

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.6.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND

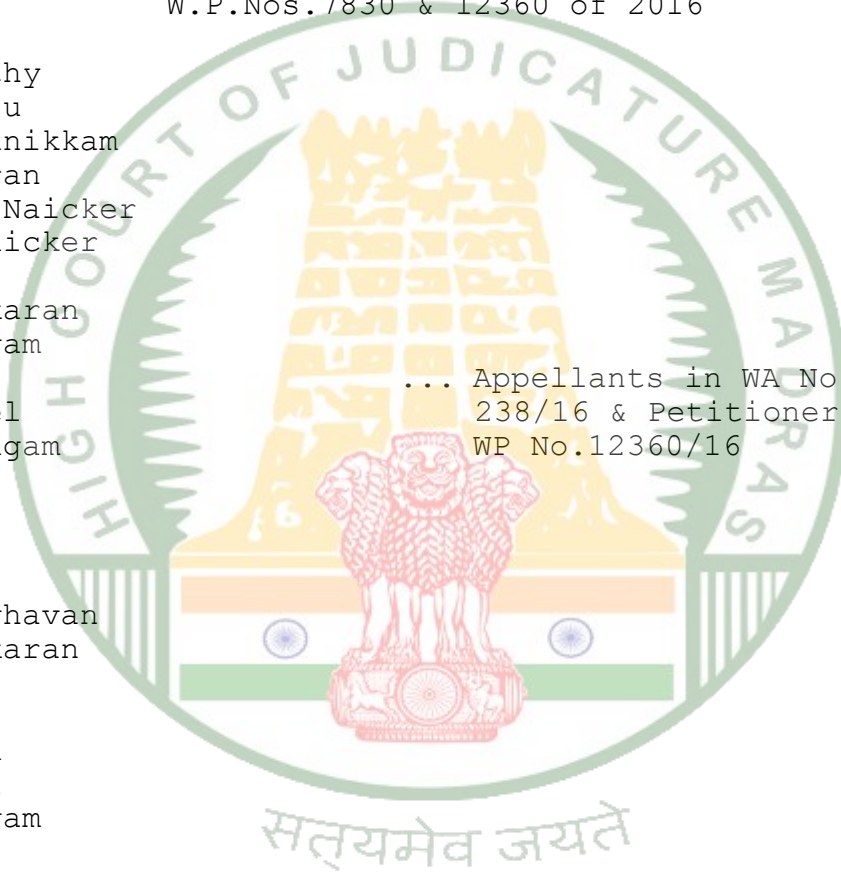
THE HON'BLE MR.JUSTICE M.V.MURALIDARAN

Writ Appeal Nos.238 & 239 of 2016 &
W.P.Nos.7830 & 12360 of 2016

M.Raghupathy
G.Sitrarasu
K.G.Rajamanikkam
C.Kannabiran
Subramani Naicker
K.Muthu Naicker
A.Kannan
P.Dhanasekaran
S.Ramalingam
K.Devaraj
G.Palanivel
S.Thulasingham

.... Appellants in WA No.
238/16 & Petitioners in
WP No.12360/16

Sridevi
Krishnan
M.Sekar
S.Veeraraghavan
Chandrasekaran
K.Indrani
Egambaram
Damodharan
V.Elumalai
Vijayarangam
A.Dharman
K.Ponnurangam
Parvathy
M.Arumugam
N.Arul
S.Vedhachalam
R.Srinivasan
Murugammal
K.R.Manikkavel
S.Balakrishnan
B.Ravichandran
Manivannan
Mohana
Balusamy



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R.Ramachandran
Pushpa
M.Velu
M.Manoharan

.. Appellants in
WA No.239/16

Dr.M.Venkata Ganesh

.. Petitioner in
WP No.7830/16

Vs.

The Government of Tamil Nadu
rep. by its Principal Secretary
Energy Department
Secretariat, Chennai 600 009.

