

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CRP(PD) No.3646 of 2017

and

C.M.P. Nos.16986 & 16987 of 2017

The Superintending Engineer,
Tamil Nadu Electricity Board,
Annal Salai, Chennai 2

..Petitioner

Vs.

1.Sri Balaji Educational and Charitable Trust,
Rep by its Chairman,
Mr.M.K.Rajagopalan.

2.M/s.Gammon India Ltd.,
Rep By its Managing Director,
Having Office at Southpakkam Village,
Kancheepuram District.

..Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair order and decreetal order dated 29.08.2017 passed in I.A. No.508 of 2016 in O.S. No.171 of 2014 on the file of the Principal Subordinate Judge, Chengalpattu and allow the Civil Revision Petition.

For Petitioner : Mr.Abdul Saleem

For Respondents : Mr.OM Prakash Senior Counsel for
Mr. M.Venkatakrisshnan for R-1

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 29.08.2017 passed in I.A. No.508 of 2016 in O.S. No.171 of 2014 on the file of the Principal Subordinate Judge, Chengalpattu.

2.The first respondent herein filed a suit in O.S. No.171 of 2014 before the learned subordinate Judge at Chengalpattu seeking for permanent injunction against the revision petitioner. According to the revision petitioner the first respondent made an illegal attempt to lay a cable and install towers in the suit scheduled property in the first week of November 2014. Hence, the revision petitioner has filed the present suit. In the aforesaid suit, the first respondent/plaintiff has obtained an ad-interim injunction under Order 39 rule 1 and 2 & r/w Section 151 of the Code of Civil Procedure.

3. The revision petitioner/defendant has filed an application under Order 7 Rule 11 of the Code of Civil Procedure before the Court below seeking to reject the plaint in O.S. No.171 of 2014. The revision petitioner stating that in terms of Section 164 of Electricity Act 2003, approval of the State Government is sufficient and valid for erection of towers and no notice or consent of the owner/occupier of any land requires

for erection of towers. The petitioner need not obtain any consent from the land owner before laying transmission lines and towers. The proposal for erection 400 KV transmission line from Kayathar (Tirunelveli Region) to Ottiyambakkam (Chennai Region) has been published in the Gazette Notification in Part VI-Section 3(b) dated 09.11.2011 by the Government of Tamil Nadu. Notification has been issued calling for objections from the interested parties. However, no objections were received from the respondent. Pursuant to the said notification, the revision petitioner has commenced the projects in the month of August 2012 for erection of the 400 KV Transmission line and 2058 towers from Kayathar (Tirunelveli Region) to Ottiyambakkam (Chennai Region) at the length of about 748 Kms at a cost of Rs.2,300 Crores. According to the Revision Petitioner/defendant, the erection of 2039 towers have already been completed for a total at the length of 748 kms, the stringent conductors for a length of about 732 Kms has also been completed and out of which 722 Kms has also been energized and the aforesaid project ought to have been completed by June 2015.

4. Counter statement has been filed by the respondent/plaintiff

in I.A.No.508 of 2016 in O.S. No.171 of 2014 by denying the allegations and contended that the bar under Section 145 of the Electricity Act, 2003 is only with regard to the proceedings under Section 126 and 127 of the Act which deals unauthorized use of electricity and collection of penalty. As such the

bar contemplated under the said section will not cover the nature of the present suit and the revision petitioner cannot invoke the same for rejection of the plaint. The defendants are not a Government, thereby it is not mandatory, to issue notice under Section 80 of Code of Civil Procedure.

5. On the aforesaid grounds, by considering the contention of both the parties, the Court below has dismissed the application holding that the same shall be decided only at the time of trial. Challenging the same, the revision petitioner/defendant has filed the present revision petition before this Court.

6. The learned standing counsel for the revision petitioner/defendant has raised the following grounds:

- i. Notice under Section 80 of the Code of Civil Procedure has not been complied with.
- ii. The Civil Suit is not maintainable, in view of Section 145 of the Electricity Act, 2003 and remedy available under Section 17 of the Telegraphic Act.

7. According to the revision petitioner/defendant the suit itself is liable to be rejected for non-compliance of provision contemplated under Section 80 of the Code of Civil Procedure. Pursuant to the said Gazette Notification issued by the Government of Tamil Nadu in Part VI-

<http://www.judis.nic.in> Section 3(b) on 09.11.2011, petitioner/defendant has executed the tower

foundations and erection works. The respondent/ plaintiff has not challenged the aforesaid notification issued by the Government.

