

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6264 OF 2012

Smt.Rukhminbai w/o Sanjeevanrao Deshmukh

Age 75 years, Occ-Household

R/o Kallam, Tq. Kallam, Dist.Osmanabad.

... PETITIONER

Versus

1] The District Collector
Osmanabad, Collector Office
Campus, Osmanabad

2] Executive Engineer
The Maharashtra State Electricity
Distribution Co. Ltd. (MSEDCL)
Patnoorkar Nagar, Nanded
Tq. & Dist.Nanded.

3] Chairman
The Maharashtra State Electricity
Distribution Co. Ltd. (MSEDCL)
Bandra, West-Mumbai.

.. RESPONDENTS

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Mr.Milind M. Patil (Beedkar) Adv. for petitioner

Mr.V.M.Kagne,AGP for respondent No.1

Mr.V.C.Patil h/f Mr.S.M.Godsay, Adv. for Respondents no.2 & 3

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CORAM : V.L.ACHLIYA,J.

DATED : 20TH APRIL,2016

ORAL JUDGMENT :

Rule. Rule returnable forthwith. With the consent of parties, Petition is taken up for final disposal at admission stage.

2] By this Petition filed under Article 227 of the Constitution of India, the petitioner has challenged the order dated 6/5/2007 passed by respondent no.1 Collector and the order dated 20/12/2011 passed by District Judge-I, Osmanabad on the grounds set out in detail in the Petition.

3] In brief it is the case of petitioner that she is the owner of the land bearing Survey No.124 at Kalamb which is adjacent to the Barshi Parli Highway. In the year 1982, she made an application for change of user of 4 acres of land from Survey No.124 to be used for residential purpose. Her request was allowed and necessary permission was granted in her favour vide order dated 7/4/1982. Respondent no.2 has erected 132 KV high tension line through her

land which was demarcated for residential purposes. Due to said act of respondent no.2 the land admeasuring about 2 acres out of said 4 acres of land has rendered unfit for residential use. The towers have been erected and high tension line has been taken through her land though she objected and made representations. She claimed compensation from respondent no.2. However, respondent no.2 has paid no heed to her request. She therefore, filed Writ Petition No.1271/1990 against the respondents. The Division Bench of this Court (Coram : B.H.Marlapalle and N.V.Dabholkar,JJ.) disposed of the said Writ Petition vide judgment and order dated 18/12/2001 and issued directions which read as under :

“3] The petition thus involves disputed question of facts which cannot be gone into in a writ proceeding under Article 226 of the constitution, by this Court. The scheme of section 42 of the Electricity Supply Act 1948 and section 51 of the Indian Electricity Act 1910 read with section 16 of the Indian Telegraphs Act, 1885 is clear and the claim for compensation, if any, has to be raised with the District Collector / Magistrate concerned and in case the claimant is not happy with the sufficiency or quantum of the claim, then an application could be filed before the District Judge. It appears that the petitioner had approached the Board for such a claim and nothing was done. Whether the petitioner is

entitled for any compensation is a preliminary issue, which is required to be gone into by the District Collector first and if the Collector holds that the petitioner is entitled for such a monetary benefit, the petitioner's further challenge for quantum of compensation could be entertained by the District Judge. Though on record, there are copies of the representations made by the petitioner to the Board, it appears that the petitioner did not approach the Collector, Beed at any time.

4] In case the petitioner submits an application to the Collector for deciding the compensation amount, if payable by the Electricity Board, within the period of four weeks from today, we direct the Collector, Osmanabad to decide the same on its own merits within three months from the date of its presentation, after examining the issue whether the petitioner has sustained any damage/loss by laying down the electric poles or s/s structures for electric power line through the land of the petitioner situated in survey no.124 of Kallam, District Osmanabad.

5] The petition is disposed of in terms of the above directions. Rule discharged. No order as to costs. Writ to go forthwith to the parties concerned."

4] Pursuant to the directions, the petitioner submitted written

application dated 3/1/2002 before the respondent no.1 – Collector, Osmanabad to determine the compensation. However, respondent no.1 has rejected the application by observing that the order of conversion of said land for Non Agriculture use was not proper and the petitioner has not paid the Non Agriculture assessment as well as not prepared the lay out. As against the order passed by the Collector, the petitioner preferred Application before District Judge, Osmanabad which came to be registered as Miscellaneous Civil Application No.201/2007. The learned District Judge-I, Osmanabad disposed of the Application vide order dated 20/12/2011 and maintained the order passed by respondent no.1. Being aggrieved by order passed by District Judge-I, Osmanabad as well as the respondent no.1 Collector, Osmanabad, the petitioner has preferred this Writ Petition.