.. R1 in both WAs & WPs

TANTRANSO
rep. by its Chairman
10th Floor, NPKRR Maaligai
144, Anna Salai
Chennai 600 002.

R2 in both WAs & WP No.
No.12360/16 & R3 in
.. WP No.7830/16

The District Collector
Collectorate
Vandavasi Road
Thaiyarkullam
Kancheepuram 631 501.

R3 in both WAs & WP
No.12360/16 & R2 in
.. WP No.7830/16

Gammon India Pvt. Ltd.
rep. by its Authorised Representative
Eswaran Koil Street
Sothupakkam
Melmaruvathur 603 319
Kancheepuram District.

R1 to R4 in both WAs
.. & WP No.12360/16

The Revenue Divisional Officer
O/o. RDO, Chengalpattu
Kancheepuram District.

.. R4 in WP No.7830/16

M.Venkata Ganesh

.. R5 in WA No.239/16

Appeals under Clause 15 of the Letters Patent filed against
the order dated 18.02.2016 made in W.P.Nos.16620 of 2015 & 16786
of 2015

WP No.7830 of 2016 - Petition under Article 226 of the
Constitution of India praying for a writ of Mandamus directing
the respondents to execute the erection/pitching of Towers more
particularly HTTL Towers in strict adherence of the Scheme and
as well as the Inspection Report of the second respondent in
Letter No.RC8919/M1/2014 dated 02.9.2014 and also that of the
Joint Inspection Report in R.C.No.1354/2014/A1 dated 26.9.2014

and not in the petitioner's patta land bearing Survey Nos.981/2, 897/1, 897/2A1 and 897/2B1 at SRO, Thiruporur, in a total extent of about 2.52 Acres.

WP No.12360 of 2016 - Petition under Article 226 of the Constitution of India praying for a writ of Certiorari calling for the records relating to G.O.Ms.No.74, Energy (A1) Department dated 26.11.2015 on the file of the first respondent and quash the same insofar as serial No.1 of the Annexure is concerned.

For Appellants & Petitioner Mr.N.L.Rajah, S.C.
in WP No.12360/16 : For Mr.K.Balu

For Petitioner in WP
No.7830/16 : Mr.L.Chandrakumar

For State : Mrs.A.Srijayanthi,
Spl.G.P.

For TANTRANSCO : Mr.A.L.Somayaji, A.G.
Advocate General
For Mr.Abdul Saleem

J U D G M E N T

(Delivered by Huluvadi G.Ramesh,J)

The appeals have been filed challenging the order of the learned single Judge dated 18.02.2016. The writ petitions have been filed by the petitioners seeking a direction not to erect the tower in the patta land and challenging G.O. Ms.No.74, Energy (A1) Department dated 26.11.2015 respectively.

2. Heard Mr.N.L.Rajah, learned senior counsel appearing for the appellants and petitioners, Mr.L.Chandrakumar, learned counsel appearing for the petitioner in one writ petition, Mr.A.L.Somayaji, learned Advocate General, appearing on behalf of Mr.Abdul Saleem, learned counsel for TANTRANSCO and Mrs.A.Srijayanthi, learned Special Government Pleader appearing for the State.

3. The facts of the case in nutshell are as follows:

TANTRANSCO proposed to lay a High Tension Transmission Line (HTTL) from Pogalur to Ottiampakkam Village, passing through Vembedu and Kayar villages. The said line proposed to pass through Vembedu and Kayar Villages is a sub-component of the project to a length of 24 kms connecting Kalivanthapattu to Ottiyampakkam at a tentative cost of Rs.31.2 Crores. The proposed line is to evacuate power for private companies at Sholinganallur and Siruseri. Since it is a HTTL project, huge

pits have to be dug in the agricultural land, covering an extent of 36 cents and excavation to a depth of 20 feet, and later it will be covered with 54,000 cft of concrete. Digging of huge pits and filling them with concrete were objected to by the appellants and petitioners on the ground that it would cause severe damage and obstruction to the underground water streams.

