

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2017

DELIVERED ON : 19.04.2017
CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.20360 of 2016

WMP.No.17481, 19671 & 31794 of 2016

N.Lakshmi ... Petitioner
Vs.

- 1.The District Collector,
Erode District,
Erode - 638 011.
- 2.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 600 003.
- 3.The Executive Engineer,
Transmission Line Construction Wing,
Tamil Nadu Transmission Corpn., Ltd.,
Tamil Nadu Electricity Board,
Salem, Salem District.
- 4.The Assistant Executive Engineer,
Transmission Line Construction Wing,
Tamil Nadu Transmission Corpn., Ltd.,
Tamil Nadu Electricity Board,
Salem, Salem District.
- 5.The Tahsildar,
Bhavani Taluk,
Bhavani,
Erode District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to forbear the respondents from drawing 440KVA - High Tension Transmission lines across or abutting the petitioner's house constructed in R.S.No.363, Nalligoundanur, Mettupalayam Village, Bhavani Taluk, Erode District by considering her representations dated 17.08.2015, 17.12.2015, 02.03.2016 and 22.04.2016.

For Petitioner : Mr.N.Jothi for
Mr.N.Manokaran

For Respondents : Mr.C.Manishankar AAG
Assisted by
Mr.S.K.Rameshuwar for RR2to4

Mr.K.J.Shivkumar G.A., for R1

O R D E R

The petitioner has filed this Writ Petition to forbear the respondents from drawing 440KVA-High Tension Transmission Line across or abutting her house constructed in R.S.No.363, Nalligoundanur, Mettupalayam Village, Bhavani Taluk, Erode District, by considering her representations.

2. The petitioner is stated to have purchased the said property during 1999 and has constructed a terraced house thereon in the North East corner of the property, in the remaining extent cultivating paddy, sugarcane, groundnut besides there are coconut, banana, Guava trees etc. During May 2005, it appears that the officials of the respondent Board conducted a survey of the petitioner's land, from which the petitioner came to know that the respondent Board are taking steps to install towers for High Tension Transmission Lines. During August 2005, the respondents erected Tower No.T44/C/0 in S.F.No.362 and Tower No.T44/C/1 in S.F.No.382. Thereafter, they made certain markings in the coconut trees standing near the petitioner's house, from which she realised that the transmission line would be drawn over her residential house, which prompted the petitioner to submit representations to the respondents 1, 3 & 4. The petitioner informed the first respondent by representation, dated 17.12.2015, about the imminent danger and requested his interference. The grievances of the petitioner were reiterated in representations dated 17.01.2016 & 02.02.2016.

3. In response, the first respondent called the petitioner and the third respondent, the Executive Engineer for a meeting and constituted a Four Member Committee to conduct field inspection and file a report. On 06.04.2016, the Four Member Committee inspected the petitioner's property and took measurements. While so, on 27.04.2016, the fourth and fifth respondents, the Assistant Engineer and the Tahsildar came to the property for taking measurements for the purpose of drawing the test line. The petitioner objected to the same pointing out about the Four Member Committee constituted by the first respondent and the report of the Committee is awaited. Thereupon the petitioner is stated to have been orally informed by the Revenue Inspector and Village Administrative Officer to attend a Peace Committee meeting before the Tahsildar on 13.06.2016. The petitioner was at a

loss to understand as to the necessity for convening such a meeting, when admittedly, there is no breach of peace in the locality.

4. Be that as it may, the petitioner's younger son appeared before the Tahsildar on 13.06.2016 and requested time to submit their objections and it appears that the Tahsildar was not inclined to accede to the request, which necessitated the petitioner to move this Court by way of this Writ Petition in which an order of interim injunction was granted on 16.06.2016. The further case of the petitioner is that inspite of the Tahsildar being aware of the interim order granted in this Writ Petition, he submitted an adverse report to the first respondent, dated 20.06.2016. As a consequence, the Chairman of the Four Member Committee namely, Sub-Collector, Gobichettipalayam, submitted a report in line with the view taken by the Tahsildar.