8. The learned senior counsel for the respondent/plaintiff would submit that at the time of filing the suit the respondent/plaintiff was not aware of the notification issued by the Government, when they attempted and enter into the suit property. Pursuant to which, the respondent/plaintiff has filed the suit and obtain the interim order on 21.11.2014, without challenging the notification issued by the Government and without impleading the Government as a party in the suit. Hence, It is clear from the above, notice under Section 80 of the Code of Civil Procedure has not been complied by the respondent/plaintiff in the aforesaid suit.

9. **MAINTAINABILITY OF THE SUIT:** According to the revision petitioner, on the basis of the proposals submitted by the Gazette notification dated 09.11.2011 issued by the Government of Tamil Nadu, the respondent/plaintiff has not challenging the said notification. The cause of action submitted by the respondent/plaintiff does not disclose the correct facts whereby the notification was issued on 9th November 2011 calling for objections from the interested parties or the aggrieved persons. Subsequently, when the Board had entered into the premises, found a

location in Sl.No.49/1 completed on 09.01.2014 and thereafter, erection of tower was completed on 14.03.2014. Whereas, the present suit was filed on 12.11.2014 and interim order was granted by the Civil Court on 21.11.2014. Therefore, on the aforesaid facts, it is clear that the respondent/plaintiff filed the present suit without seeking for proper relief.

10. The next contention of the learned standing counsel for the petitioner under Section 145 of the Electricity Act, 2003, Civil Court is Bar to entertain the suit, under Section 145 reads as follows:

“145.Civil Court not to have jurisdiction.-No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

11. According to the counsel for the petitioner, the action of the petitioner herein are in exercise of power conferred under Section 164 of Electricity Act. The learned standing counsel relied upon the provision under Section 164 of the Electricity Act which reads as under:

**“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 (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.”

12. Further, according to the learned standing counsel for the petitioner, if any person is aggrieved, under Sections 16 and 17 of the Indian Telegraphic Act, they have to approach before the District Magistrate, but in the present case, tower has been erected in the property. Therefore, under Section 17 of the Indian Telegraphic Act, the respondent/plaintiff has to approach only the District Magistrate concerned for removal or alteration of the transmission line or post. Under the aforesaid statute, District Magistrate is the competent authority to pass order for any grievance or objections under the Act. When there is a special Act under the Telegraphic Act, the petitioner has to approach the District Magistrate for raising any objections by the respondent/plaintiff. Hence, the present suit is not maintainable.

13. In support of his contention, learned counsel for the petitioner has relied upon the decision of the *High Court of Punjab and Haryana reported in 2009 SCC OnLine P & H 1132: (2009) 5 RCR (Civil) 742, in the case of Power Grid Corporation of India Vs. Rajbir Singh and others* wherein P & H High Court has considered the identical issue and held as follows:

“9.As far as the legal issues are concerned, through the suit was filed not only against the petitioner but also Secretary, Minister of Power, but neither any prior notice under Section 80 CPC was issued nor the prayer for exemption thereof was made in the suit. Not only this, Section 145 of the Electricity Act clearly mandates that no Court shall grant any injunction in respect of any action taken or to be taken in pursuance of any power conferred by or under the Electricity Act. In the present case, the petitioner has been declared as a Central Transmission Utility and is carrying on the job of laying transmission lines for NRSSS-V Schemes under the Electricity Act. Accordingly, even in terms of the aforesaid provision, the process of installation of transmission lines could not be stalled. Further, in my opinion, no prejudice as such has been caused to respondents No.1 and 2 as with the change in location of one such of the towers in the land owned by them, the number of towers in their land remains the same. Even if a little bit more line will pass through their land is inconsequential for the reason that they will get compensation therefore. It is only about 200 meters length of line, which has been increased in the land owned by respondents No.1 and 2.

11.With the material on record, I do not find that respondents No.1 and 2 had not been able to make out a prima facie case for interim injunction in their favour. The balance of convenience is in favour of the petitioner and in case the interim injunction is confirmed in favour of respondents No.1 and 2, the petitioner will suffer

irreparable loss and he same would certainly be against the larger public interest as well what respondents No.1 and 2 were entitled to is only the compensation for use of their land, which can very well be determined in terms of money. The effort was only to shall the implementation of a prestigious project of ulterior motive.”

and the other decision of the Punjab and Haryana High Court, reported in 2014 SCC Online P & H 5141 in the case of Om Prakash V. Line Incharge, Amit Kumar & ors..

