

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.08.2016

DATE OF DECISION: 03.11.2016

CORAM

THE HON'BLE MR.SANJAY KISHAN KAUL, THE CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE R.MAHADEVAN

W.A.Nos.797 of 2006 and 460 of 2007

W.A.No.797 of 2006:

- 1.The Superintending Engineer, (North)
Tamil Nadu Electricity Board,
Anna Salai, Chennai-600 002.
- 2.The Divisional Engineer,
Madhavaram Circle,
Vyasarpadi, Chennai.
- 3.The Assistant Executive Engineer,
Chennai Electricity Distribution Circle/ North,
Tamil Nadu Electricity Board,
Madhavaram-II, Chennai-60.
- 4.The Junior Engineer,
Chennai Electricity Distribution Circle/ North,
Tamil Nadu Electricity Board,
Madhavaram-II, Chennai-60. ... Appellants/Respondents

Vs.

I.Shanmugadurai ... Respondent/Petitioner

W.A.No.460 of 2007:

I.Shunmugadurai ... Appellant

Vs.

The Superintending Engineer (CEDC/West),
Tamil Nadu Electricity Board,
Tirumangalam,
Anna Nagar West,
Chennai-101. ... Respondent/Respondent

W.A.No.797 of 2006 filed under Clause 15 of the Letters Patent, against the order passed by this Court dated 29.03.2006 in W.P.No.22196 of 2004.

W.A.No.460 of 2007 filed under Clause 15 of the Letters Patent, against the order passed by this Court dated 27.02.2007 in W.P.No.1447 of 2007. Prayer in 22196/2004: Petition filed under article 226 of the constitution of India, praying to issue at a writ of mandamus to direct the respondents to shift/remove the electrical 11 kva power drier head line from the petitioners hands bearing S.Nos.781/2, 782 to 784 and 797 in madhavaram Village, Ambathur Taluk, Tiruvallur District.

Prayer in WP.No.1447/2007: petition filed under Article 226 of the constitution of India, issuance of a writ of mandamus directing the respondent to shift/Remove the electrical 33 KVA power head time from the petitioners hands Nos.781/2, 782 to 784 and 797 in madhavaram Village, Ambathur Taluk, Tiruvallur District.

For appellants in W.A.No.797/2006
and respondent in W.A.No.460/2007 : Mr.P.R.Dilip Kumar

For respondent in W.A.No.797/2006
and appellant in W.A.No.460/2007 : Mr.R.Syed Mustafa

JUDGMENT

R.MAHADEVAN, J.

W.A.No.797 of 2006 is filed against the order dated 29.03.2006 passed by this Court in W.P.No.22196 of 2004. W.A.No.460 of 2007 is filed against the order dated 27.02.2007 passed by this Court in W.P.No.1447 of 2007.

2.The facts leading to the filing of W.A.No.797 of 2006 are as under:

(i)The petitioner in W.P.No.22196 of 2004 is the respondent in this appeal. The said writ petition was filed by the respondent herein to shift/remove the electrical 11 kVA power overhead line, erected by the appellants-Tamil Nadu Electricity Board in the land belonging to him, causing prejudice to his interest in the property. The respondent has also paid the registration charges of Rs.1000/- for shifting the HT poles and Rs.500/- each towards diversion of overhead lines, as demanded by the Tamil Nadu Electricity Board. But the Board, stating that the respondent has not produced any sketch of his land for shifting the electrical poles, had not proceeded to shift the poles, thus caused great inconvenience to the respondent. Hence the said writ petition was filed.

(ii) On a perusal of the materials available on record, recording the undertaking given by the Board that they will divert the electrical lines from the land of the respondent herein, and also holding that since the respondent has deposited the amount as demanded by the Board towards registration, the question of further payment by the respondent does not arise, this Court allowed the writ petition with a direction to the Board to shift the electrical lines from the land of the respondent, within three months.

(iii) Challenging the said order, the present appeal has been filed by the Tamil Nadu Electricity Board.

3. The facts leading to the filing of W.A.No.460 of 2007, are as follows:

(i) The petitioner in W.P.No.1447 of 2007 is the appellant in this appeal. The said writ petition was filed by the appellant herein to shift/remove the electrical 33 kVA power overhead line, erected by the appellants-Tamil Nadu Electricity Board in the land belonging to him, causing prejudice to his interest in the property. The appellant approached the respondent-Board requesting to shift and remove the 33kV electrical poles from his land, followed by several representations in this regard, and he also paid the necessary registration charges as demanded by the Tamil Nadu Electricity Board. Since no action has been taken to remove the 33kV electrical poles, he filed the writ petition in W.P.No.1447 of 2007.

