40 as follows:

"40. A combined reading of Section 67 (2) (a) to (d) of the 2003 Act together with (I) Rule 3 (1) and 3 (4) of the Works of Licensees Rules 2006 (II) Section 164 of the 2003 Act and (III) Sections 10 and 16 of the Telegraph Act, 1885, would lead us to the following conclusions:-

(i) In normal circumstances, the licensee would require the prior consent of the owner or occupier of any land, by virtue of Rule 3(1)(a) of the Works of Licensees Rules 2006, read with Section 67 (2)(a) to (d) of the Electricity Act 2003.

(ii) But if the appropriate Government has, in terms of Section 164 of the 2003 Act, by order in writing, conferred upon any Public Officer or licensee, the powers of a telegraph Authority under the Indian Telegraph Act, 1885, for placing of electric lines or electric plant, then the requirement of prior consent under Rule 3(1)(a) need not be complied with. This is in view of Rule 3(4) of the Works of Licensees Rules 2006.

(iii) In other words, if the appropriate Government had passed an order empowering the licensee to exercise any of the powers conferred by the Telegraph Act, 1885, then the licensee can invoke Sections 10 and 11 of the Telegraph Act, 1885 and simply enter upon any private land and carry out necessary works, without the prior consent of the owner. But if the appropriate Government had not passed any order in terms of Section 164 of the Electricity Act, 2003 conferring such a power upon the licensee, to exercise any power under the Telegraph Act, then the licensee has to obtain prior consent of the owner or occupier, as per Rule 3(1)(a) of the Works of Licensees Rules 2006 to carry out the works".

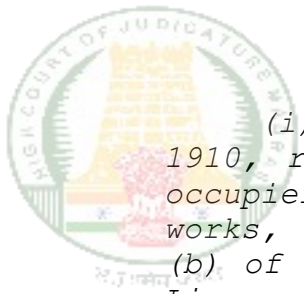
28. It appears from the Board proceedings of the Tamil Nadu Electricity Board in Permanent B.P.(CH)No.368, Technical Branch, dated 25.08.2010, that the Appropriate Government had already conferred powers upon the Electricity Board to exercise the powers of the Telegraph Authority under the Telegraph Act, 1885. Since this conferment was made under Section 51 of the 1910 Act even before the 2003 Act was enacted, this conferment survived by virtue of Section 185 (2) (a) of the 2003 Act.

29. Therefore, neither the absence of the non abstante clause in Section 164 of the 2003 Act that corresponds to Section 51 of the 1910 Act nor the failure of the State Government to issue rules under Section 67(2) of the 2003 Act would improve the case of the appellants.

30. Identical arguments were repelled by one of us (VRSJ) in **R.Santhana Raj** and the conclusions that emerged out of the detailed

<https://hccases.suits.gov.in/hccases> summed up in Paragraph 58 of **R.Santhana Raj** as follows:

"58. Therefore, in the light of the foregoing discussion, the following conclusions emerge:-



(i) The provision of Section 12(2) of the Electricity Act, 1910, requiring the licensee to obtain consent of the owner or occupier of the land on which it is proposed to carry out certain works, stands repealed, in terms of Section 185 (1) and 185 (2) (b) of the Electricity Act, 2003, with the issue of the Works of Licensees Rules, 2006, in exercise of the power conferred by Section 67 (2) of the 2003 Act.

(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 proviso under Rule 3(1).

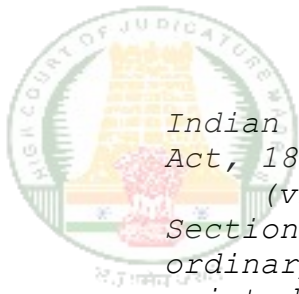
(iv) But in cases where powers are conferred upon the licensee under Section 164 of the Electricity Act, 2003, the provisions of Rule 3(1) to (3) of the Works of Licensees Rules, 2006 will not apply. In other words, where the appropriate Government had conferred upon the licensee, the powers of a Telegraph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

(v) Since Section 164 of the 2003 Act, corresponds to Section 51 of the 1910 Act, the power conferred by the Government upon a licensee, in terms of Section 51 of the 1910 Act, is saved by Section 185(2)(a) of the 2003 Act. Therefore, the power conferred upon the Tamil Nadu Electricity Board by the Government of Tamil Nadu under Section 51 of the 1910 Act, could continue to be exercised by the Board, as though those powers were conferred under Section 164 of the 2003 Act.

(vi) Section 10 of the Telegraph Act, 1885, does not contemplate "consent" or "permission" of the owner or occupier of a property, for the purpose of placing and maintaining a supply line, under, over, along or across and posts in or upon any immovable property. The only case where Section 10 contemplates permission is in respect of a property vested in or under the control or management of any local authority.

(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 occupier after an order is passed by the District Magistrate becomes a punishable offence under Section 188 of the



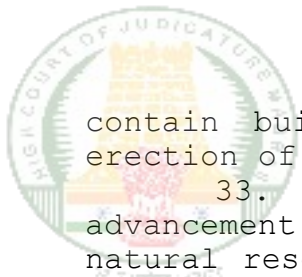
Indian Penal Code, by virtue of Section 16 (2) of the Telegraph Act, 1885.

