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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.11.2016
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A(MD)No.1105 of 2015
and
M.P(MD)No.1 of 2015
and
C.M.P.(MD)No.7485 of 2016

P.Yesudasan

... Appellant/Petitioner

Vs.

1.The Superintending Engineer,
Tamilnadu Electricity Board,
Nagercoil, Kanyakumari District.

2.The Assistant Executive Engineer,
High Tension Electricity Line (Construction of Tower),
Tamilnadu Electricity Board,
Parvathipuram, Nagercoil,
Kanyakumari District.

3.The Assistant Executive Engineer,
Distribution Section,
Tamilnadu Electricity Board,
Suriyacodu Post,
Kanyakumari District.

... Respondents/Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of Letter Patent Act praying to set aside the order passed by this Court in W.P. (MD)No.18346 of 2013, dated 18.09.2015.

Prayer in WP(MD). 18346/ 2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents to consider the petitioner representations dated 22.10.2013 and 23.10.2013 and consequently restraining teh respondents from installing the Electricity High Tension Tower Line in the Petitioner s agricultural land situated in Survey No.4814, Re survey No.357/8, Kuzhinjanvillai Veedu, Mettupalayam, Village, Suriyacodu Post, Vilavancode Taluk, Kanyakumari District.



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For Appellant :Mr.T.Arul
for Mr.M.P.Senthil

For Respondents :Mr.B.Pugalendhi,
Additional Advocate General
assisted by Mrs.S.Srimathy
for Mr.S.M.S.Johny Basha
Standing Counsel for TNEB

JUDGMENT

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

By consent, this Writ Appeal is taken up for final disposal.

2. The appellant/writ petitioner would state that he has purchased a punja land in Survey No.4814, Re.Survey No.357/8, Kuzhinjanvillai Veedu, Methukummel, Kanyakumari District, through a registered sale deed bearing Document No.4410/1980 registered on the file of the Sub-Registrar Office, Parasalai, Thiruvananthapuram District and claims to be in possession and enjoyment of the said land right from the date of purchase and mutation was also taken place and he was also issued with Patta bearing No.1900.

3. The appellant/writ petitioner would further state that the respondents for the purpose of erecting High Tension Tower/Power lines for transmission of electricity had already acquired 8 cents out of 55 cents and 460 sq. ft and in respect of the remaining portion, he had planted rubber trees and in the event of further erection of Electricity High Tension Tower/Power lines, his occupation for eking out his livelihood will be affected. In this regard, the appellant/writ petitioner has also approached the first respondent and submitted a representation on 22.10.2013 requesting him not to erect Electricity High Tension Tower/Power lines in his land and also produced the documents stood in his name. The first respondent has forwarded the same to the third respondent on the same day, with a request to approach the said official for further response.

4. The appellant/writ petitioner in this regard has also submitted another representation dated 23.10.2013 to the second respondent praying for change of alignment and his request is pending and despite the pendency of the same, all steps are being taken by the respondents 2 and 3 to erect Electricity High Tension Tower/Power lines and therefore, he approached this Court by

https://hcservicescourts.gov.in/hcservices/ Civil Service Courts Writ Petition in W.P.(MD)No.18346 of 2013, praying for issuance of Writ of Mandamus, directing the respondents to consider and dispose of his representations dated 22.10.2013 and



23.10.2013 and consequently, forbearing the respondents from installing the Electricity High Tension Tower/Power lines in his agricultural land situated in Survey No.4814, Re.Survey No.357/8, Kuzhinjanvillai Veedu, Methukummal Village, Suriyacodu Post, Velavanadu Taluk, Kanyakumari District.

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5. The Writ Petition was entertained and notices were ordered to the respondents. The first respondent has filed his counter affidavit stating, among other things, that Nadaikavoo 110 KV line is drawn from Munchirai - Kuzhithurai 110 KV line. The said line is the alternative source of supply for maintaining uninterrupted power supply and avoiding low voltage in and around Puthukadai, Munchirai, Kaliakkavilai, Madichal, Nithiraivilai, etc., in Vilavancode Taluk and it is a sanctioned scheme work in T and D scheme for the year 2012 - 2013, vide Board Proceedings No.235, dated 13.12.2007. The Tamil Nadu Electricity Board had considered the said proposal and accorded sanction with an estimate cost of Rs.518.96 Lakhs.