(ii) While disposing the writ petition, the appellant herein was directed by this Court to pay a sum of Rs.7,00,000/- for shifting the electrical lines from his property and on making such payment, the Board was directed to shift the service lines as required by him, within a period of twelve weeks. The learned single Judge also held that since according to the appellant he is not a consumer and hence he need not pay the amount, the question as to whether the appellant is liable to pay the amount or not, shall be decided in the writ appeal filed at the instance of the Board and if the appellant ultimately gets a favourable order in the appeal, the Board shall refund the amount with interest at 8% from the date of deposit till the date of repayment.

(iii) Challenging the said order made in the writ petition, the present appeal is filed by the appellant / petitioner in the writ petition.

4. When the writ appeal in W.A.No.797 of 2006 came up before this Court on 13.07.2006, the respondent agreed to furnish solvent security for securing the claim of the Board to the

extent of Rs.16,00,000/- to the satisfaction of the Registrar General of this Court, within a period of six weeks. Therefore, this Court ordered that the Board shall shift the HT power lines from the land of the respondent within a period of four weeks from the date of furnishing of security as undertaken by the respondent. Consequent to the said interim order passed, W.P.No.1447 of 2007 was disposed of directing to shift/remove the electrical lines from the subject property, on condition that the individual pays a sum of Rs.7,00,000/- within a period of twelve weeks.

5. When these appeals came up before this Court on 06.07.2016, this Court observed that the crucial question would be whether the appellant-Electricity Board is required to pay any compensation for taking a HT wire over a private property without any pole being erected on the land of the private person, and the linked issue would be whether any consent is required for doing so. Thereafter, the matter was adjourned to 13.07.2016 for examining the relevant provisions and to make further submissions.

6. On 17.08.2016, when these appeals were taken up, the learned counsel for the Electricity Board submitted that he has obtained instructions that no compensation was paid to the predecessor-in-interest of the respondent in W.A.No.797 of 2006, and as regards actual expenses incurred for shifting, he submitted that he will file an affidavit in that behalf. This Court put a question to the learned counsel for the Electricity Board as to whether there is possibility for any settlement keeping in mind the proviso to Section 17(1) of the Indian Telegraph Act, 1885, which envisages that if compensation had been paid and request is made for shifting, the owner has to tender the amount for defraying the expenses for removal or half the amount of paid compensation whichever may be the smaller, and that if this principle is applied in the absence of compensation paid, whether the actual expenses ought to be shared equally by the two parties. Thereafter the matter was adjourned to 31.08.2016.

7. When the matter was taken up on 31.08.2016, an affidavit was filed on behalf of the Electricity Board indicating the break-up of the expenses, from which it is seen that one of the major components for shifting of 2 lines of 11kVA is a sum of Rs.6,07,050/- for road cutting charges payable to the Highways Department; this road cutting charges arises from the fact that instead of taking the cable over head, the cables are now taken underground. It is also stated in the affidavit that this was done in view of the larger issue of avoiding such aspects from others in future for the lines in question. When this Court made

a query as regards the entry of over-head charges, it was conceded that this is not an actual expense entry, but a notional entry on account of the work being supervised by the officers of the Electricity Board. These two entries are of Rs.1,55,250/- for the two lines of 11 kVA and Rs.1,24,910/- for one 33kVA line. Since there was no road cutting charges for 33kVA line, the amount is much less in respect of 33kVA line.

8.Further, the Tamil Nadu Electricity Board filed a written submission in which it is stated that the Board erected the overhead line by laying poles in the year 1965 and at that time, it was an agricultural land. Since it was erected way back in 1965, the records are not available with them. Thus, it is stated that the electric poles were already in existence when the respondent in W.A.No.797 of 2006 purchased the property, and subsequent to purchase of the property by him, he approached the Board to shift the overhead line from his premises and gave an undertaking to bear any incidental charges.