5. Noticing these facts, the Court vide order dated 04.07.2016, appointed an Advocate Commissioner to obtain first hand information about issues involved in the Writ Petition. The scope of the warrant of commission was to inspect and ascertain as to whether there is any deviation from the original route and if so, the details of the properties which are to be spared on account of the proposed deviation.

6. The learned Advocate Commissioner inspected the property in the presence of all the parties on 16.07.2016 and submitted his reported dated 19.07.2016, stating that there has been a definite deviation from the original route.

7. In the counter affidavit filed by the respondents 1 to 3, they took a stand that the Board has given minimum required clearance as per the Electricity Laws and no harm would be caused to the petitioner's house.

8. The petitioner by way of reply contended that the Government Gazette notification dated 05.02.2012 and the paper publication, dated 27.03.2013, did not indicate the Officer who has been notified by the appropriate Government under Section 164 of the Electricity Act, 2003 (2003 Act). Thereafter, the third respondent filed an additional counter affidavit, which also dealt with the report of the Advocate Commissioner stating that the deviation is to the extent of 83 decrees at crossing of the existing 110KV line and took shelter under Rule 87 of the Indian Electricity Supply Rules 1956.

9. The petitioner by way of reply submitted that the respondent Board ought to have provided guarding arrangement, apart from deviating the route, the offending line does not have the ground clearance of 52 mtrs., over the Right of Way (RoW).

10. Mr.N.Jothi, learned Senior counsel appearing for the petitioner after reiterating the factual averments and demonstrating as to how the proposed line is to be drawn by referring to sketches and diagrams made the following legal submissions:-

(i) Section 67 of the 2003 Act read with Rule 3 of the Works of Licenses Rules 2006 mandates consent of the owner or occupier of the land and Section 67(2)&(3) provides various safeguards before granting permission to the licensee (Board) and in terms of the proviso 2 to Rule (3) of the Rules if the owner of the land raises an objection, the Board has to obtain permission in writing from the District Magistrate/Collector and this has not been done by the respondent Board;

(ii) no order has been produced by the respondents 2 to 4, which authorises them to exercise the powers under Section 10 and 16 of the Telegraph Act, 1885, which is mandated under Section 164 of the 2003 Act;

(iii) Section 2(20) defines 'Electric line', Section 2 (48) defines 'overhead line' and Section 2 & Rule 2(ai) of the 1956 Rules, defines 'overhead line' as defined under Section 2 (48) and Section 164 of the Act mandates that the appropriate Government should confer power on any public officer to exercise powers under the Indian Telegraph Act, 1885 and the notification produced by the respondent does not show that an officer had been notified or appointed;

(iv) To emphasis further, it is submitted that the Rule 87 of the Indian Electricity Rules, 1956, has been retained under the Repeal Act by virtue of the saving clause in Section 185(2) (c) of the Act.

(v) Rule 87 of the 1956 Rules deals with lines, crossing or approaching each other and the Rule contemplates providing guarding arrangement or protective devices as laid down in the code of practice or guidelines prepared by the Power and Telecommunication Coordination Committee;

(vi) in terms of Rule 87(2), one month's notice is required to be given along with relevant details of protection and drawing to the owner of the existing line. This would mean that the owner of the existing line should agree on the safety measures to be provided;

(vii) Rule 87(3) provides the minimum clearance that is required, when a new line is drawn over and above the existing line to ensure the safety distance which has to be maintained;

(viii) Rule 87(4) states that the owner of the new line should provide guarding arrangements to his own new line or ask the owner of the existing line to make arrangement for such guarding and the cost to be borne by person making a new line in terms of Rule 87(5);

(ix) Rule 87(6) provides as to how the crossing of the line should be done and this sub-Rule is not applicable to the petitioner's case, since the Rule does not use the expression existing line, which is found in Rule 87(2) and 87(4) and therefore, this sub-Rule will apply only to cases where both lines are new lines and there is a necessity for deviation, which is required to be done in right angles.

