

CWP No.2636 of 2016 (O&M)

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

**CWP No.2636 of 2016 (O&M)
Date of decision:09.11.2016**

Isher Kaur

...Petitioner

Versus

Union of India and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Akshay Bhan, Senior Advocate, with
Mr. HPS Sandhu, Advocate, for the petitioner.

Mr. Anmol Pandit, Advocate, for
Mr. A.K.Bansal, Advocate, for respondent No.1-UOI.

Mr. Sukhandeep Singh, Advocate, for
Mr. Lokesh Sinhal, Advocate, for respondent No.2.

Mr. Anant Kataria, DAG, Punjab.

Mr. Chetan Mittal, Senior Advocate, with
Mr. Varun Issar, Advocate, for respondent No.4.

Rakesh Kumar Jain, J. (Oral)

The petitioner, a Non-Resident Indian, is the owner of land measuring 21 Bighas, comprised in Khasra No.217, 218, 273, 274, 219/3, 216/1, situated in village Mullanpur Dakha, Tehsil and District Ludhiana, which was purchased by her vide three sale deeds bearing Wasika No.323 dated 10.06.1997, Wasika No.420 dated 26.06.1997 and Wasika No.795 dated 04.11.1997. The petitioner received a notice dated 19.12.2015, stating therein that by virtue of the power vested with M/s NRSS-XXXI (B) Transmission Limited, under Sections 10 to 19 of the Indian Telegraph Act, 1885 (hereinafter referred to as the "Act") read with Section 42 of the Electricity (Supply) Act, 1948, a Twin MOOSE Transmission Line of 400

KV D/C circuit from Malerkotla Sub-station to Amritsar Sub-station of Power Grid Corporation of India Limited would go through her property. It is further stated therein that though due care would be taken to minimize the damage to standing trees and crops, yet certain minimum unavoidable damage is likely to take place during construction/erection of the aforesaid line. The trees so felled would be handed over to the petitioner and compensation for the yield component of the trees so felled and the crop damaged would be suitably paid to her as per the norms of revenue department. The petitioner replied to the said notice to the District Magistrate, Ludhiana on 28.12.2015.

It is averred in the present petition that the petitioner is aggrieved that the route of the transmission line, which was going into a straight line, shown in yellow colour in the site plan attached with this petition as Annexure P-9, has been changed, which is shown in red colour in the site plan, as a result thereof, the respondents are going to erect a tower in her land, as shown in green colour, in order to save the land belonging to Guru Hargobind Medical Education Society (respondent no.5 herein).

The petitioner has challenged the action of the respondents, *inter alia*, on the grounds that the notice has been issued under a repealed statute, namely, the Electricity (Supply) Act, 1948 and that the notice is illegal as the respondents have not followed the procedure prescribed in Section 16 of the Act. The petitioner has, thus, made a prayer for issuance of a writ in the nature of *certiorari* for seeking quashing of the notice dated 19.12.2015 and for any other writ, order or direction as this Court may deem appropriate. She has further made a prayer that in the meantime, the

respondents be restrained from raising any tower in her land in pursuance of the notice dated 19.12.2015.

Notice of motion was issued in this case on 30.03.2016 but there is no stay, restraining the respondents from raising any kind of construction on the land of the petitioner.

The writ petition is basically contested by respondent No.4, who has averred in their reply that it has been granted the prior approval under Section 68(i) of the Electricity Act, 2003 (hereinafter referred to as the “Act of 2003”) for construction of transmission lines under “Northern Region System Strengthening Scheme-XXXI (Part-B)” consisting of (i) Kurukshetra-Malerkotla 400 KV D/C transmission line (ii) Malerkotla-Amritsar KV D/C transmission line and further vide notification dated 15.10.2014, the Ministry of Power, Government of India, conferred, under Section 164 of the Act of 2003, all the powers on it, which is possessed by the Telegraph Authority under the Act. It is also averred that there was a mistake in the notice issued to the petitioner in which reference has been made, inadvertently, to Section 42 of the Electricity (Supply) Act, 1948, which has been repealed by the Act of 2003 and that mistake has been rectified by issuing a fresh notice dated 22.06.2016 to the petitioner, which is attached as Annexure R-4/6 with the reply filed by respondent No.4. It is further averred that the petitioner has not filed any objection to the scheme formulated for laying down the transmission line, the project is time bound and has to be completed by September, 2016 to facilitate power flow to the State of Punjab from generation projects in Chhatisgarh. It is also averred that respondent No.4 had written a letter dated 23.01.2016 to the Deputy