9.As far as the legal position of the Tamil Nadu Electricity Board is concerned, it was submitted that the provisions under which compensation is payable would depend upon the date of putting up the overhead HT line. If the line was put up after the year 2003, i.e., the date of coming into effect of the Electricity Act, 2003 (Central Act No.36 of 2003), then compensation would be payable as envisaged under Section 10(d) of the Indian Telegraph Act, 1885, which reads as under:

"10.Power for telegraph authority to place and maintain telegraph lines and posts.-The telegraph authority may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property:

Provided that-

(a)...

(b)...

(c)...

(d)in the exercise of the powers conferred by this section, the telegraph authority shall do as little damage as possible, and when it has exercised those powers in respect of any property other than that referred to in clause(c), shall pay full compensation to all persons interested for any damage sustained by them by reason of the exercise of those powers."

10.It was further stated that the above said compensation envisaged under Section 10(d) of the Indian Telegraph Act, is by virtue of a valid notification of the appropriate Government in terms of Section 164 of the Electricity Act, 2003, conferring

powers on the Electricity Board to exercise the powers of the Telegraph Authority under the Indian Telegraph Act, 1885. It was also stated that even if the overhead line was put up before 2003, compensation is payable as per the notification issued by the State Government under Section 51 of the Indian Electricity Act, 1910, conferring powers on the Electricity Board to exercise the powers of the Telegraph Authority under the Indian Telegraph Act, 1885. Even if the overhead HT lines have been set up by way of a sanctioned scheme under the Electricity (Supply) Act, 1948, under Section 42 of the said Act, the provisions of the Indian Telegraph Act are made applicable entitling claims for compensation. As regards the linked issue of obtaining consent before setting up the overhead HT line, it was stated that since the Indian Telegraph Act is made applicable, the said Act does not provide for obtaining consent from the owners / occupiers in such matters and therefore no consent is required from the owners / occupiers for erecting the poles.

11.A separate affidavit dated 31.08.2016 was filed on behalf of the Tamil Nadu Electricity Board in which it is stated that as per Section 164 of the Electricity Act, 2003 r/w Section 10 of the Indian Telegraphic Act, the telegraph authority, may, from time to time, place and maintain a telegraph line under, over, along, or across, and posts in or upon, any immovable property and hence the Board is exempted from payment of compensation to the owner of the land. It was also stated that the estimation cost of Rs.16,00,000/- was paid by the land owner for 11kVA lines as per the direction of this Court for shifting / removal of the overhead lines.

12.The learned counsel for the appellants/ Tamil Nadu Electricity Board in W.A.No.797 of 2006 and the respondent in W.A.No.460 of 2007, contended that the learned single Judge ought to have seen that the electrical lines were already in existence in the subject land since 1965, even prior to the purchase of the land by the respondent in W.A.No.797 of 2006, and therefore, the cost of shifting has to be borne by the consumer. He stated that the registration charges cannot be construed as cost of shifting charges. He further stated that since the individual has accepted that he is willing to bear any charges for shifting of electrical poles, he cannot go back stating that he is not liable to pay the amount. Now that the amount demanded has already been paid by the individual. Hence, the counsel submitted that there is no question of returning any amount from the deposited amount. Thus, he contended that W.A.No.797 of 2006 filed by the Board has to be allowed and W.A.No.460 of 2007 filed by the individual has to be dismissed. As regards any compensation paid, he submitted that neither any

compensation was paid to the earlier owner of the property for erecting the HT lines, nor any land acquisition proceedings initiated.

13.The learned counsel for the appellant in W.A.No.460 of 2007 and the respondent in W.A.No.797 of 2006, submitted that the respondent in W.A.No.797 of 2006 had earlier furnished the immovable property to the tune of Rs.16,00,000/- to the satisfaction of the Registrar General of this Court pursuant to the interim order passed by this Court in W.A.No.797 of 2006 on 13.07.2006, and consequently the Board had shifted two 11 kVA power lines from the lands belonging to the appellant, but they did not remove the 33 kVA power line, since he had not mentioned 33kVA power line in the prayer and hence he was forced to file another writ petition in W.P.No.1447 of 2007. Therefore, the imposition of condition by the learned single Judge in W.P.No.1447 of 2007 that the individual should deposit Rs.7,00,000/- as cash, without appreciating the order passed by this Court in the interim application in W.A.No.797 of 2006 dated 13.07.2006 that he should produce solvency security to the extent of Rs.16,00,000/- to the satisfaction of the Registrar General of this Court within a period of six weeks and on furnishing the same, the Board shall shift the high tension power lines, is erroneous. Stating so, he prayed for allowing the writ appeal in W.A.No.460 of 2007 and dismissing the writ appeal in W.A.No.797 of 2006.

