

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA No.2158 of 2010(O&M)
Date of decision: 12.02.2015

Ramesh Kumar and another

...Appellants

Versus

Punjab State Electricity Board and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Arun Takhi, Advocate for the appellants.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

ARUN PALLI J. (Oral)

Suit filed by the plaintiffs was dismissed by the trial court, though plaintiffs were set at liberty to claim damages due to erection of poles, wires and transformer vide judgment and decree dated 27.08.2004. Appeal preferred against the said decree failed and was dismissed on 18.08.2009. This is how, plaintiffs are before this court, in this regular second appeal, which is still at the motion stage without notice. Parties to the lis, hereinafter, would be referred to by their original positions in the suit.

In short, a decree for mandatory injunction was claimed by the plaintiffs, directing the defendants to remove transformer, electric pole, shown in red colour from the plot, shown in green colour in the site plan, appended with the

plaint. It was averred that plaintiffs happened to be the owners of the plot in question, comprised in khasra No.1582, measuring 8 marlas, which was a part of land measuring 3 kanals 6 marlas. It was maintained that defendants had erected a pole along with transformer and a wire was also affixed to lend support to the pole, in the property of the plaintiff. Another pole was installed in the passage and in case the electricity wires were taken from southern side to northern side, the site of the plaintiff would come underneath the wires and likewise, if the wires were taken from north to south, that would cause more damages to the vacant plot of the plaintiffs. In fact, there already existed a road in which other poles were erected and it was not explained as to why the PSEB erected transformer in the private land of the plaintiffs. A valuable right was alleged to have been taken away by the defendants, as no construction was possible once the electric wires were laid above the site in question. As defendants did not acknowledge the claim of the plaintiffs, thus, the suit.

In defence, it was pleaded, inter alia, that the defendants were fully entitled to install the poles, lines, wires etc., pursuant to the provisions of Section 10 of the Indian Telegraph Act, 1885. The board as well as the telegraph authorities, under the Telegraph Act, 1885, were empowered to lay down or install any apparatus, wires, poles, transformers, lines, brackets etc. for supply of electricity. It

was maintained that the plaintiffs could not claim any injunction restraining the board to perform its statutory functions. Further, it was denied that the defendants had installed a pole in the private property of the plaintiffs. In fact, the board had installed two H. Poles and a transformer was installed on the said poles. It was averred that the said poles were erected in the corner of the street and were causing no obstruction or hindrance to anybody. The height of the wires from the street was about 21/22 feet and the poles were installed at a distance of 2 feet from the edge of the street. There was an old transformer installed near the Modern Hospital. The said transformer had the capacity of 100 KV and was having capacity of 80 KV load. And on account of volunteered disclosure scheme regarding load, the consumers in the locality had increased their loads and thus, the old transformer was completely overloaded. That being so, it was necessary for the defendants to under-load the old transformer by installing new one. That is how, a new transformer of the capacity of 100 KV was installed in public interest. Moreover, before installing the said transformer, a site plan was prepared, that was in sync with the scheme approved by Additional Superintending Engineer, City Division, PSEB, Hoshiarpur as well as by the Chief Electrical Inspector, Patiala. The work in this regard was commissioned on 09.06.1999 and completed on 06.10.1999. And since that

day, the new transformer was in operation. The wires were not causing any damage to the vacant plot of the plaintiffs. No transformer was installed in their private property. Therefore, the defendants prayed for dismissal of the suit.

On a consideration of the matter in issue and the evidence on record, the courts below found that Pratibha Walia (PW2) had proved the site plan of the disputed plot, which was Ex.P1. And as per site plan, one pole of the transformer is located in the plot of the plaintiff. Jiwan Kumar (PW3) has stated that transformer, which has been installed by the defendants, has two poles and one pole of the transformer is in the plot of the plaintiff and the second pole is in the passage/street. The transformer was installed by the PSEB on 05.10.1999. That when the house is constructed then wires of the transformer will pass over the roof of the said house, which may endanger life of the persons staying therein. That plot of the plaintiff has become useless due to installation of the transformer. Ramesh Kumar (PW4) has stated that height of the wires passing over his plot is just 18 feet and if he constructs his house wires will touch the roof of the same and endanger the life of his family. Whereas, on the contrary, Madan Mohan Gupta (DW1), testified that there exist 15-20 feet wide passage and the transformer was installed in the said passage. In fact, both the officers of the defendant-board, out rightly denied that one pole of the transformer was located