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Commissioner, Ludhiana that angle point 19/0 is required to be installed at the fields of the petitioner and notice was issued on 19.12.2015 under the Act. It is further mentioned in the letter that in the construction of Tower No.19/0 and 20/0, respondent No.4 have to cross existing 220 KV D/C transmission line of the Punjab State Transmission Corporation Limited and as per regulation, it is required to take prior permission from the concerned utility before issuing notice to the owners of the land to carry out the work. It is further submitted that the crossing proposal was submitted by the PSTCL on 23.04.2015 and approval for the same was received on 24.11.2015 and further request was made to the Deputy Commissioner for issuing the necessary orders/directions to the petitioner and other persons mentioned in the letter dated 23.01.2016 that they should not create any hindrance in construction of the transmission line. It is also alleged that the scheme was published on 10.06.2014 in three news papers viz. Indian Express, Jansatta and Punjabi Tribune and without there being any kind of objection by anyone, the Gazette Notification was published on 15.10.2014 by the Ministry of Power. After the receipt of application of respondent No.4, the Deputy Commissioner directed the petitioner and other land owners to come present personally in his office on 04.03.2016 but the petitioner did not appear. It is also averred that respondent No.4 has strictly adhered to the site plan/scheme approved by the Central Electricity Authority and there is no change effected by it in the site plan/scheme as no deviation is possible from the approved project.

The petitioner has filed replication to the written statement filed by respondent No.4, in which it is alleged that publication of the notice is an

eye-wash much-less vague as it only mentions the name of the village and not the area which is to be utilized for the purpose of erection of towers.

Mr. Bhan, learned senior counsel appearing on behalf of the petitioner, has argued that respondent No.4 cannot entirely depend upon Section 164 of the Act of 2003 in order to take away the right of the petitioner available to her in terms of the Section 67(2) of the Act of 2003, under which the Works of Licensees Rules, 2006 (hereinafter referred to as the “Rules”) have been framed. His precise argument is that as per Rule 3 of the rules, the licensee, while carrying out the work of laying down the electricity supply line, has to give an opportunity of hearing to the land owner whose land is to be utilized and after receiving the objections, the Competent Authority provided under the Rules has to decide the same, in accordance with the provisions of the Rules. It is submitted that in the absence of the said procedure having been followed by respondent No.4, the entire proceedings carried out for laying down the transmission line are patently erroneous and illegal.

In support of his submissions, he has relied upon a Single Bench judgment of the Patna High Court in the case of **Ram Naresh Singh and another vs. The Power Grid Corporation of India Ltd. and others**, CWJC No.6993 of 2010, decided on 17.05.2010, which has been upheld by the Division Bench of the Patna High Court in the case of **Power Grid Corpn. of India Ltd. and Ors. vs. Ram Naresh Singh and Ors.**, 2011 AIR (Patna) 83.

Learned senior counsel appearing on behalf of the petitioner has been fair enough to state that the Power Grid Corporation of India

Limited has challenged the aforesaid order of the Division Bench of the Patna High Court before the Supreme Court by way of Civil Appeal No.8951 of 2011 titled as “**Power Grid Corp. of India Ltd. & Anr. vs. Ram Naresh Singh & Ors.**”, which is allegedly pending adjudication.

He further relied upon a Division Bench judgment of the Madras High Court rendered in the case of **Superintending Engineering, Tamil Nadu Electricity Board, Maharaja Nagar, Tirunelveli and another vs. M. Sengu Vijay and another**, 2011(3) MLJ 625.

On the other hand, Mr. Mittal, learned senior counsel appearing on behalf of respondent No.4, has submitted that the petitioner is reeling under a wrong impression that the action is being taken by a licensee under Section 67 of the Act of 2003. It is submitted by him that the entire proceedings are being carried out by them by virtue of an order passed by the Government of India, conferring powers upon them under Section 164 of the Act of 2003. It is submitted that there is a marked difference between the proceedings carried out under Sections 67 and 164 of the Act. In support of his submission, he has relied upon the following judgments:-

- i) **Dakshin Haryana Bijli Vitran Nigam Ltd. and another vs. The Permanent Lok Adalat and another**, CWP No.3968 of 2014, decided on 04.05.2016;
- ii) **E. Venkatesan and others vs. Chairman, Tamil Nadu Electricity Board, Madras and others**, 1997 AIR (Madras) 64;
- iii) **Bharat Plywood and Timber Products Private Ltd. vs. Kerala State Electricity Board Trivandrum and**

others, 1972 AIR (Kerala) 47;