14.Heard the learned counsel on either side and perused the materials available on record carefully.

15.On a threadbare analysis of the orders passed by this Court, we find that initially the respondent in W.A.No.797 of 2006 / appellant in W.A.No.460 of 2007, has agreed that he will provide security for shifting the lines, as demanded by the Board. But in the earlier writ petition, ie., W.P.No.22196 of 2004, this Court held that since nothing has been stated in the counter filed by the Board as to under what provisions of law the individual has to pay the cost for shifting the electrical lines, and that the necessary registration charges has been deposited by the individual, the question of further payment does not arise and accordingly the writ petition was allowed directing the Board to shift the electrical lines within a stipulated period. Further, it is seen from the records that subsequently as per the order of this Court dated 22.08.2007, the individual was directed to pay a sum of Rs.16,00,000/- to the Electricity Board and on proof of deposit of the said amount, the Registry was directed to return the documents of security to him. Accordingly, he had deposited a sum of Rs.16,00,000/- with the Electricity Board, by way of Pay Order

No.161442 dated 05.09.2007, drawn on Tamilnad Mercantile Bank, Perambur Branch, Chennai. The electrical poles in respect of 11kV HT lines, were also removed by the Electricity Board.

16. In respect of W.P.No.1447 of 2007, counter affidavit was filed by the Board stating that under Regulation 6 of the Tamil Nadu Electricity Supply Code, which was framed under Section 50 read with Section 167 of the Electricity Act, 2003, the consumer shall pay the estimated cost of shifting in advance in full. It was also stated that only if the payment is made, the shifting will take place. Further, the individual has also agreed to give security for Rs.7,00,000/- which has been quantified as tentative estimated cost for re-drawing of the lines. Thus, holding that the individual has to comply with the statutory requirement if he wants his property to be developed, the writ petition was disposed of directing the individual to pay the amount as agreed to by him. It is also seen from the materials available on record that even before buying the property, the electrical lines were erected in the subject land. If that be so, the individual is not a consumer. It is also to be seen that the individual has consented earlier for paying any amount for shifting of the electrical HT lines in question.

17. Thus, for both 11kV and 33kV HT lines, the individual has deposited the entire demanded amount of Rs.16,00,000/- and Rs.7,00,000/- respectively, totalling to Rs.23,00,000/-.

18. The fact remains that no consent was obtained from the erstwhile owner of the property and no compensation was also paid by the Board for erecting the poles, which is a mandatory requirement to be followed. Further, no land acquisition proceedings have been initiated while acquiring the land in question, for erecting the poles. It is also seen from the records that the individual has consented earlier for paying any amount for shifting of the electrical HT lines in question and due to the same, interim order was passed by this Court to furnish solvent security for securing the claim, before the Board, to the extent of Rs.16,00,000/-. Thereafter, further orders were passed to deposit a sum of Rs.16,00,000/- before the Board and on proof of deposit of the said amount, the Registry was directed to return the documents of security to him. Accordingly, he had deposited a sum of Rs.16,00,000/- with the Electricity Board, by way of a Pay Order and consequently, the electrical poles in respect of 11kV HT lines, were removed by the Electricity Board. While it is the case of the individual that he has consented for payment of amount for shifting the poles, since no land acquisition proceedings have been initiated and no compensation has been paid, there cannot be any direction permitting the Electricity Board to retain the entire amount

deposited by the individual.

19. At this juncture, it would be appropriate to refer to the decision of a Division Bench of this Court in *Superintending Engineer, TNEB v. M. Sengu Vijay*, reported in (2011) 3 MLJ 625. In that case, aggrieved by an order passed by the learned single Judge allowing a writ petition filed by the first respondent therein and directing the Board to remove the electric poles and service lines from the land of the first respondent therein, an appeal was filed by the Board. This Court held that since it was not the case of the Board that the erstwhile owner was paid compensation while erecting the poles, in the absence of any specific consent from the erstwhile owner and also in the absence of payment of compensation by the Board, mere silence on the part of the erstwhile owner of the subject property, cannot be construed as implied consent. It was also observed in that judgment that payment of compensation is a mandatory requirement to be followed. Stating so, the appeal was dismissed confirming the order of the learned single Judge.