in the plot of the plaintiff. Accordingly, it was observed that as no official demarcation of the plot of the appellant Ramesh Kumar has been done, therefore, it was not possible for the court to adjudicate with certainty that one pole of the transformer was erected in the land of the plaintiff. Although unfortunately, the application of appellant Ramesh Kumar for demarcation of the suit property was declined, but even then appellant has not led cogent evidence to prove that because of the poles of the transformer, portion of his plot was encroached. The only witness available in this regard was Pratibha Walia Architect Engineer (PW2), who prepared the site plan Ex.P1. However, in her cross-examination, she testified that she did not consult the documents of the revenue department before preparing the site plan and she measured the area at the spot as per instructions of plaintiff. She did not give any notice to the defendants while preparing the site plan. As such no reliance could be placed on the site plan submitted by Pratibha Walia (PW2). Further, the testimonies of Jiwan Kumar (PW3) and Ramesh Kumar (PW4), were hardly of any consequence, as no revenue or municipal record was produced to show that the transformer was actually installed in the plot of the plaintiff. As regards the plea of the plaintiffs that defendants were required to publish and notify the scheme, before carrying out the process, it was observed that under Section 29 of the Electricity Supply Act, 1948, if the

cost of any scheme of the electricity board involves capital expenditure of ₹ 1 Crore, then the said scheme is required to be published in the official gazette of the State Government as well as local newspaper. In the instant case, defendants had proved that the scheme as regards installing of the transformer in the present case, expenditure involved was less than ₹ 1 Lac. Therefore, there was no requirement for the electricity board to notify or publish the scheme and call for objections from the affected parties. In this context, DW1 Madan Mohan Gupta, SE, PSEB, Hoshiarpur, had proved the attested copy of the estimate as well as site plan for installing of the transformer, which have been exhibited as Ex.D1 & Ex.D2, respectively. The estimate (Ex.D2) was passed by the SE Operation Circle, PSEB Hoshiarpur. DW1 has further stated that the work of installation of the transformer was started on 09.06.1999, and was completed on 06.10.1999. And since then, new transformer was working. That no application or objection was received from any person or Ramesh Kumar in the office of the board. That wires from the transformer were neither crossing over any building nor the house of Ramesh Kumar. Similarly, DW2, JE Gurjinder Singh, has proved on record the estimate and summary job card, Ex.D3 and Ex.D4. He has also deposed that no complaint oral or written was ever received from anybody regarding installation of the transformer at the spot.

Accordingly, it was concluded that the respondent electricity department had proceeded in accordance with the rules and regulations of the Electricity Supply Act and it had not violated any instructions during the installation of the transformer at the disputed spot. On a consideration of the matter in issue and the evidence on record, it was concluded that the defendants had completed the work at site by installing the transformer and erecting the poles on 06.10.1999 i.e. before institution of the suit, therefore, decree for mandatory injunction as claimed by the plaintiffs, could not be passed. However, plaintiffs were set at liberty to claim damages in accordance with law. Accordingly, the suit was dismissed with the liberty as indicated above.

I have heard learned counsel for the appellants at length and perused the RSA paper book.

Learned counsel for the appellants simply seeks to reiterate the submissions that were advanced before the courts below and rejected after a due and comprehensive consideration. No other argument was advanced.

On a due and thoughtful consideration of the matter in issue, I am of the considered view that the instant appeal is devoid of merit and is thus, liable to be dismissed for the reasons that are being recorded hereinafter. Madan Mohan Gupta (DW1), SE, PSEB, Hoshiarpur, proved the site plan and attested copy of the estimate (Ex.D1 & Ex.D2), for installation

of the transformer. Estimate (Ex.D2) was approved by the SE Operation Circle, PSEB, Hoshiarpur. Gurjinder Singh, J.E. (DW2) also deposed that board could install transformer, poles, wires etc. for supply of electricity to the public. And board had installed two poles on the corner of the street which does not create any hindrance to the public. Evidence on record showed that throughout the installation process, no complaint or objections were received by the board from any quarter including the plaintiff. Further, wires that were fastened with the transformer were not crossing over any building or even the house of the plaintiff. As regards, the plea of the plaintiffs that the defendants, before executing the scheme, were obligated to publish the scheme and solicit objections, as observed by the first appellate court, the provisions of Section 29 of the Electricity Supply Act, 1948, suggests that only where the cost of the scheme involves a capital expenditure of ₹ 1 Crore, the scheme is required to be published in the official gazette of the State Government as well as local newspaper. However, the scheme in question involved an expenditure of less than ₹ 1 Lac. Learned counsel for the appellants could not point out as to how the scheme in question and its execution was in breach of any rules, regulations of the Electricity Supply Act. Concededly, the work was commissioned at the site on 09.06.1999 and completed on 06.10.1999, and the present suit was instituted on

13.11.1999, and since that day, the transformer was in operation. That being so, as observed by the courts below, plaintiff could sue the defendant only for compensation in accordance with law. It could not be pointed out as to how the conclusions that were concurrently recorded by both the courts below were either contrary to the position on record or suffered from any material illegality.

In the wake of the position, as set out above, there hardly exists any ground, least plausible in law, to interfere with the decree being assailed in the present appeal. No question of law, much less any substantial question of law, arises for consideration. Appeal being devoid of merit is, accordingly, dismissed.

February 12, 2015
Rajan

(Arun Palli)
Judge