11. Thus, it is the submission of the learned Senior counsel is that Rule 87(6) will apply only when two new proposed lines are drawn and will not apply to the petitioner's case and the said Rule stands apart and cannot be read along with sub-Rules 1 to 5 of Rule 87. It is further submitted that the topo sketch filed along with the Commissioner's report as well as that which was produced by the respondent Board will clearly reveal that there is a deviation of the route, which will cause substantial damage to the petitioner's property, which became evident only after the erection of the tower T44/C/0 in S.F.No.362. Thus, when there is deviation from the exiting route, the interest of the petitioner/land owner should be protected and the respondent should be directed to draw the transmission line without any deviation and when it crosses the existing 110KV line appropriate guarding devices are required to be provided.

12. After referring to the decisions of this Court in the case of R.Santhana Raj & Anr., vs. The Chief Engineer & Ors., reported in 2012 WLR., 376, P.Arimutharasu vs. The Superintending Engineer (Wind Farm Project) reported in 2015 1 LW 353 and the decision of the Allahabad High Court in the case of Ravi Shankar Jaiswal @ Gauri Shankar vs. State of U.P., & Ors., reported in 2013 218 AIC 273 (Allahabad), it is submitted that these decisions are not applicable to the facts and circumstances of this case and are distinguishable. It is further submitted that the respondents in their counter affidavit have taken a stand that if the line is not drawn, it would be against the public interest. However, while doing so, there is a duty on the part of the respondent to act in accordance with law and strict compliance of the legal provisions is required considering the plight of the landowner, especially when, the lands are agricultural lands. To buttress this submission, reliance was placed on the decision of the Hon'ble Supreme Court in the case of Raghbir Singh Sehrawat vs. State of Haryana & Ors., reported in (2012) 1 SCC 792, Tukaram Kana Joshi & Ors., vs. Maharashtra Industrial Development Corpn., & Ors., reported in (2013) 1 SCC 353; and Bhusawal Municipal Council vs. Nivrutti Ramchandra Phalak & Ors., reported in (2015) 14 SCC 327.

13. Mr.C.Manisankar, learned Additional Advocate General appearing for the respondents referring to the additional counter affidavit filed by the third respondent and submitted that the Board has approved the erection of new 400KV double circute line newly constructed Rasipalayam 400KV sub-station to Salem for a route length of 194kms with 558 towers to evacuate electric power supply generated from Wind Mills of southern region and to utilise the EHT pathway to transmit electric power supply from Northern States of India by connecting sub-stations at Salem and at Tiruvalem, whenever it is required. It is further submitted that as per the original approved route Tower No.44/0 to 44/A/0 are in straight line.

From Tower No.44/A/0, the route takes left turn and passes in straight line connecting Tower No.44/1 and upto Tower No.44/B/0. From Tower No.44/B/0, the route takes a right turn considering the existing road, houses, pump house, LT line etc., and passes upto Tower No.44/C/0. From Tower No.44/C/0, the route takes a left turn and passes in straight line connecting Tower Nos.44/C/1, 44/C/2, 44/C/3, 44/C/4, 44/C/5, 44/C/6, upto 44/D/0. It is submitted that the towers are so located, so that the lines are drawn giving adequate clearance to the petitioner's house property, LT lines etc. It is submitted that the turning of the lines at Tower Nos.44/B/0, to 44/C/0 is approved by considering the crossing of exiting 110KV double circuit EHT power line at crossing angle of 83 degrees as per Rule 87 of the Indian Electricity Rules, 1956. Further, it is submitted that it is not technically feasible to draw the line as suggested by the Advocate Commissioner and adequate clearance is maintained for the building of the petitioner in the original approved route and compensation will be paid for the damages caused during the execution of the work. Further, it is submitted that the Towers have been erected as per the originally approved route without deviation by maintaining adequate clearances, both horizontal and vertical to the residential buildings including the petitioner's building in S.F.No.363. It is further submitted that approximately Rs.550 crores has been spent out of Rs.600 crores earmarked for the project and the work has been stalled on account of the objection raised by the petitioner. In support of the above submission, reliance was placed on the decisions of the Hon'ble Supreme Court in the cases of Orissa Power Transmission Corpn., Ltd., & Ors. vs. Asian School of Business Management Trust & Ors., reported in (2013) 8 SCC 738 and Managing Director Ramakrishna Poultry Private Ltd., vs. R.Chellappan & Ors., reported in (2009) 16 SCC 714, referred in Sri Vignesh Yarns Pvt., Ltd., vs. S.Subramaniam reported in 2013 1 MLJ 50.