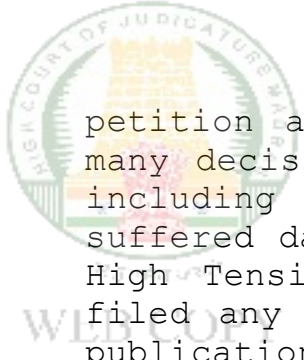
6. The first respondent further stated that the Tamil Nadu Electricity Board (TNEB) is also authorized in terms of the provisions of Section 42 of the Electricity (Supply) Act, 1948 and it was also granted exemption from the provisions of Sections 12 to 16, 18 and 19 of the Indian Electricity Act, 1910 and the work was also taken up after ensuing Budget provision.

7. Insofar as the plea made by the appellant/writ petitioner for change of alignment is concerned, the first respondent would submit that the scheme has been formulated, after extensive survey including the environmental considerations, road crossing, power line crossing, telecommunication line cross, railway line crossing and river crossing, apart from inhabited area and almost 70% of the work under the scheme was completed and the work in respect of the disputed site belonging to the appellant/writ petitioner alone is to be completed. At that point of time, it was not possible for them to change the alignment and also took a stand that the Tamil Nadu Electricity Board need not obtain consent of the land owners before putting up the Towers and drawing overhead lines and as per Section 10 of the Indian Telegraph Act, 1885, they have been authorised to do so.

8. The first respondent also took a stand that the the above work is carried out in public interest and since the alignment of route has been finalised by the experts with the aid of scientific instruments, like, Total Station and GPS etc., it is not possible to deviate the alignment and the said route has been taken in order to minimise any collateral damages to the minimum and therefore, prayed for dismissal of the writ petition.

<https://hcservices.ecourts.gov.in/hcservices/>

9. The learned Single Judge of this Court, after taking note of the submissions made in the affidavit filed in the writ



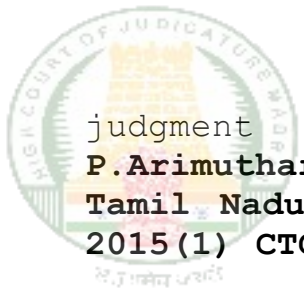
petition as well as counter affidavit and relying upon the very many decisions rendered by this Court, found that the petitioners including the appellant herein have not alleged that they have suffered damages by erection of High Tension Towers and drawing of High Tension Lines in the lands in question and they have not filed any objection when called for by the respondents, by paper publication dated 30.05.2008 and Gazette publication dated 23.07.2008 and the objections in the form of representations sent by them are also belated and as such, the points urged on behalf of the petitioners lack merit and consideration and therefore, dismissed all the writ petitions filed by the land owners, including the writ petition in W.P.(MD)No.18346 of 2013 filed by the appellant/writ petitioner, by a common order dated 18.09.2015 and aggrieved by the same, the present Writ Appeal is filed by the appellant/writ petitioner.

10. The learned Counsel for the appellant/writ petitioner has drawn the attention of this Court to the typed set of documents, especially, to the paper publication effected in Dinamalar News Daily, dated 30.05.2008 and Gazette Publication dated 23.07.2008 and would submit that admittedly, the routes as sanctioned by the Scheme have not been indicated at all and so also, the lands through which the Electricity High Tension Towers/Power lines are to be erected and in the absence of the same, the appellant/writ petitioner cannot be expected to file objections with relevant particulars. However, on becoming aware of the same, as to the erection of Electricity High Tension Towers/Power lines, the appellant/writ petitioner has submitted his objections dated 22.10.2013 and 23.10.2013 to the third respondent and the said official, in turn, vide communication, dated 06.11.2013, has informed the appellant/writ petitioner that his objections/representations have been forwarded to the concerned officials and he can contact them for further response.

