

CWP No.23897 of 2015

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

**CWP No.23897 of 2015
Date of decision:24.02.2016**

Bhagwati Nigah Gram Udyog Mandal, Ugala ...Petitioner
Versus
State of Haryana and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sunil Chadha, Senior Advocate, with
Ms. Pallavi Singh, Advocate, for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Puneet Jindal, Senior Advocate, with
Mr. Varun Goyal, Advocate, for respondents No.2 to 5.

Rakesh Kumar Jain, J.

The petitioner-society, registered under the Societies Registration Act, 1860 with the Registrar of Societies, Haryana, is alleged to have purchased the land measuring 06 Kanal 03 Marlas in village Abdulagarh, Tehsil Barara, District Ambala, vide registered sale deed dated 10.07.1998 for setting up an industry in the said land but so far, the industry has not been set up as it could not raise the requisite loan. It is alleged that the Haryana Vidyut Prasaran Nigam Limited (for short "HVPNL") issued a notification on 19.07.2010 to construct transmission lines and sub-stations in Haryana in which 66 KV transmission line was also to be constructed at Yara-Ugala S/C Line on D/C towers with 0.4 sq. inch ACSR conductor,

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having tentative length of 5 Kms. It is alleged by the petitioner that the said notification was duly published in the newspapers but neither in the notification nor in any public notice published in the newspaper, the description of the land in the shape of khasra numbers etc. through which the said 66 KV transmission line was to pass was ever mentioned. The construction of aforesaid 66 KV transmission line started somewhere in the year 2012. The petitioner sought information from the respondents under the Right to Information Act, 2005 (for short "the Act") regarding route plan of the transmission line, in response to which a tentative route plan was supplied. In the said tentative route plan, the length of the line was extended from 5 Kms. to 6785 meters and the number of towers were shown as 28.

It is alleged that since the petitioner was not threatened with the construction of the transmission line shown in the tentative route plan, therefore, it did not do anything. However, in the year 2014, the petitioner came to know that the respondents have changed the route plan and apprehending that the respondents may construct one of the towers over their land, the petitioner submitted a detailed representation dated 22.10.2014 and ultimately filed a civil suit on 07.11.2014 in the Court of Civil Judge (Senior Division), Ambala, for permanent injunction to restrain the present respondents from interfering in their possession by installing tower in their land. It is admitted by the petitioner that interim injunction was not granted by the Civil Court and when the present writ petition was filed on 04.11.2015, the civil suit was pending. Earlier also, the petitioner

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had approached this Court by way of CWP No.13468 of 2015, seeking issuance of a writ in the nature of *mandamus* directing the respondents to consider various objections raised by the petitioner regarding change of route plan but the said writ petition was withdrawn by the petitioner on 09.07.2015, with liberty to press their representation. It is alleged that even thereafter, the petitioner filed a detailed representation dated 15.10.2015, which has not been decided by the respondents, who were going ahead with installation of tower in the land of the petitioner and in that process, they had even constructed the platform on 23-24.10.2015.

With this background, the petitioner has prayed for a writ in the nature of *mandamus*, seeking a direction to the respondents to construct the transmission line strictly in terms of the notification dated 19.07.2010 and route plan shown in the tentative route plan (Annexure P-2) and also to prohibit them to install any tower in the land of the petitioner-society, which does not fall in the said route plan.

In the reply filed by respondents No.2 to 5, preliminary objection has been raised that the petitioner had filed the civil suit on the same cause of action on 07.11.2014, which was pending when the writ petition was filed, therefore, the petitioner cannot take two parallel remedies for the same cause of action. It is also submitted that the petitioner had earlier filed the writ petition, which was not pressed and withdrawn with liberty to pursue the representation, therefore, the petitioner is not entitled to re-agitate the matter in the present writ petition as according to the petitioner, when the earlier writ petition was filed, the work of laying down

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the transmission line was on and the representation had already been filed. In this regard, counsel for the respondents has relied upon two Division Bench judgments of this Court in the cases of **S.K.Mittal, Environmental Engineer vs. State of Haryana**, 1996(4) RSJ 489 and **Pradeep Kumar vs. Maharshi Dayanand University, Rohtak**, 2000(1) RSJ 510.