(viii) The words "resisted or obstructed" appearing in Section 16(1) of the Telegraph Act, 1885 have to be given their ordinary meaning. They have to be understood as defensive acts as pointed out by the Apex Court in Santosh Kumar (cited supra). Actual physical acts of omission and commission at site or on the spot, is not necessary to constitute resistance or obstruction, as held by the Supreme Court in C.C.E. vs. Paradip Port Trust. The method of resistance/obstruction adopted by people, vary from person to person depending upon their status, level of education, mental orientation and social upbringing. Therefore, any kind of objection or protest by the land owner would tantamount to obstruction/ resistance. Such an interpretation is necessary in view of the fact that the Telegraph Act is a colonial Act of pre-Constitutional days, which came to be adapted after the Constitution and which has come to be borrowed by the Electricity Act, 2003 to interfere and infringe upon the rights of owners of private property to their unhindered enjoyment. The Supreme Court pointed out in Dev Sharan vs. State of U.P. {2011 (4) SCC 769} that even the Land Acquisition Act, 1894, is "a pre-constitutional legislation of colonial vintage and is a drastic law, expropriatory in nature". Therefore, any interpretation to such enactments should conform to the Constitutional goals and rights. Despite the fact that the right to property is no more a fundamental right after the 44th Amendment to the Constitution, it is nevertheless a constitutional right under Article 300-A. In several decisions, the Supreme Court has held that to hold property is not only a Constitutional right but also a human right. {see Lachhman Dass vs. Jagat Ram {2007 (10) SCC 448}, Vimlaben Ajitbhai Patel vs. Vatslaben Ashokbhai Patel {2008 (4) SCC 649}, N.Padmamma vs. S.Ramakrishna Reddy {2008 (15) SCC 517}, Chandigarh Housing Board vs. Major General Devinder Singh {2007 (9) SCC 67}. Therefore, a dignified protest, even in the form of a formal letter, notice or telegram, would amount to obstruction within the meaning of Section 16(1) of the Telegraph Act, 1885. Once such a protest is lodged, the licensee should seek an order from the District Magistrate.

The above conclusions answer all the objections raised by the appellants. Therefore, we are of the view that the appeals are devoid of merit and liable to be dismissed.

31. However, Mr.B.Saravanan, learned counsel for the appellants made a fervent appeal to lay down at least certain guidelines since the valuable right to property protected under Article 300-A of the Constitution, which is not only a constitutional right but also held to be a human right, cannot be infringed. According to the learned counsel, some officers suddenly land up on some agricultural lands where there are standing crops and destroy them under the guise of erecting transmission towers and transmission lines. Such acts infringed upon the valuable constitutional right of the land owners.

32. However, it is pointed out by the learned counsel for the respondents that neither Transmission Corporation and Distribution Corporation proceeds blind folded in all these matters. According to the learned counsel for the respondents, an areal survey is first conducted to determine the shortest route. It is followed by identification of lands, segregation of lands into those that are barren and those that



contain buildings or crops. Thereafter, a plan is prepared for the erection of towers in the shortest possible route with the least damage.

33. It is an irony of history that every major leap in the advancement of science and technology has always been at the cost of one natural resource of other. Therefore, the respondents shall bear in mind the fact that without appropriate survey, both areal as well as on ground, the respondents shall not normally proceed with the erection and installation of towers.

34. The objective of the respondents should always be to select the shortest route with the least possible damage to the lands and least detriment to the land owners. We are conscious of the fact that the choice of lands that will provide the shortest route with the least possible damage, may not always be so easy. If the respondents avoid installation of towers on certain lands due to their high fertility, the eco- system and the individual land owner are saved. But it may result in the transmission towers being erected on alternate lands that may not provide the shortest route. The consequence of this option is that the cost of the generation and transmission would go up, that would have an impact upon the economy of the country. Therefore, the act of balancing the conflicting interests are best left to experts.

35. In the result, the writ appeals are dismissed. No costs. Consequently, M.P(MD)Nos.1 to 1 of 2015 are closed.

Sd/-

Assistant Registrar (Writ)

/True Copy/

Sub Assistant Registrar

To

1. The District Collector,
Dindigul District, Dindigul.
2. The Superintendent of Police,
Dindigul (Rural), Dindigul District.
3. The Superintendent Engineer,
General Construction Circle (TANGEDCO)
Madurai - 625 007.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR NO.75886, 75888

+ 4 CC TO M/S.JOHNNY BASHA, ADVOCATE IN SR NO. 71246,72567

+ 13 CC TO MR.B.SARAVANAN, ADVOCATE IN SR NO. 75714

SMS

TE/AAL-MPA/ : 07/01/2016 : 15P/22C

Judgment made in
Writ Appeal(MD) Nos.1343
to 1352 and 1356 to 1358 of 2015 and
M.P(MD)Nos.1 of 2015
Dated: 18.12.2015