“3.As is evident from the record that the Central Government has formulated a scheme, to erect the electricity transmission line from Meerut to Moga, as envisaged in Section 164 of The Electricity Act read with Sections 10 & 16 of The Indian Telegraph Act, 1885, after obtaining the technical approval and sanction of the Ministry of Power Government of India. It is not a matter of dispute that the appropriate authority can use the land for the purpose of laying the transmission line without acquiring it. However, the persons interested would be entitled to the compensation for the use of their land under the indicated Acts. Therefore, the plaintiff cannot injunct the defendants to stop the commissioning of electricity transmission line. Taking into consideration the entire material & relevant facts, the trial Court has correctly dismissed the injunction application of the plaintiff, vide impugned order (Annexure P2).

4.Not only that, the order of trial Court was upheld by the appellate Court, by virtue of impugned order (Annexure P3), which, in substance, is as under:

“Further in Power Grid Corporation of India v. Rajbir Singh 2009 (5) RCR (Civil) 742 it has been held that the project of national importance creating infrastructure are not be interfered with. It has further been held that the Courts have to be extra cautious in dealing such cases. It has also been held that the petitioner (Power Grid Corporation of India) has absolute right to install power in exercise of power under the Electricity Act read with Telegraph Act. The land owner has aright to receive

compensation on account of using of the land for installation of tower and transmission line. It has also been held that the plea that change in route which led to increase in the length of transmission line and will cost more to the petitioner is not the domain of owners to examine or to challenge the same in Court as it is the job of the experts to have to consider every aspect of the matter. In view of the law laid down in the above referred authorities, defendants cannot be restrained from erecting towers or laying lines in the suit property. However, the plaintiff is entitled to the compensation as per the damage caused or as per rules on the subject. In addition to this, it may be pointed out here that Section 145 of the Electricity Act specifically bars the Courts from issuing injunction in respect of any action take or to be taken in pursuance of any power conferred by or under the Act. Thus o grounds are made out to interfere in the order passed by learned Lower Court and the same is hereby, affirmed.”

5. Meaning thereby, the Courts below have examined the matter in right perspective and have concurrently recorded the cogent grounds in this regard. Such orders, containing valid reasons, cannot possibly be interfered with, in ht exercise of superintendence power of this Court under Article 227 of the Constitution of India, unless and until, the same are illegal, perverse and without jurisdiction. Since no such patent illegality or legal infirmity has been pointed out by the learned counsel for petitioner, so, the impugned orders (AnnexuresP2 7 p3) deserves to be and are hereby maintained in the obtaining circumstances of the case.”

and also relied upon the decision of the **Division Bench of High Court of Delhi reported in 2009 (108) DRJ 239 in the case of B.L. Kiantroo v.**

BSES Rajdhani Power Ltd. wherein Delhi High Court held as under:

20. In the second part of the Section 145 it is also directed by the Legislature that no injunction shall be granted by any Court or other authority in respect of any

action taken or to be taken in pursuance of any power conferred by or under this Act. Therefore, the aforesaid section is to be read with section 153 of the Electricity Act, 2003, Section 153 of the Electricity Act, 2003 reads as under:

“153. Constitution of Special Courts-- (1) The State Government may, for the purposes of providing speedy trial of offenses referred to in (Sections 135 to 140 and Section 150) by notification in the official Gazette, constitute as may Special Courts as may be necessary for such area or areas, as may be specified in the notification.”

14. This Court (Madurai Bench) reported in *the case of A.R.V. Jegadeesan v. The Assistant Engineer, Tamil Nadu Electricity Board, Slakkarai, Virudhunagar, Virudhunagar District & others, 2011(2) MWN (Civil) 54* held as under:

“9. It should also be noticed that besides seeking declaration that the impugned order is null and void, the Appellant/Plaintiff has also sought for an injunction not to disconnect the service connection. The same is covered by the later part of Section 145. In that respect also, it should be held that the Suit in respect of the either of the reliefs shall stand barred by the provisions under Section 145 of the Electricity Act.”

