

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 487 OF 2017

MR. KASHINATH P. TARI.,	... Petitioner
Versus	
STATE, THR. CHIEF SECRETARY AND 11 ORS.,	... Respondents

Mr. Galileo Francisco Teles, Advocate for the petitioner.
Mr. Dattaprasad Lawande, Advocate General with Mr. A.
Prabhudessai, Addl. Govt. Advocate for the respondent nos. 1 to
4, 6, 7, 10 and 12.
Mr. S. Mahambrey, Advocate for the respondent no. 5.
Mr. Yogesh V. Nadkarni, Advocate for the respondent no. 8, 9,
11.

Coram:- F. M. REIS &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 16th June, 2017

P.C.

Heard Mr. G. Teles, learned Counsel for the petitioner, Mr. Dattaprasad Lawande, learned Advocate General for the respondent nos. 1 to 4, 6, 7, 10 and 12, Mr. S. Mahambrey, learned Counsel for the respondent no. 5 and Mr. Y. V. Nadkarni, learned Counsel for the respondent no. 8, 9, 11.

2. The grievances raised by the petitioner in the above petition are two fold; it is the contention of Mr. G. Teles, learned Counsel appearing for the petitioner that a high tension line passing through the property belonging to the respondent no. 8 surveyed under No. 20/3A of village Baiguinim. It is further his case that the respondent no. 8 obtained a development permission to carry out development of the subject property subject to the shifting of

the high tension line which is passing through his property. It is further pointed out that to comply with the said condition, the respondent no.8 approached the electricity department to permit him to shift the high tension line. The learned Counsel further submits that the electricity department had granted the permission subject that such exercise of shifting is carried out at the costs of the respondent no.8 and further under the supervision of the Electricity Department. The learned counsel also submits that the department has also imposed conditions to the effect that in case, there are any objection to such shifting of the high tension line, it will be the responsibility of the respondent no.8. The learned Counsel further submits that in the process of carrying out such shifting of the high tension line, though respondent no.8 has constructed a pole adjoining to the existing road in the property belonging to the respondent no. 8 and surveyed under No.20/3-A, nevertheless, the location of such high tension line is contrary to the rules which prescribe a specific distance to be maintained from the adjoining property. The learned Counsel further pointed out that as the property is located across the existing road such high tension line would certainly affect the petitioner which calls for a direction of this Court to stop shifting of such high tension line which would prejudice the plots of the petitioner. The learned Counsel further points out that the Electricity Department itself held a meeting with the respondent nos 8 and the petitioner to end the

dispute but nothing fruitful emerged at which compelled the petitioner to file the present petition.

3. The next grievance of the petitioner is that the condition imposed in the development permission issued by the respondent no.6 clearly provide that no construction activities would be carried out in the subject plot until the high tension line is completely shifted in terms of such direction. The learned Counsel points out that as such the respondent no.8 cannot carry out any construction activities until the high tension line is completely shifted as per such directions.

4. On the other hand, Mr. Y. V. Nadkarni, learned Counsel appearing for the respondent no.8 pointed out that Rule 80 of the Indian Electricity Rules, 1956 provides the horizontal and vertical distances to be maintained whilst putting up a high tension line. It is further pointed out that the distance prescribed under the said Rules would clearly show that the horizontal distance from the high tension line to be maintained is 2.9 mts whereas the property of the petitioner is located at a distance of more than 10 mts from the high tension line. The learned counsel as such submits that grievance of the petitioner is misconceived and as such the question of granting any relief with that regard to the petitioner would not at all be justified. With regard to the second grievance of the petitioner Mr. Nadkarni, learned Counsel for the respondent no.8 has taken us through the affidavit filed by the respondent no.8 laying emphasis to para

33 of the said affidavit to point out that the respondent no.8 has clearly stated that unless the high tension line is completely shifted in terms of the condition, no construction activities could be carried out in the subject property. The learned Counsel as such submits that the apprehension of the petitioner is without any justification and as such the petition deserves to be rejected. Mr. Dattaprasad Lawande, learned Advocate General appearing for the respondent nos.1,2,3,4,6,7, 10 and 12 has pointed out that the development permission granted by the planning authority has clearly imposed conditions that the construction activity can be carried out only after the high tension line is completely shifted. The learned Advocate General as such points out that the authority shall ensure that all other conditions imposed while granting the development permission are duly complied with.

5. We have considered the submission of the learned Counsel and we have also gone through the records.

6. Rule 80 of the Indian Electricity Rules, 1956 reads thus:-

Clearance from building of high and extra-high voltage lines---(1)Where a high or extra-high voltage over-head line passes above or adjacent to any building or part of a building it shall have on the basis of maximum sag a vertical clearance above the highest part of the building immediately under such line, of not less than-

(a) for high voltage lines upto and including 33,000 volts..... 3.7 metres

(b) for extra-high voltage lines..... 3.7 metres plus 0.30 metre for every additional 33,000 volts or part thereof.

(2) The horizontal clearance between the nearest conductor and any part of such building shall, on the basis of maximum deflection due to wind pressure, be not less than:-

(a) for high voltage lines upto and including 11,000 volts â€¹.. 1.2 metres

(b) for high voltage lines above 11,000 volts and up to and including 33,000 volts..... 2.0 metres

(c) for extra-high voltage lines2.0 metres plus 0.3 metre for every additional 33,000 volts for part thereof.

[Explanation.--For the purpose of this rule expression "building" shall be deemed to include any structure, whether permanent or temporary.]

7. Taking note of the said provision it clearly provides that the horizontal distance to be maintained is 2.9 mtrs. The property of the petitioner as shown in the plan produced by the petitioner disclose that the plots of the petitioner are located beyond the existing 10 mts wide road between the property of the petitioner and the property of the respondent no.8.

8. In such circumstances, the contention of Mr. G. Teles, learned Counsel for the petitioner that the requisite distance has not been maintained by the respondent no. 8 while carrying out such shifting of the high tension line prima facie cannot be accepted.

9. Mr. G. Teles, learned Counsel for the petitioner however submits that even otherwise the existence of the high tension line at the place intended by the respondent no. 8 would be a public hazard as the road is located adjoining the pole erected by the respondent no.8. The question of considering such aspect in the present Writ Petition when the petition is not a PIL Writ Petition would not at all be justified and substantial pleadings are averred in the petition with that regard.

10. With regard to the next grievance raised by Mr. Teles, the learned Counsel for the petitioner ,we find that para 33 of the affidavit filed by the respondent no.8 states thus:-

"As regards the grievance made in the present Petition in respect of the purported Stop Work Order dated 11th April, 2017 by the Town and Country Planning Department, I respectfully submit that the Respondent no. 8 herein has absolutely no intention of violating the Condition No.39 of the Technical Clearance Order dated 05 January, 2017. The Respondent no. 8 assures that the said Condition No.39 of the Technical Clearance Order dated 05th January, 2017 would be strictly complied with."

11. The statement in the said affidavit stands accepted and as such the apprehension of the petitioner on that count would no longer survive. Apart from that Mr. Dattaprasad Lawande learned Advocate General for the respondent nos.1 to 4,6,7,10 and 12 states that the concerned authority has clearly pointed out that all the conditions as imposed by the planning authority shall

be complied in respect of the subject development being carried out by the respondent no. 8.

12. In such circumstances and subject to above, we find that there is no case made out for any relief as claimed by the petitioner in the above petition. Petition stands accordingly disposed of. Interim order, if any, stands vacated.

PRITHVIRAJ K. CHAVAN, J.

F. M. REIS, J.

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