It is further submitted that 90% work of the transmission line has already been completed and the tower has also been erected on the land in question on 06.11.2015, whereas notice of motion was issued in this petition on 06.11.2015 without any stay. However, the *status quo* order was passed by this Court on 16.11.2015. It is also submitted that out of total 19 towers, 18 towers have already been installed and the wires have been put on most of the towers. As regards the length of the transmission line, it has been reduced because it was mentioned specifically in the tentative route plan by putting a note that “*route length/Nos & type of tower can be increased/decreased after detail survey*”.

While referring to the notification in question, counsel for the respondents has also submitted that the opportunity of objection was given which were to be filed within two months from the publication of the notification, after which there was no provision for entertaining any objection against the scheme, which was deemed to be sanctioned without any modification by the respondents.

In the rejoinder filed by the petitioner, it is alleged that the core issue which is to be decided in the present writ petition flows from the interim order dated 06.11.2015, in which the contention of the petitioner

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was recorded that the towers are being installed without notifying the specific khasra numbers and the route depicted in Annexure P-2 as it does not indicate the exact location, rather only number of towers to be installed have been mentioned. The petitioner has referred to a letter dated 19.09.20014, as per which the Chief General Manager/Commercial of the UHBVN, Panchkula has asked for compliance of the HERC directions issued on 27.08.2014 vide which Regulation 2010 of Central Electricity Authority (Technical Standards for Construction of the Electrical Plants and Electric line) and guidelines were to be followed in the execution of works of construction of electric lines and it was decided that the electric line should be erected strictly as per the Central Electricity Authority (Technical Standards for Construction of the Electrical Plants and Electric Line) Regulation 2010 and the notification, which is to be issued by the licensee i.e. UHBVN, for informing the public about the erection of new lines, shall also include the name of the villages, kila number and khasra number of the land through which the line is to pass. It is further averred that in the tentative route plan (Annexure P-2), proposed tower no.16 was at least 40 meters away from the land of the petitioner, whereas in the route plan Annexure P-4, the location of tower no.13 is right in the center of the land of the petitioner. It is also averred that the civil suit filed by the petitioner was withdrawn on 04.11.2015.

Counsel for the petitioner has vehemently argued that the respondents have not laid down the proposed line as per the notification as earlier they had increased the length of the route to 6785 meters i.e. about 7

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Kms. with 28 number towers passing through three villages but lateron it has been reduced to 3098 meters length with only 19 towers. It is submitted that the respondent should have disclosed the villages and khasra numbers through which the line was to pass as a matter of practice even if the directions have come on 19.09.2014 vide Annexure P-11. It is further averred that no doubt the petitioner had filed the civil suit for permanent injunction but no temporary injunction was granted by the Civil Court and the suit was withdrawn to file the present writ petition and that in the earlier writ petition, permission was granted by this Court to press their representations made to the respondents, therefore, the preliminary objection raised by the respondents is unwarranted.

On the other hand, counsel for the respondents has submitted that the proposed transmission line was notified on 19.07.2010, opportunity was given to the affected parties to file their objections/representations within two months and since no objection was filed by the petitioner, therefore, it has no right to file the present writ petition. Moreover, it is submitted that the petitioner has not approached this Court with clean hands because the petitioner had already filed the civil suit, which has been withdrawn by them without any permission to file the writ petition and the earlier writ petition was also withdrawn without pressing it on merits because perhaps the Hon'ble Court was not inclined to pass any order in favour of the petitioner. It is further submitted that the letter dated 19.09.2014 (Annexure P-11) is not applicable to the present case because it is issued by the UHBVN, whereas the respondent is the HVPNL, engaged

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only in creating infrastructure of the transmission lines. It is also submitted that the route plan Annexure P-2 was only tentative in which a note was also given that the route length/number and type of towers can be increased and decreased after detailed survey and ultimately, it has been found that the transmission line can be laid down on a distance of half of the route earlier proposed by reducing the number of towers for which the petitioner should not have raise any objection. In the end, it is submitted that 90% work of the transmission line was already complete when the writ petition was filed and rest 10% of the work is pending because of the present writ petition.