- iv) **Braham Singh vs. State of U.P. and others, 2008(4) R.C.R. (Civil) 389;**
- v) **Vijay Ramchandra Agrawal vs. Power Grid Corporation of India Ltd. and another, 2010(4) M.P.L.J. 73; and**
- vi) **G.V.S. Rama Krishna s/o Nageswara Rao and Ors. vs. A.P. Transco rep. By its Managing Director, Vidyuth Soudha and ors., 2010(8) R.C.R. (Civil) 2223.**

From the arguments raised by learned counsel for both the parties, the question which arises for adjudication is as to whether the petitioner has a legal right to be heard for the purpose of her consent in terms of Section 67 of the Act of 2003 or respondent No.4 can execute its work only by paying compensation, without obtaining consent of the petitioner, in terms of Section 164 of the Act of 2003 read with Section 10 of the Act?

In order to appreciate the arguments raised by learned counsel for both the parties, it would be relevant to reproduce certain provisions of the Act and the Act of 2003, which are as under:-

Section 10 of the Act

“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) the telegraph authority shall not exercise the powers conferred by this section except for the purposes of a telegraph established or maintained by the [Central

- Government], or to be so established or maintained;
- (b) the [Central Government] shall not acquire any right other than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph line or post; and
 - (c) except as hereinafter provided, the telegraph authority shall not exercise those powers in respect of any property vested in or under the control or management of any local authority, without the permission of that authority; and
 - (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.”

Sections 67 and 164 of the Act of 2003

“Section 67. Provisions as to opening up of streets, railways, etc.-- (1) A licensee may, from time to time but subject always to the terms and conditions of his licence, within his area of supply or transmission or when permitted by the terms of his licence to lay down or place electric supply lines without the area of supply, without that area carry out works such as -

- (a) to open and break up the soil and pavement of any street, railway or tramway;
 - (b) to open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
 - (c) to alter the position of any line or works or pipes, other than a main sewer pipe;
 - (d) to lay down and place electric lines, electrical plant and other works;
 - (e) to repair, alter or remove the same;
 - (f) to do all other acts necessary for transmission or supply of electricity.
- (2) The Appropriate Government may, by rules made by it in this behalf, specify, -
- (a) the cases and circumstances in which the consent in writing

of the Appropriate Government, local authority, owner or occupier, as the case may be, shall be required for carrying out works;

- (b) the authority which may grant permission in the circumstances where the owner or occupier objects to the carrying out of works;
- (c) the nature and period of notice to be given by the licensee before carrying out works;
- (d) the procedure and manner of consideration of objections and suggestion received in accordance with the notice referred to in clause (c);
- (e) the determination and payment of compensation or rent to the persons affected by works under this section;
- (f) the repairs and works to be carried out when emergency exists;
- (g) the right of the owner or occupier to carry out certain works under this section and the payment of expenses therefor;
- (h) the procedure for carrying out other works near sewers, pipes or other electric lines or works;
- (i) the procedure for alteration of the position of pipes, electric lines, electrical plant, telegraph lines, sewer lines, tunnels, drains, etc.;
- (j) the procedure for fencing, guarding, lighting and other safety measures relating to works on streets, railways, tramways, sewers, drains or tunnels and immediate reinstatement thereof;
- (k) the avoidance of public nuisance, environmental damage and unnecessary damage to the public and private property by such works;
- (l) the procedure for undertaking works which are not repairable by the Appropriate Government, licensee or local authority;
- (m) the manner of deposit of amount required for restoration of any railways, tramways, waterways, etc.;
- (n) the manner of restoration of property affected by such works and maintenance thereof;
- (o) the procedure for deposit of compensation payable by the licensee and furnishing of security; and

(p) such other matters as are incidental or consequential to the construction and maintenance of works under this section.

(3) A licensee shall, in exercise of any of the powers conferred by or under this section and the rules made thereunder, cause as little damage, detriment and inconvenience as may be, and shall make full compensation for any damage, detriment or inconvenience caused by him or by any one employed by him.

(4) Where any difference or dispute [including amount of compensation under sub-section (3)] arises under this section, the matter shall be determined by the Appropriate Commission.