11. It is the submission of the learned Counsel for the appellant/writ petitioner that once the objection is raised as to the erection of power lines is concerned, the respondents ought to have approached the jurisdictional District Collector, in terms of 16(1) of Indian Telegraph Act, 1885 and after his adjudication only, the authorities ought to have taken steps to erect the same and without invoking the jurisdiction of the District Collector in terms of the above said provisions, straight away, they started to take steps to put up the High Tension Towers/Power lines in the appellant/writ petitioner's land and that apart, the appellant/writ petitioner is also at liberty to invoke the provisions under Section 17(2) of the said Act and without adhering to the rule of law, the respondents are acting in a high-handed manner and therefore, he prays for interference.

<https://hcservices.ecourts.gov.in/hcservices/>

12. The learned Counsel for the appellant/writ petitioner, in support of his submissions, has also placed reliance upon the



judgment rendered by a Single Bench of this Court in **P.Arimutharasu Vs. The Superintending Engineer (Wind Far Project), Tamil Nadu Electricity Board, Tirunelveli and Others** reported in **2015(1) CTC 483**.

13. Per contra, Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mrs.S.Srimathy, learned Counsel appearing for the respondents has drawn the attention of this Court to the typed set of documents filed by the respondents and would submit that since it is a sanctioned scheme, prior sanction of the land owner is not all necessary in terms of Section 10 of the Indian Telegraph Act, 1885 and insofar as the objections/representations submitted by the appellant as to the erection of Electricity High Tension Towers/Power lines is concerned, the objection has been considered in a proper and perspective manner and the experts have chosen the said alignment.

14. The learned Additional Advocate General would further submit that since 70% of the work is also completed, it is not possible to change the alignment. In support of his submissions, he also placed reliance upon the order dated 08.11.2011 made in W.P.(MD)No.8844 of 2011 and the judgment dated 28.11.2012 made in W.A.No.2660 of 2012 and therefore, he prays for dismissal of the Writ Appeal with exemplary costs.

15. This Court has paid it's best attention to the rival submissions and also perused the materials placed before this Court.

16. In the order dated 08.11.2011 made in W.P.(MD)No.8844 of 2011, the facts of the case would disclose that similar objections have been raised by the land owners, but in that case, before approaching this Court by filing the writ petition, erection of Electricity High Tension Tower(s) had been completed and the electric lines have also been energized. The learned Judge, on a consideration of the facts and circumstances as well as the earlier judgments, in paragraph No.58, has drawn the following conclusions:

"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 Section 16(1) 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."

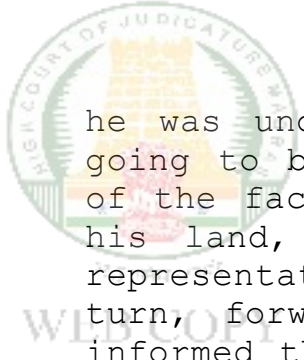
17. Insofar as the objections raised by the land owner are concerned, the learned Judge in paragraph 58 (viii) has concluded that a dignified protest, even in the form of a formal letter, notice or telegram would amount to obstruction within the meaning of Section 16(1) of the Indian Telegraph Act, 1885 and once such a protest is lodged, the licensee should seek an order from the District Magistrate. But on the facts of the case found that the respondents did not do so and therefore, granted liberty to the respondents therein to get approval from the District Magistrate under Section 16(1) of the Indian Telegraph Act, 1885 and also granted liberty to the land owner to apply to the District Magistrate under Section 17(2) of the Indian Telegraph Act, 1885, for the removal of the towers or to seek compensation in terms of Section 16 of the said Act.

18. The Honourable Division Bench of this Court, in similar facts and circumstances of case in W.A.(MD)Nos.1343 to 1352 and 1356 to 1358 of 2015, has considered the above cited decision in **N.Santhana Raj Vs. The Chief Engineer** reported in **2012(1) CTC 504** and thereafter, granted liberty to the appellant/writ petitioner therein, to move the District Magistrate under Section 17(2) of the Indian Telegraph Act, 1885 and with a further direction to the said official to consider and dispose of the same within a stipulated period.