4. An application was filed before the National Green Tribunal, by one K.G.Mohanaraman, challenging the proposed HTTL. The Tribunal, after taking note of the report submitted by the District Collector with and the same was dismissed, with liberty to approach appropriate forum for compensation. The said order was challenged before the High Court and later it was withdrawn, since an appeal lies before the Supreme Court against the order of the National Green Tribunal. Accordingly, an appeal was filed in C.A.No.4666 of 2015 before the Supreme Court and the same was dismissed for want of merits.

5. The erection of towers and the proposed HTTL were challenged by the appellants in the writ petitions on the ground that there was no proper approval under Section 68 of the Electricity Act, 2003 and therefore, there was a prohibition on the respondents from erecting transmission lines without the consent of the land owners. They also sought to consider alternate route through poramboke land, near the periphery of the village.

6. The learned single Judge, by order dated 18.02.2016, dismissed the writ petitions, holding that the writ petitions are barred by res judicata as the issue has already been decided by the National Green Tribunal and the same was confirmed by the Supreme Court. Hence, the writ appeals.

7. In the meantime, the Government has granted approval for execution of EHT Lines under G.O.Ms.No.74, Energy (A1) Department, dated 26.11.2015. Challenging the G.O. on the ground that it has been passed after the implementation of the Scheme, W.P.No.12360 of 2016 has been filed.

8. Seeking a direction to the respondents not to erect towers in his patta lands and to erect the same in strict adherence to the Scheme and the inspection report dated 02.9.2014 and joint inspection report dated 26.9.2014, W.P.No.7830 of 2016 has been filed.

9. It is true that the appellants and petitioners are owning agricultural lands of small extents. Their grievance is that damage would be caused to them if HTTL line is laid in their agricultural land and that the same could be laid through poramboke land, near the periphery of the village. It is not in dispute that all the contentions raised were raised before the

learned single Judge. The learned single Judge has taken note of the grievances of the petitioners and also taken note of various aspects, including the findings rendered by the National Green Tribunal as well as the decision taken by this Court in similar matters and decided the matter after elaborate discussion.

10. Admittedly, an issue which was decided by the National Green Tribunal and confirmed by the Apex Court, cannot be agitated again and again. Though it is stated that the appellants and petitioners were not a party to the proceedings before the National Green Tribunal, the respondents and the issue before the National Green Tribunal are the same before this Court. Therefore, the finding of the learned single Judge that the writ petitions are barred by res judicata has to be upheld.

11. However, in view of the submission made on behalf of the appellants and petitioners, this Court, on 24.6.2016, directed the District Collector to hear the appellants and petitioners as to their grievance with respect to laying of line and also TANTRANSO and to find out as to the possibility of changing the laying of line on or before 29.6.2016 and to take a decision on 30.6.2016 and directed the Registry to list the matter on 30.6.2016.

12. Accordingly, the District Collector has passed an order on 29.6.2016. It appears from the proceedings of the District Collector dated 29.6.2016 that an enquiry was conducted on 29.6.2016, after communicating to all the parties through Tahsildar. It is stated therein that uninterrupted power supply to Chennai city and suburban areas will be possible only if project is completed and that 95% of the work has already been completed by incurring an expense of Rs.2270 Crores (out of Rs.2300 Crores) and therefore, there is no possibility of changing of laying of line, as prayed for by the petitioners. It is also stated that agriculture is being carried on below the towers in all places.

13. In view of the above proceedings, we are of the considered view that laying of line in an alternate route is impossible as the work is about to complete. Further, we do not find any reason to interfere with the detailed order of the learned single Judge.