(5) The Appropriate Commission, while determining any difference or dispute arising under this section in addition to any compensation under sub-section (3), may impose a penalty not exceeding the amount of compensation payable under that sub-section.

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Section 164. Exercise of powers of Telegraph Authority in certain cases.- The Appropriate Government may, by order in writing, for the placing of electric lines or electrical plant for the transmission of electricity or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying electricity under this Act, subject to such conditions and restrictions, if any, as the Appropriate Government may think fit to impose and to the provisions of the Indian Telegraph Act, 1885, any of the powers which the telegraph authority possesses under that Act with respect to the placing of telegraph lines and posts for the purposes of a telegraph established or maintained, by the Government or to be so established or maintained.”

Besides the aforesaid provisions which are in existence, learned counsel for respondent No.4 has also made a reference to the provisions of the repealed Act, namely, the Indian Electricity Act, 1910 (hereinafter referred to as the “Act of 1910”), for the purpose of comparison, which are

as under:-

Sections 12 and 51 of the Act of 1910

“12. Provision as to the opening and breaking up of streets, railways and tramways. - (1) Any licensee may, from time to time but subject always to the terms and conditions of his license, within the area of supply, or, when permitted by the terms of his license to lay down or place electric supply-lines without the area of supply, without that area-

- (a) Open and break up the soil and payment of any street, railway or tramway;
- (b) Open and break up any sewer, drain or tunnel in or under any street, railway or tramway;
- (c) Lay down and place electric supply-lines and other works;
- (d) Repair, alter or remove the same; and
- (e) Do all other acts necessary for the due supply of energy.

(2) Nothing contained in sub-section (1) shall be deemed to authorise or empower a licensee, without the consent of the local authority or of the owner or occupier concerned, as the case may be, to lay down or place any electric supply-line or other work in, through or against any building, or on, over or under any land' not dedicated to public use whereon, wherever or whereunder any electric supply line work has not already been lawfully laid down or placed by such licensee: Provided that any support of an overhead line or any stay or strut required for the sole purpose of securing in position any support of an overhead line may be fixed on any building or land or, having been so fixed, may be altered, notwithstanding the objection of owner or occupier of such building or land, if the District Magistrate or, in a Presidency town, the Commissioner of Police by order in writing so directs: Provided also, that, if at any time the owner or occupier of any building or land on which any such support, stay or strurt has been fixed shows sufficient cause, the District Magistrate or, in a Presidency-town the Commissioner of Police may by order in writing direct any such support, stay or strut to be removed or altered.

(3) When making an order under sub-section (2), the District Magistrate or the Commissioner of Police, as the case may be, shall fix the amount of compensation or of annual rent, or of both, which

should in his opinion be paid by the licensee to the owner or occupier.

(4) Every order made by a District Magistrate or a Commissioner of Police under sub-section (2) shall be subject to revision by the State Government.

(5) Nothing contained in sub-section (1) shall be deemed to authorise or empower any licensee to open or break up any street not repairable by the Central Government or the State Government or a local authority, or any railway or tramway, except such streets, railways or tramways (if any), or such parts thereof, as he is specially authorised to break up by his license, without the written consent of the person by whom the street is repairable or of the person for the time being entitled to work the railway or tramway, unless with the written consent of the State Government: Provided that the State Government shall not give any such consent as aforesaid, until the licensee has given notice by advertisement or otherwise as the State Government may direct, and within such period as the State Government may fix in this behalf. to the person above referred to, and until all representations or objections received in accordance with the notice have been considered by the State Government.

(6) In this section, "occupier" of any building or land means a person in lawful occupation of that building or land.

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51. Exercise in certain cases of powers of telegraph authority. -

Notwithstanding anything in Sections 12 to 16 (both inclusive) and Sections 18 and 19, the State Government may, by order in writing, for the placing of electric supply-lines, appliances and apparatus for the transmission of energy or for the purpose of telephonic or telegraphic communications necessary for the proper co-ordination of works, confer upon any public officer, licensee or any other person engaged in the business of supplying energy to the public under this Act, subject to such conditions and restrictions (if any) as the State Government may think fit to impose, and to the provisions of the Indian Telegraph Act, 1885 (13 of 1885), any of the powers which the telegraph-authority possesses under that Act, with respect to the placing of telegraph lines and posts for the

purposes of a telegraph established or maintained by the Government or to be so established or maintained.”