14. By way of reply, the learned counsel for the petitioner would reiterate that no public officer has been appointed as required under Section 164 of the Act and unless such officer is notified, they cannot enter upon the land and this goes to the root of the matter affecting the very validity of the action initiated by the respondents. The decisions relied on by the learned Additional Advocate General are distinguishable on facts and not applicable to the case of the petitioner.

15. Heard the learned counsels appearing for the parties and perused the materials placed on record.

16. The undisputed facts are that the petitioner is the owner of the land in question in which she has constructed a house and the remaining extent of land is preserved as 'agriculture property'. The photographs produced show that there are fully grown coconut trees apart from other standing

crops/trees. During the course of argument, one factual position which came to light was that the petitioner is not averse to the drawal of the line across her property, nor she is averse to the respondent Board erecting a tower in her property, but her endeavour is to save as much extent of her property from damage which would be caused, in the event the high tension line is drawn as per the proposed route. It is true that the towers have been erected. The Court queried the learned Senior counsel for the petitioner as to why the petitioner did not raise objection at the appropriate time even before the disputed tower was erected. The learned counsel would submit that as per the original markings done by the respondent in the petitioner's property, the line which was to be drawn was far away from the dwelling house and though the line may pass through the petitioner's property, she was not inclined to raise any objection, as the project is of public importance, but only during April 2016, when the respondents 4 & 5 came to take measurement for the purpose of drawing a test line, the petitioner realised the impact that would be caused on her dwelling house and property and raised an objection. It is seen that even before 27.04.2016, the petitioner had submitted her objections dated 17.12.2015, when markings were done on the coconut trees standing in the property, but however, nothing appreciable was done at that point of time, but later the first respondent appointed a Four Member Committee to inspect the land and take measurements. At that stage, the Tahsildar directed the petitioner to appear for a Peace Committee meeting, which infact was a rude shock, as there was no breach of peace in the area on account of the objections raised. Nevertheless, the petitioner through her representative appeared before the Tahsildar and requested time to file objections. However, the Tahsildar was not inclined to hear the petitioner and was determined to pass an order. At that juncture, the petitioner has approached this Court and her interest was protected by an order of interim injunction on 16.06.2016.

17. It is not in dispute that the Tahsildar was aware of the order of injunction, in spite of the same he had proceeded to pass an adverse order on 20.06.2016, which was mechanically accepted by the Four Member Committee headed by the Sub-Collector. During the course of argument, this issue was brought up before this Court and the Court took serious note of the manner in which Mr.V.Venugopal, Revenue Tahsildar, Bhavani, had conducted himself and this Court was inclined to pass the following order on 01.11.2016:-

9.A perusal of the said proceedings shows that the District Collector has referred to the petitioner's objection, the stand taken by the Superintending Engineer and decided to constitute a committee consisting of four Revenue Officials to conduct an inspection of the premises and submit a report. The officials, being Sub-Collector,

Gobichettipalayam, Revenue Tahsildar, Bhavani, Assistant Director, Land Survey, Erode and the Assistant Executive Engineer, Rasipalayam - Dharmapuri. Thus, the District Collector wanted an over-view of the entire matter in the light of the stand taken by the petitioner as well as the Superintending Engineer.

10. What is disturbing is the report of Mr.V.Venugopal, Revenue Tahsildar, Bhavani. The report has to be submitted by a four members' team and it appears that there were notices issued and the petitioner's son and their counsel appeared on 13.06.2016. However, in the meantime, this Writ Petition was filed before this Court on 15.06.2016, and an order of interim injunction was granted on 16.06.2016. This fact was well within the knowledge of Mr.V.Venugopal, Revenue Tahsildar, Bhavani and curiously enough, when he submitted a report to the District Collector, dated 20.06.2016, he has virtually given an ex parte ruling stating that the objection of the petitioner is not well founded and that only to cause obstruction to the drawl of line the petitioner has submitted her objections and ultimately, submitted a report stating that the tower can be drawn as proposed by the Board.