I have heard learned counsel for the parties and perused the available record.

Insofar as the preliminary objection of the respondents is concerned, the petitioner has itself mentioned in the writ petition that it had filed a civil suit for permanent injunction on 07.11.2014 in the Court of Civil Judge (Senior Division), Ambala, in which prayer was also made for temporary injunction which was not granted. It is also averred that the suit was fixed for 04.11.2014 and on the same day, the writ petition was drafted which is evident from the date appended on the writ petition. Similarly, the petitioner had earlier filed CWP No.13468 of 2015 which was withdrawn on 09.07.2015, in which the following order was passed:-

“Counsel for the petitioner, after arguing for some time, prays for withdrawal of the present writ petition with liberty to press the representations, which have been submitted to the respondents.

Disposed of as withdrawn with liberty aforesaid.”

From the aforesaid facts, it is evident that CWP No.13468 of

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2015 was filed during the pendency of the civil suit dated 07.11.2014 and when the petitioner failed to get any favourable order, withdrew the writ petition in the name of pressing the representation. The petitioner continued the suit till 04.11.2015 and then decided to file the present writ petition because the interim injunction was not granted by the Civil Court till then. The petitioner has also attached the plaint with this petition as Annexure P-6, in which a specific prayer was made by the petitioner to restrain the respondents from installation of the transmission line through their land. In **S.K.Mittal's case (supra)**, the following observations were made:-

“7. The rule that the High Court will not ordinarily exercise jurisdiction under Article 226 where an equally efficacious alternative remedy is available to the petitioner is based on a sound principle of public policy, namely, that if the party approaching the High Court for issue of a writ can get similar relief by filing appeal, revision or civil suit, the extraordinary jurisdiction should not be exercised by the High Court. This also means that the High Court will not convert itself into a substitute of the civil courts and various statutory adjudicating bodies. In a given case a person aggrieved by the action of the State or its agencies may avail the remedy of civil suit thinking that he will be able to get effective relief from the competent civil court. Such person may also apply for grant of temporary injunction for protection of his rights. Once this course is adopted, it is not permissible for that person to give up the remedy of civil suit and approach the High Court merely because at a subsequent point of time he thinks that the proceedings in the civil court will last longer than the period which would be consumed in the decision of a writ filed for seeking similar relief. Once a person has chosen to seek remedy in a civil court, he cannot turn around subsequently and say that the remedy by way of civil suit is not effective. Often it is seen that civil suit is filed with an application for temporary injunctions because the party feels that it will be more convenient and easy to convince the civil court to pass an order of injunction than the High Court.

However, when such party finds that the civil court is not inclined to grant injunction or the injunction application has been rejected, it moves an application for withdrawing the suit with the sole object of filing petition in the High Court on the same subject matter. At times an attempt is made to seek order of temporary injunction from the High Court after the civil court has declined similar relief. In some cases where order of temporary injunction is passed on an application filed along with the civil suit, the plaintiff-applicant feels that such an order will not be sustained by the appellate court and, therefore, he/she seeks withdrawal of the suit and then files writ in the High Court. This practice cannot in any manner be commended. Rather it deserves to be deprecated because it gives rise to an impression to the litigating public that if one cannot get temporary injunction from the civil court in an application filed under Order 39 Rules 1 and 2 read with Section 151 Civil Procedure Code then an attempt could be made to get such relief from the High Court in exercise of its jurisdiction under Article 226. In our opinion, this Court will not exercise its jurisdiction under Article 226 in a case where the petitioner had earlier approached the civil court for grant of relief on the same subject matter or any issue directly related with the subject matter of writ petition. We are also of the opinion that it would be a sound exercise of discretion not to entertain a petition filed by a person who had earlier approached the civil court by filing a civil suit and who withdrew the same at a subsequent point of time when it was felt that civil court will not grant relief by way of temporary injunction or that the injunction granted by the civil court may not subsist for long.