It is submitted by counsel for respondent No.4 that in Section 12 of the Act of 1910, it was mandated to have consent of the occupier of such building or land for the purpose of its utilization, whereas, while repealing the Act of 1910 by the Act of 2003, Section 67(2) provides that the Appropriate Government would frame rules to specify various aspects including the determination and payment of compensation or rent to the persons affected by works under that Section.

Counsel for respondent No.4 has submitted that the genesis of the Rules is Section 67(2) of the Act of 2003 in which Rule 3 provides that in case the work is being executed by the licensee, it would be incumbent upon the licensee to take the consent of the occupier for utilization of his or her land. Rule 3 of the Rules is also relevant for the purpose of decision of this case, which is reproduced as under:-

“3. Licensee to carry out works.-

- (1) A licensee may –
 - (a) carry out works, lay down or place any electric supply line or other works in, through, or against, any building, or on, over or under any land whereon, wherever or whereunder any electric supply-line or works has not already been lawfully laid down or placed by such licensee, with the prior consent of the owner or occupier of any building or land;
 - (b) fix any support of overhead line or any stay or strut required for the purpose of securing in position any support of an overhead line on any building or land or having been so fixed, may alter such support:

Provided that in case where the owner or occupier of the building or land raises objections in respect of works to be

carried out under this rule, the licensee shall obtain permission in writing from the District Magistrate or the Commissioner of Police or any other officer authorised by the State Government in this behalf, for carrying out the works:

Provided further that if at any time, the owner or occupier of any building or land on which any works have been carried out or any support of an overhead line, stay or strut has been fixed shows sufficient cause, the District Magistrate or the Commissioner of Police, or the officer authorised may by order in writing direct for any such works, support, stay or strut to be removed or altered.

- (2) When making an order under sub-rule (1), the District Magistrate or the Commissioner of Police or the officer so authorised, as the case may be, shall fix , after considering the representations of the concerned persons ,if any, the amount of compensation or of annual rent, or of both, which should in his opinion be paid by the licensee to the owner or occupier.
- (3) Every order made by a District Magistrate or a Commissioner of Police or an authorised officer under sub-rule (1) shall be subject to revision by the Appropriate Commission.
- (4) Nothing contained in this rule shall effect the powers conferred upon any licensee under section 164 of the Act.”

The term “licensee” is defined under Section 2(39) of the Act of 2003 to mean a person who has been granted a license under Section 14 of the Act of 2003. Section 14 of the Act of 2003 deals with the grant of license, which provides that the Appropriate Commission may, on an application made to it under Section 15, grant a license to any person (a) to transmit electricity as a transmission licensee; or (b) to distribute Electricity as a distribution licensee; or (c) to undertake trading in electricity as an electricity trader, in any area as may be specified in the license.

The main judgment which has been relied upon by the counsel for the petitioner is of the Division Bench of the Patna High Court in **Ram**

Naresh Singh's case (supra) to contend that Rule 3 of the Rules would still be applicable despite the powers conferred by the Central Government in terms of Section 164 of the Act of 2003 because Rules have also been framed under the Act of 2003.

On the contrary, learned counsel for respondent No.4 has relied upon the judgment of the Andhra Pradesh High Court in **G.V.S. Rama Krishna's case (supra)** in which it has been held that “*as could be seen, though Section 67(1) of the Electricity Act, 2003 is identical to Section 12(1) of, the Indian Electricity Act, 1910, Section 67(2) of the Electricity Act, 2003 varies from Section 12(2) of the repealed Indian Electricity Act, 1910. Section 67(2) does not say that the consent of the owner or occupier is mandatory but the matters where the property of other persons is affected by the works of the licensee have been left to be provided by the appropriate Government by way of Rules in exercise of its rule making power*”. It is further held that “*in view of Section 185(2)(b) of the Electricity Act, 2003, it is not in dispute that the provisions contained in Sections 12 to 18 of the Indian Electricity Act, 1910, still govern the field since as on today no rules are made under Section 67(2) of the Electricity Act, 2003*”. The other relevant findings recorded in the said judgments read thus:-

“27. A reading of Section 12(2) of the Indian Electricity Act, 1910 makes it clear that the acts specified under Section 12(1) cannot be carried out without the consent of the concerned owner or occupier. However, the question that arises for consideration is whether Section 12 of the Indian Electricity Act, 1910 is applicable to the case on hand.