11. In my prima facie view, the stand taken by the Revenue Tahsildar is wholly incorrect as the report should be by a four members' team. That apart, he, having known about the interim order granted by this Court on 16.06.2016, ought to have deferred the proceedings and intimated to the District Collector, accordingly.

18. Therefore, the respondents cannot fall back upon the order passed by the Revenue Tahsildar or for that matter, the report which had been submitted.

19. Now moving on to the legal submissions raised by the learned counsel for the petitioner, the first of which is that no order has been produced by the respondents 2 to 4, which authorises them to exercise the powers under Sections 10 & 16 of the Telegraph Act as per the mandate under Section 164 of the 2003 Act.

20. The learned Additional Advocate General referred to the proceedings of the respondent Board in FB TANTRANSCO proceedings No.59, Technical Branch, dated 03.12.2012. It states that the TANTRANSCO approves the establishment of three numbers of 400 KV substations at Thanppagundu, Anikadavu and

Rasipalayam for the purpose of evacuation of wind power in Tamil Nadu at an estimated cost of Rs.1229.97 crores (gross and net). It further states that by virtue of the provisions contained in sub-section 2(2)(a) of Section 185 of the 2003 Act, the Tamil Nadu Transmission Corporation Limited, being the transmission utility and successor entity of TNEB, will exercise the powers of the telegraphic authority under the provisions of Section 164 of the 2003 Act, which have already been conferred upon the Board under Section 51 of the Indian Electricity Act, 1910. Along with the said proceedings, the report and detailed estimate have been annexed. Further, it is seen that the Superintending Engineer, GCC/Salem, TANTRANSCO has issued a notification with regard to erection of proposed EHT line and the same has been published as per Sections 164 and 168 of the 2003 Act, notifying the transmission lines proposed to be constructed during the year 2013-14 and subsequent year for which sanction has been accorded by TANTRANSCO for augmenting the power supply. The subject towers are mentioned in serial No.8(c) of the notification published in the Indian Express dated 31.01.2014. The notification further states that it is published for general information of the public and if any objection regarding the schemes mentioned therein, the same may be appealed to the Superintending Engineer within two months from the date of issue of the publication as per Sections 164 and 168 of the 2003 Act. The vernacular version of the notification has been published in the Tamil daily in Dinamani on 01.02.2014. In continuation with TANTRANSCO notification dated 20.07.2012 certain additional particulars were included and the same has been published in the Tamil Nadu Government Gazette, dated 12.03.2014 and the same has been issued by Mr.N.Sasitharan, the Superintending Engineer of the General Construction Circle. The said notification also provides for objections to be filed, if any, within a period of two months of the publication. Thus, it has been shown that notification has been issued as mandated under Section 164 of the 2003 Act and therefore, there is no such procedural infirmity or failure to comply with the statutory requirement. Thus, this issue raised by the petitioner is decided in favour of the respondents.

21. The next submission is based on Rule 87 of the Indian Electricity Rules, 1956 and the same is quoted hereunder:-

87. Lines crossing or approaching each other- (1) Where an overhead line crosses or is in proximity to any telecommunication line, either the owner of the overhead line or the telecommunication line, whoever lays his line later, shall arrange to provide for protective devices or guarding arrangements, in a manner laid down in the Code of Practice or the guidelines prepared by the Power and Telecommunication Coordination Committee and subject to the provisions of the following sub-

rules:-

(2) When it is intended to erect a telecommunication line or an overhead line which will cross or be in proximity to an overhead line or a telecommunication line, as the case may be, the person proposing to erect such line shall give one month's notice of his intention so to do along with the relevant details of protection and drawings to the owner of the existing line.

(3) Where an overhead line crosses or is in proximity to another overhead line, guarding arrangements shall be provided so as to guard against the possibility of their coming into contact with each other. Where an overhead line crosses another overhead line, clearances shall be as under: -

[Minimum clearances in metres between lines crossing each other.]