8. In this case, the petitioner had earlier approached the Court of Civil Judge (Senior Division), Faridabad and sought an injunction against his repatriation to the parent department. He successfully persuaded the learned trial court to pass an order of injunction. Subsequently, he withdrew the suit on an apparent realization that the injunction order dated 19.04.1996 may prove to be short-lived. Having availed the remedy in the civil court thinking that he could get relief from such court, the petitioner cannot now be permitted to challenge the order dated 15.03.1996

and subsequent orders issued by Government regarding his repatriation to the parent department.”

Similarly, in **Pradeep Kumar's case (supra)**, observations were made in the following manner:-

“9. We have heard the counsel for the parties and have perused the record. We are in agreement with the arguments advanced on behalf of the University. It has been correctly pointed out that once the petitioner had chosen to pursue his remedy in a civil Court he could not be permitted at a later stage to withdraw that suit and approach this Court to seek redressal for same cause of action. The decision of this Court in the case of S.K.Mittal (supra) fully supports this proposition and we may usefully reproduce the following observations of this Court from page 489 of the report:-

“The rule that the High Court will not ordinarily exercise jurisdiction under Article 226 where an equally efficacious alternative remedy is available to the petitioner is based on a sound principle of public policy, namely, that if the party approaching the High Court for issue of a writ can get similar relief by filing appeal, revision or civil suit, the extraordinary jurisdiction should not be exercised by the High Court. This also means that the High Court will not convert itself into a substitute of the civil courts and various statutory adjudicating bodies. In a given case a person aggrieved by the action of the State or its agencies may avail the remedy of civil suit thinking that he will be able to get effective relief from the competent civil court. Such person may also apply for grant of temporary injunction for protection of his rights. Once this course is adopted, it is not permissible for that person to give up the remedy of civil suit and approach the High Court merely because at a subsequent point of time he thinks that the proceedings in the civil court will last longer than the period which would be consumed in the decision of a writ filed for seeking similar relief.””

In view of the aforesaid facts and circumstances and the

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observations in the aforesaid cases, it is apparent that the petitioner has been playing hide and seek with this Court. Accordingly, this Court is of the considered opinion that the petitioner does not have any right to pursue his remedy in this petition and as such, the writ petition is dismissed, maintaining the preliminary objection raised by the respondents.

Adverting to the merits of the case also, in the notification dated 19.07.2010, it was specifically mentioned that *“notice is hereby given that any licensee or other person interested, may raise any objection and/or may make representation upon the above scheme within 2 months of the publication of this notification, after which no further objection and/or representation shall be entertained and the scheme shall be deemed to be sanctioned with or without modification by the Nigam”*. The petitioner admittedly did not raise any objection to the scheme as they were not allegedly affected by the scheme at that time. Moreover, the entire case set up by the petitioner is on the basis of tentative route plan (Annexure P-2), as per which tower no.16 was about 40 meters away from the land of the petitioner but in the said tentative route plan, it was specifically mentioned that *“route length/Nos. & type of tower can be increased/decreased after detail survey”*. Ultimately, the respondents had found that the transmission line can be laid down by erecting 19 towers instead of 28 by which the total length of the transmission line was reduced/decreased from the tentative length of 6785 meters to 3908 meters, which was cost effective and in the benefit of the respondent-Nigam.

Insofar as the argument of the petitioner that the respondent

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should have mentioned name of the villages and the khasra numbers through which the transmission line was to pass through, it only pertains to UHBVN and that too regarding the memo issued on 19.09.2014 and has nothing to do with the respondents, namely, the HVPNL, which is an altogether different company and by the time the said memo was issued on 19.09.2014, the construction work was already in progress. It is also not in dispute that 90% of the work has already been completed and before the *status quo* order was passed by this Court, the tower had already been erected/installed in the land of the petitioner.

Thus, even in view of these facts and circumstances, no relief can be granted to the petitioner. Consequently, the present writ petition is hereby dismissed on merit as well.

February 24, 2016
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(**Rakesh Kumar Jain**)
Judge