28. On an analysis of Section 67 and Section 164 of the

Electricity Act, 2003, it is apparent that whenever an order is passed by the appropriate Government in exercise of the powers under Section 164 of the Electricity Act, 2003 for the placing of electric lines for the transmission of Electricity, conferring upon any public officer, licensee or any other person engaged in the business of supplying electricity any of the powers which the telegraph authority possesses under the Indian Telegraph Act, 1885 with respect to the placing of telegraphic lines and posts for the purposes of a telegraph established by the Government, such public officer, licensee or any other person engaged in the business of supplying Electricity stands in the same position as regards the exercise of power as the telegraph authority under the Indian Telegraph Act, 1885. However, in the absence of such an order under Section 164 of the Electricity Act, 2003, if a licensee i.e., a person who has been granted a license to transmit Electricity or to distribute electricity under the Act, proposes to place electric lines, electric plant or other works necessary for transmission or supply of electricity, Section 67 of the Electricity Act, 2003 comes into operation and consequently it is mandatory to obtain the consent of the concerned owner or occupier as required under Section 12(2) of the Indian Electricity Act, 1910.

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31. As could be seen, Section 10 of the Indian Telegraph Act, 1885 empowers the telegraph authorities to place and maintain the telegraph lines under, over, along or across and posts in or upon any immovable property. However, the said power shall not be exercised in respect of any property vested in or under the control or management of any local authority without the permission of that authority. The proviso (d) to Section 10 of Indian Telegraph Act, 1885 further made it clear that while exercising powers conferred under Section 10 the Telegraph authority shall do as little damage as possible and when it has exercised those powers in respect of any property other than the property under the control or management of the local authority shall pay full compensation to all the persons interested for any damage sustained by them by reason of exercise of the said powers. It is also relevant to note that as per proviso (b) of Section 10 of the Indian Telegraph Act, 1885, the Central Government shall not acquire any right other

than that of user only in the property under, over, along, across in or upon which the telegraph authority places any telegraph lines or posts.

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33. For the aforesaid reasons, I am of the opinion that Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885 recognized the absolute power of the A.P. Transco to proceed with placing of electric supply lines or electric polls for the transmission of electricity on or over the private lands subject to the right of the owner/occupier to claim compensation if any damage is sustained by him by reason of placing of such electric supply lines. In other words, neither the acquisition of the lands is necessary nor there is any need for consent of the owner or occupier.

34. It is also relevant to note that since Section 28 or 42 of the Electricity (Supply) Act, 1948 are not saved under Section 185 of the Electricity Act, 2003, there is no need to publish a sanctioned scheme nor it is necessary to give any notice by publication in local news papers as required under Section 29(2) of the Electricity (Supply) Act, 1948. In spite of the same, the notification dated 14.07.2008 was published in the A.P. Gazette as well as two local dailies inviting objections from the interested/aggrieved persons and no objections were received from anyone.”

Shri Bhan, learned senior counsel appearing on behalf of the petitioner, has submitted that the Hon'ble Bench dealing with the **G.V.S. Rama Krishna's case (supra)** was not properly assisted because it is observed categorically in the order that the Rules have not been framed under Section 67(2) of the Act of 2003 though the judgment was delivered in the year 2009 and the Rules were already there in the year 2006.

The argument of learned counsel for the petitioner, while referring to Rule 3 of the Rules, has some substance that the objections with regard to occupation of the land of the petitioner should have been considered and her consent should at least have been taken had the action

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being taken by respondent No.4 under Section 67 of the Act of 2003 as a licensee but the said argument would not apply to the facts and circumstances of the present case as the action has been taken by respondent No.4 in terms of the powers conferred upon it under Section 164 of the Act of 2003 which provides that the respondents, at the time of laying down the electricity line, can rely upon the provisions of Section 10 of the Act.

The judgment in **G.V.S. Rama Krishna's case (supra)**, which has been relied upon by respondent No.4, is supporting its case throughout in which it has been held that in case of invocation of Section 164 of the Act of 2003, no consent is required of the occupier of the land who is only entitled to be compensated in terms of money for the land which is to be utilized by the respondents for the purpose of construction of tower or post on it.

In view of the distinction that has been drawn by this Court in respect of the right of a licensee and the right conferred by the Appropriate Government under Section 164 of the Act of 2003, the objection raised by the petitioner with regard to obtaining her consent for utilization of her land does not survive.

Consequently, the present writ petition is hereby dismissed being denuded of any merit.

November 09, 2016
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No