19. In M.P(MD)No.1 of 2015 in W.A.(MD)No.1105 of 2015, it is the specific stand of the appellant/writ petitioner that he took a specific stand in paragraph 12 that he also owns two more properties comprised in Survey Nos.355/12 and 358/1A1 and Power lines are rightly erected on the proposed alignment, however, he did not choose to make challenge, for the reason that the alignment is in a straight way and insofar as the land in question is concerned, there is a deviated alignment.

20. The learned Counsel for the appellant/writ petitioner has also drawn the attention of this Court to the additional typed set of documents, dated 17.08.2016, filed in this writ appeal and would submit that in respect of the land in question, he has proposed to put up a superstructure and also obtained necessary planning permission from the President of the local body on 13.11.2011 and in the event of erection of Electricity High Tension Towers/Power lines, he cannot put up a construction.

21. The paper publication as well as the Gazette publication dated 30.05.2008 and 23.07.2008 respectively, would clearly disclose that the proposed route or alignment has not been indicated and also the Survey Numbers, on which, the Power lines be erected and therefore, the appellant/writ petitioner is right in making his submissions. In the absence of any details, he is not in a position to submit his objections as



he was under the impression that the electrical line/ route is going to be taken through some other lands and on becoming aware of the fact that the Power lines are going to be erected through his land, immediately he filed his objections in the form of representation dated 22.10.2013 to the third respondent, who, in turn, forwarded the same to the concerned authorities and also informed the appellant/writ petitioner through their communication dated 06.11.2013 that he can approach the concerned officials for getting effective response.

22. In the light of the judgment in **N.Santhana Raj Vs. The Chief Engineer** reported in **2012(1) CTC 504**, once an objection is raised, the respondents are under a statutory obligation to approach the jurisdictional District Collector/District Magistrate under Section 16(1) of the Indian Telegraph Act, 1885, however, they did not do so and the explanation submitted is that since 70% of the project/work has been completed, any delay will lead to further escalation of costs, which, in turn, affected the public interest.

23. However, in the case on hand, once an objection is raised by the land owner, in terms of a statutory provision under Section 16(1) of the Telegraph Act, 1885, the licensee/respondents have to approach the jurisdictional District Collector/District Magistrate for getting appropriate orders. It is a well settled position of law that once a statutory provision prescribes a thing to be done in a particular manner, it should be done only in that manner and not in any other way. Admittedly, the said exercise has not been undertaken by the respondents so far.

24. In the result, the writ appeal is partly allowed and the impugned order dated 18.09.2015 made in W.P.(MD)No.18346 of 2013 is set aside and the respondents either individually or collectively shall approach the District Collector of Kanyakumari District by invoking provisions under Section 16(1) of the Indian Telegraph Act, 1885 in the form of application within a period of two weeks from the date of receipt of a copy of this order and the said official, on receipt of the same, shall consider the said objections on merits and in accordance with law and after putting the appellant/writ petitioner on notice, shall pass orders in accordance with law within a period of four weeks thereafter and communicate the decision taken to the appellant/writ petitioner as well as the respondents. It is needless to say that the appellant/writ petitioner as well as the respondents shall extend their maximum co-operation to the District Collector of Kanyakumari District to complete the said exercise within the above stipulated time frame and till such time, the respondents 1 to 3 shall not erect any Electric High Tension Tower/Power lines, <https://hcservices.ecourts.gov.in/hcservices> appellant/writ petitioner who shall not put up any superstructure pursuant to the sanction of a planning permission accorded by the local body. Considering the facts of the case,



there shall be no order as to costs. The interim order already granted shall stand vacated and consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (As)

/True copy/

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Sub Assistant Registrar

To

- 1.The Superintending Engineer,
Tamilnadu Electricity Board,
Nagercoil, Kanyakumari District.
- 2.The Assistant Executive Engineer,
High Tension Electricity Line (Construction of Tower),
Tamilnadu Electricity Board,
Parvathipuram, Nagercoil,
Kanyakumari District.
- 3.The Assistant Executive Engineer,
Distribution Section,
Tamilnadu Electricity Board,
Suriyacodu Post,
Kanyakumari District.

+1cc to Mr.M.P.Senthil, Advocate SR.No.66924

+1CC to Mr.S.M.S.Johnny Basha, Advocate SR.No.66858

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W.A (MD) No.1105 of 2015
and

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