14. However, the grievance of the appellants and petitioners that there is a possibility of getting lesser amount from the yield than the expected amount, in view of the erection of tower and their apprehension that at the time of sale, the land will fetch only depreciated value, instead of market value, needs our consideration. Though the learned Advocate General submits that there is no provision for granting compensation under the

Electricity Act, as there is no acquisition of land, since the erection of towers will be made only in the agricultural lands due to which the appellants and the petitioners would suffer a loss, we are of the considered opinion that the appellants and petitioners should be compensated to the extent of damages caused to them by the erection of towers in their agricultural land.

15. The writ appeals and writ petitions are disposed of, with a direction to the Government and TANTRANSO to take note of our observations in the preceding paragraph and to provide compensation to the appellants and petitioners to the extent of damages caused to them by the erection of towers in their agricultural land. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Secretary
Energy Department
Secretariat, Chennai 600 009.
2. The Chairman
TANTRANSO
10th Floor, NPKRR Maaligai
144, Anna Salai
Chennai 600 002.
3. The District Collector
Collectorate
Vandavasi Road
Thaiyarkullam
Kancheepuram 631 501.

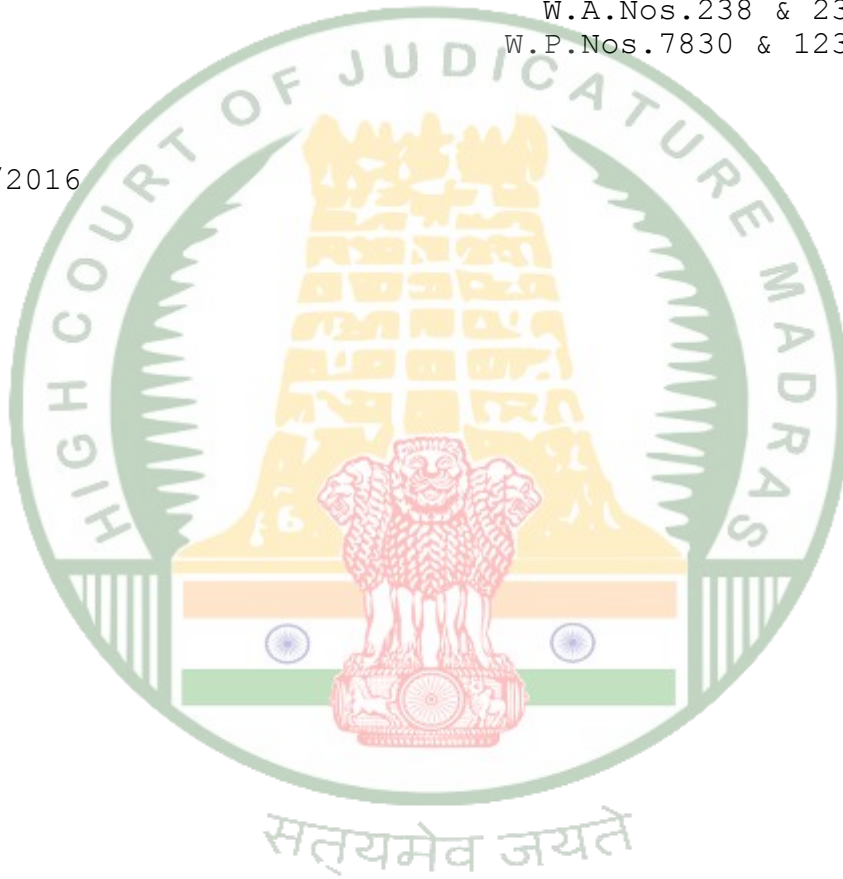
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4. The Revenue Divisional Officer
O/o. RDO, Chengalpattu
Kancheepuram District.

+2cc to Mr.Abdul Saleem, Advocate Sr.37002, 37001
+2cc to Mr.Balu, Advocate Sr.36840
+1cc to Mr.L.Chandrakumar, Advocate Sr.36843
+1cc to Mr.L.Chandrakumar, Advocate Sr.36911

W.A.Nos.238 & 239 of 2016 &
W.P.Nos.7830 & 12360 of 2016.

Mg[co]
srg 21/07/2016



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