Sl. No.	Nominal System Voltage	11-66 KV	110-132 KV	220 KV	440 KV	800 KV
1.	Low&Medium	2.44	3.05	4.58	5.49	7.94
2.	11-66KV	2.44	3.05	4.58	5.49	7.94
3.	110-132KV	3.05	3.05	4.58	5.49	7.94
4.	220KV	4.58	4.58	4.58	5.49	7.94
5.	400KV	5.49	5.49	5.49	5.49	7.94
6.	800KV	7.94	7.94	7.94	7.94	7.94

Provided that no guardings are required when an extra high voltage line crosses over another extra-high voltage, high voltage, medium or low voltage line or a road or a tram subject to the condition that adequate clearances are provided between the lowest conductor of the extra-high voltage line and the top most conductor of the overhead line crossing underneath the extra-high voltage line and the clearances as stipulated in rule 77 from the topmost surface of the road is maintained.] (4) A person erecting or proposing to erect a line which may cross or be in proximity with an existing line, may normally provide guarding arrangements on his own line or require the owner of the other overhead line to provide guarding arrangements as referred to in sub-rule, (3).

(5) In all cases referred to in the preceding sub-rules the expenses of providing the guarding arrangements or protective devices

shall be borne by the person whose line was last erected.

(6) Where two lines cross, the crossing shall be made as nearly at right angles the nature of the case admits and as near the support of the line as practicable, and the support of the lower line shall not be erected below the upper line.

(7) The guarding arrangements shall ordinarily be carried out by the owner of the supports on which it is made and he shall be responsible for its efficient Maintenance.

(8) All work required to be done by or under this rule shall be carried out to the satisfaction of the Inspector.

22. It is argued by the learned counsel for the petitioner that in terms of Section 87(1) of the Rules, the owner of the new overhead line could make a new line which could run over and cut across over and above the existing line and in such cases, it shall provide guarding arrangements or protective devices as contemplated in the Code of Practice or the guidelines prepared by the Power and Telecommunication Coordination Committee. In terms of the sub-rule (2) of Rule 87, owner of the new line should give one month's notice to the owner of the existing line indicating his intention to comply with Rule 87(2), with complete details of the protection along with the drawings to the owner of the existing line. Therefore, it is submitted that this Rule would mean that the owner of the existing line should approve and agree on the safety measures of protective guarding or devices so indicated by the owner of the new line intended to be crossed up and over the existing line. It is further submitted that sub-rule (3) of Rule 87 prescribes the minimum distance of clearance that is required when the new line is drawn over and above the existing line, the distance is to be maintained between the new line that goes over the existing line is indicated by considering the different capacities of the existing line and the new line and the safety distance that is to be maintained between the two lines when the new line runs over the existing line; sub-rule (4) states that the owner of the new line should provide guarding arrangements to his own new line or ask the owner of the existing line to make arrangements for such guarding; sub-rule (5) speaks about the cost liability; sub-rule (6) deals with the contingency where two lines cross at stipulates that the crossing shall be made as nearly at right angles; and sub-rule (7) deals with the maintenance of the guarding arrangements. It is the submission of the learned counsel that sub-rule (6) of Rule 87 will never apply to the facts of the case on hand, as the rule is silent with respect to the existing line, as the same has not been used in the said Rule. Therefore, it is submitted that there is a possibility of deviation from each other at the required angle and this cannot be misinterpreted so as to

make sub-rules (1) to (5) as redundant.

23. In other words, it is submitted that sub-rules (1) to (5) of Rule 87 deals with the new line drawn over and above the existing line, whereas sub-rule (6) deals with possible adjustments of two new lines being simultaneous in nature and therefore, sub-rule (6) cannot be made applicable to the facts of the present case.