15. The learned senior counsel appearing for the respondent would submit that the aforesaid judgments are not applicable to the facts of the present case, only for the assessment, levy and charges under the provisions of the Indian Electricity Act, 2003. In view of the decisions cited *supra*, under section 145 of the Electricity Act, the present suit is not maintainable before the Civil Court. That apart, under Section 17 of Indian

Telegraphic Act, which reads as under:

“Section 17:Removal of alteration of telegraph line or post, on property other than that of a local authority.-

“(1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher or lower level or altered in form, he may require the telegraph authority to remove or altered in form, he may require the telegraph authority to remove or alter the line of post accordingly:

provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be smaller sum

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under Sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.”

16. In view of the Section 17 of the Indian Telegraphic act, the respondent/plaintiff has to approach before the District Magistrate concerned for making objections on the grounds raised in the present suit.

<http://www.judis.nic.in> Therefore, when there is a competent authority is prescribed under the Act

to make objections under Section 17 of the Indian Telegraphic Act and in view of Bar under Section 145 of the Electricity Act, 2003, the present suit is not maintainable before the Civil Court and the order passed by the Court below is liable to be set aside.

17. In the light of the above facts and circumstances of the case and the decision cited supra of this Court, this Court has no hesitation to set aside the order passed by the Court below and the Application in I.A. No. 508 of 2016 in O.S. No.171 of 2014 is allowed and consequently, the plaint in O.S. No.171 of 2014 on the file of the Principal Subordinate Judge, Chengalpattu is rejected.

18. In the result, Civil Revision Petition is allowed, and the Miscellaneous Petitions are closed. No order as to costs.

सत्यमेव जयते

27.11.2017

rkp

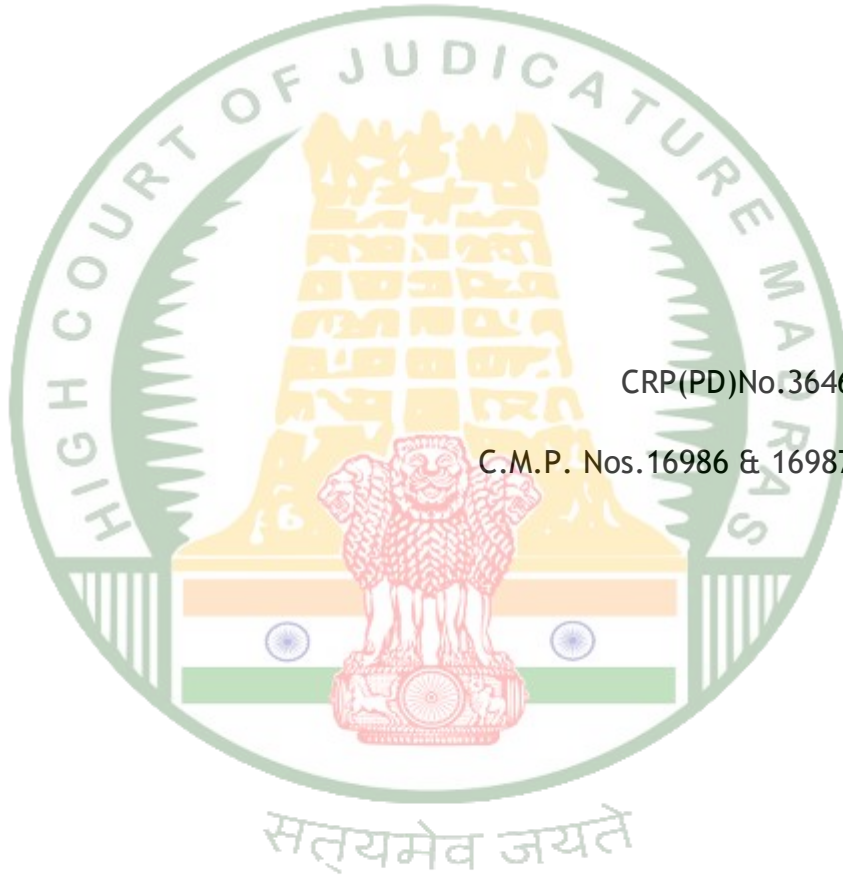
Index :Yes
Internet:Yes
Speaking order

Note: Issue order copy on 11.12.2017.

To
The Principal Subordinate Judge,
Chengalpattu.

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D.KRISHNAKUMAR,J.
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