20. Admittedly, in the present case, the erection of electric poles in question had happened in the year 1965 and both the parties are not able to show any evidence with regard to payment of compensation or otherwise. Under the circumstances, considering the fact that the property in question was purchased wherein the electric poles were already erected, that too in the year 1965, it is just and necessary that the individual should bear the expenditure towards shifting of the electric poles to some extent, as agreed by him and on which basis the poles were shifted.

21. As per the calculation sheet produced by the Electricity Board, with regard to 11 kVA electric lines, a sum of Rs.6,07,050/- has been shown as road cutting charges payable to the Highways Department. As already stated by this Court, this road cutting charges arises from the fact that instead of taking the cable over head, the cables are taken underground. This was not a request of the individual and this was done in view of the larger issue of avoiding such aspects from others in future for the lines in question. In respect of overhead charges, a sum of Rs.1,55,245/- has been charged for the two 11 kVA lines and Rs.1,24,910/- has been charged for one 33 kVA line, for which it was conceded that these are not actual expense entries, but notional entries on account of the work being supervised by the officers of the Electricity Board.

22. In the light of the above discussions and also considering the principles enunciated in the judgment of this Court in *Superintending Engineer, TNEB v. M. Sengu Vijay* (supra)

and the factual matrix of the present case, this Court is of the considered opinion that the above mentioned amounts towards road cutting charges and overhead charges cannot be fastened on the individual but only to be borne by the Board. The amount in respect of road cutting charges and overhead charges works out to Rs.8,87,205/-. The actual amounts for shifting of the electric poles as claimed by the Board is Rs.15,75,495/- towards 11 kVA poles and Rs.6,79,660/- towards 33 kVA poles, totalling to Rs.22,55,155/-. If the road cutting charges and overhead charges as claimed by the Board are deducted from this amount, it works out to Rs.13,67,950/-. As per the proviso to Section 17 (1) of the Indian Telegraph Act, 1885, if compensation had been paid and request is made for shifting, the owner has to tender the amount for defraying the expenses for removal or half the amount of paid compensation whichever may be the smaller. If this principle is applied in the absence of compensation paid, this Court is of the considered view that only 50% of the amount now arrived at, ie., 50% of Rs.13,67,950/- shall be taken by the Board as cost towards shifting of HT electric poles as well as laying of cables. The following is the calculation:

PARTICULARS	AMOUNT (Rs.)
Actual amount as per the calculation sheet of the Board towards shifting of 11 kVA electric poles	15,75,495/-
Actual amount as per the calculation sheet of the Board towards shifting of 33 kVA electric poles	6,79,660/-
Total....	22,55,155/-
Less: Road cutting charges and overhead charges and (Rs.6,07,050/- + Rs.1,55,245/- + Rs.1,24,910/-)	8,87,205/-
Balance	13,67,950/-

50% of Rs.13,67,950/- = Rs.6,83,975/-

23.Thus the Board is entitled only for a sum of Rs.6,83,975/- towards shifting of 11 kVA and 33 kVA electric poles as well as laying of cables. Accordingly, the Tamil Nadu Electricity Board is directed to deduct the above amount of

Rs.6,83,975/- from the total deposited amount of Rs.23,00,000/- and refund the balance amount to the respondent in W.A.No.797 of 2006/appellant in W.A.No.460 of 2007, with interest at 8% per annum, as directed in the order made in the writ petition in W.P.No.1447 of 2007 dated 27.02.2007, from the date of deposit till the date of payment, within a period of twelve weeks from the date of receipt of a copy of this judgment. With this direction, the writ appeals are disposed of. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KM
To

- 1 The Superintending Engineer (CEDC/West),
Tamil Nadu Electricity Board,
Tirumangalam, Anna Nagar West,
Chennai-101.
- 2.The Superintending Engineer, (North)
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- 5.The Junior Engineer,
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Tamil Nadu Electricity Board,
Madhavaram-II, Chennai-60.

+2cc to Mr.P.R. Dhilipkumar, Advocate, S.R.No.62280
+2cc to Mr.R. Syed Mustafa, Advocate, S.R.No.62308 & 62309

nrjk (CO)
md (12/11/2016)

W.A.Nos.797 of 2006 and 460 of 2007