24. The admitted facts as per the additional counter affidavit filed by the third respondent, filed in July 2016 is to the following effect:-

7. I submit that as per the original approved route, from the Tower No.44/0 to Tower No.44A/0 are in strait line. From Tower No.44A/0, the route takes 12° 33'36" Left Turn and passes in straight line connecting Tower No 44/1 and up to Tower No.44B/0 by considering the existing road, House, Pump House, LT line etc. From Tower No.44 B/0, the route takes 53° 34'56" Right Turn and passes up to Tower No 44C/0 by considering the existing 110KV Double Circuit EHT Power Line, 2 Nos LT Lines, 11KV, Road, Cart Track, etc. From Tower No.44C/0 the route takes 53° 34'56" Left Turn and passes in straight line connecting Tower No.44C/1, Tower No.44C/2, Tower No.44C/3, Tower No.44C/4, Tower No.44C/5, Tower No.44C/6 and up to Tower No.44D/0 by leaving adequate clearance to the existing House (belonging to the petitioner), LT line etc.

8. In this connection, I submit that the turning of lines at towers No.44 B/0 to tower No.44 C/0, is approved by considering the crossing of existing 110 KV Double Circuit EHT power line at crossing angle of 83° as per Indian Electricity Rule 87 of 1956.

25. From the above, it is clear that the turning of the lines at tower No.44B/0 to 44C/0 was approved considering the crossing of existing 110KV Double Circuit EHT power line at crossing of 83° in terms of Rule 87. To be noted that Rule 87 deals with lines crossing or approaching each other. In terms of sub-rule (1), the pre-requisite being providing for protective devices or guarding arrangements where an overhead line crosses or is in proximity to any line, in the manner laid down and subject to the provisions of sub-rules (2) to (8) of Rule 87. Thus, sub-rule (1) of Rule 87, states as to what has to be done, where an overhead line crosses or is in proximity to any line. Therefore, the requirements to be complied with in sub-rules (2) to (8) are procedural requirements, which are required to be adhered to and each of the sub-rules (2) to (8) are not mutually exclusive, but are

required to be adhered to depending upon the contingency. This is so because, Rule 87(1) states that providing for protective devices or guarding arrangements shall be made in the manner laid down in the Court and subject to the provisions of the sub-rules (2) to (8) of Rule 87. Therefore, this Court is not in agreement with the stand taken by the petitioner that the various sub-rules under Rule 87 have to be compartmentalized.

26. Now we move on to the factual aspect of the matter with regard to the safety distance between the proposed line and the petitioner's property. The Writ Petition was heard on various dates and interim directions were issued from time to time and one such direction was issued on 08.12.2016, which reads as follows:-

Heard Mr.N.Jothi, learned counsel for the petitioner and Mr.C.Manishankar, learned Additional Advocate General assisted by the learned Standing Counsel appearing for the respondents.

2.This Court elaborately heard the submissions of the learned counsels and the controversy has now fallen into a narrow campus. The contention raised by the petitioner is that the alignment of 440 KVA line is not as per the original proposed route and the petitioner was made to believe that the line will be more than 50ms away from the petitioner's house. Further the contention is that only after the tower-T44/C/1 erected and they were attempting to draw line, the petitioner came to know that the proposed line will pass through the terrace of the petitioner's house. Therefore the writ petition has been filed.

3.The official of the Electricity Board who is present in Court would state that the proposed line will be at a same distance of 8.43cm away from the petitioner's house and from the photographs submitted by the learned Advocate Commissioner, it is pointed out that the line will take a turn and go over the coconut thoppu and would not in any manner go over the terrace of the petitioner's house. Since this issue is not being capable of resolved by examining the maps or photographs as there are certain disputes raised, the best available option is to draw a dummy line in the presence of the petitioner so that the petitioner will know as to how the exact proposed location through which the line will be drawn.

<https://hcservices.ecourts.gov.in/hcservices/> 4.The learned Additional Advocate

General is agreeable to such course being adopted and he would submit that appropriate direction may be issued in this regard. Yet another reason made by the learned counsel for the petitioner is that the District Collector, Erode District had personally visited the area in question and has made certain observations. Therefore, the learned Additional Advocate General shall also hold discussion with the District Collector, Erode District and revert back with the views expressed by the District Collector.