5] I have heard the submissions advanced by learned counsel appearing for petitioner, respondents no.2 and 3 and learned A.G.P. for respondent no.1 and further perused the impugned record and proceeding.

6] In my view, the impugned order passed by learned respondent no.1 is not sustainable in law. The fact is not in dispute that the petitioner is the owner of land bearing Survey No.124 from which the

respondent no.2 has laid down 132 KV high tension line and erected the poles and other structure for said purpose. The fact is also not in dispute that because of the 132 K.V. line, which passes through the land of the petitioner, the petitioner cannot carry the construction upto certain distance from both the sides of high tension lines. The fact is also not in dispute that by order dated 7/4/1982 passed by Sub Divisional Officer, Latur, the land admeasuring 1 Hectare 81 R out of Survey No.124 of village Kallam, Tq. Kallam, Dist.Osmanabad belonging to the petitioner was allowed to be used for Non Agriculture purposes and more particularly, for residential purpose. Similarly, the fact is not in dispute that the high tension wire passes through the land belonging to petitioner. It is no one's case that the permission granted by Sub Divisional Officer, Latur vide order dated 7/4/1982 in favour of the petitioner to convert the agriculture land to be used for Non Agriculture purpose i.e. the residential purpose was revoked by competent authority. In such circumstances, respondent no.1 cannot question the correctness and legality of order passed by Sub Divisional Officer on the ground that the no objection certificate produced while submitting an application was not issued by authority competent to issue such certificate from the electricity department.

7] In my view as per the directions given by Division Bench of this Court in Writ Petition No.1271/1990, only course available before the

respondent no.1 was to conduct an enquiry as to whether the petitioner is entitled for any compensation on account of 132 KV high tension line laid down which passes through land owned by her and further to ascertain the compensation to be payable. However, respondent no.1 Collector as well as the District Judge, Osmanabad has failed to take into consideration the directions contained in order passed by this Court. Instead of determining the compensation the respondent no.1 has involved himself in examining the correctness of order dated 7/4/1982 passed by Sub Divisional Officer granting permission to convert the land for Non Agriculture use. Once the order granting change of user of land stands, the Collector was not expected to have gone into correctness and legality of the order passed while dealing with application made by petitioner to determine the compensation. Even if it is assumed that after the order was passed allowing the change of user of land no steps were taken to get the lay out sanction and the status of land continued to be an agriculture land, still the right of petitioner to claim compensation cannot be denied.

8] The learned counsel for the petitioner has pointed out that Ministry of Energy, Industries and Labour has issued Government Resolution bearing No.संकिर्ण/०२०१०५.क.२९/ऊर्जा-४ मंत्रालय मुंबई-३२ दिनांक ०१/०१/२०१० whereby the detail guidelines have been laid down for

determination of compensation to be payable to the persons whose land has been used for erecting the towers and taking electric lines. As per the Government Resolution dated 1/1/2010, the detail guidelines have been issued as determination of compensation in respect of lands which include the dry crop land, irrigated land, bagayati land and non agriculture land used for erecting the poles,towers for taking electric lines. In view of said guidelines it is incumbent on the part of the respondent no.1 to conduct necessary enquiry to ascertain as to whether the petitioner is entitled for the compensation and if it is found that petitioner is entitled for the compensation, then to determine the quantum of compensation to be payable to petitioner.

9] In view of above, the order passed by respondent no.1 as well as respondent no.3 deserves to be set aside and matter needs to be remanded to respondent no.1 for fresh decision. Accordingly, the order dated 6/5/2007 passed by respondent no.1 Collector and order dated 20/12/2011 passed by District Judge-I Osmanabad are set aside. The matter is remanded back to respondent no.1 with direction to examine as to whether the petitioner is entitled for compensation on account of poles embeded in the land owned by petitioner and 132 KV high tension line passes from the land owned by petitioner. In case it is found that the petitioner is entitled for the

compensation, then respondent no.1 is directed to determine the compensation and pass necessary order directing the respondent no.2 to pay compensation to petitioner. It is further directed that the petitioner and all concerned be heard in the matter and order as directed be passed within 3 months from the date of passing of this order. Rule made absolute in above terms with no order as to costs.

(V.L.ACHLIYA,J.)

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