5. In the light of the above, the following interim direction is issued:

- 1) The officials of the respondent Board are directed to draw a dummy line preferably using a coir or cotton rope to show as to how the proposed line is to be drawn and its alignment.
 - 2) Photographs and videograph taken by the respondent Board after the line is drawn to be submitted to this Court in the next hearing date.
 - 3) The Advocate Advocate General shall also hold discussion with the District Collector, Erode District and ascertain about the inspection conducted by the District Collector as much is observed.
 - 4) This may be placed in the form of report by the competent officer of the respondent Board.
 - 5) The above exercise shall be carried out preferably between 26.12.2016 to 29.12.2016 after informing the petitioner.
6. List the matter on 04.01.2017.

27. The purpose for issuing the above direction was due to the fact that the official of the Electricity Board who was present in Court stated that the proposed line will be at distance of 8.43 mtrs., away from the petitioner's house and by referring to the photographs submitted by the Advocate Commissioner, it was pointed out that the line will take a turn and go over the coconut thoppu and would not go over the terrace of the petitioner's house. Since this issue could not be resolved by examining maps and photographs, this Court opined that the best available option is to draw a dummy line so that the petitioner will have a clear picture as to how the proposed line would be drawn.

28. The learned Additional Advocate General was agreeable for such course being adopted and requested the Court to issue necessary directions.

29. This Court also took into consideration the submissions of the learned counsel for the petitioner stating that the District Collector had personally visited the area in question and has made certain observations. Therefore, direction was issued to draw a dummy line, pursuant to which, the exercise was carried out and the District Collector submitted his report dated 02.01.2017, to the learned Additional Advocate General. It is relevant to note that the Assistant Executive Engineer, Tower Line Construction in his report dated 12.04.2016, stated that the proposed power line is passing at a horizontal distance of 8.43 mtrs away from the petitioner's house, which is more than the required clearance of 5.22 mtrs as per the Indian Electricity Safety Rules, 1956. In compliance with the directions issued by the Court vide its order dated 08.12.2016, (supra), the dummy line was drawn and measurement was taken in the presence of the District Collector, who would report that the work of drawing the dummy line using rope from the left side bottom cross on of Tower 44C/0 and left side bottom cross on of tower 44C/1 was completed without touching any trees and it was noticed that the line was not passing over the house and passing crossly with more distance from south west corner of the house and with less distance from south east corner of outside bathroom. Therefore, it was decided to measure the south west corner wall of outside bathroom which is the nearest point from the alignment of the dummy line. On measurement being done, the distance was found to be 6.10mtrs.

30. The District Collector has recorded the representation made by the petitioner stating that the fixing point of rope at tower 44C/1 was correct and in tower 44C/0 using roller pulley, there was a deviation away from the end of cross arm where the actual conductor will be strung. It appears that the Board officials expressed practical difficulties in fixing the roller pulley and considering the petitioner's representation, attempt was made with a threaded plumb bam dropping from point of rope in pulley. It is admitted that it was found very difficult to measure with accuracy due to strong winds. Therefore, survey instrument with GPS facility was used to measure such deviation focusing the fixing point at tower 44C/0. It is further stated that the distance between rope line and open yard bathroom situated in the south east corner was 6.10 mtrs. However, the actual High Tension Wire Line will be laid at a distance of 5.619mtrs approximately. The difference being due to obstruction in laying rope line along with original High Tension wire line. The vertical distance has not been measured, but the extract showing the required vertical and horizontal clearances from the building to power line conductor were enclosed along with the said letter.

31. The petitioner made a request to examine the feasibility of drawing the power line directly from tower 44

B/0 to tower 44C/1. The District Collector would state that during the inspection, it was found that a house and one well belonging to other land owner were found below the line as suggested by the petitioner.

32. Thus, we have three sets of measurements before us pertaining to the safety distance. The first of which is in terms of the report of the Assistant Executive Engineer, dated 12.04.2016, which states that the distance is stated to be 8.43mtrs., as against the required safety distance of 5.22mtrs. When measurement was taken using dummy line pursuant to the interim direction dated 08.12.2016, the District Collector reports that the measurement, which was taken on 28.12.2016, was 6.10mtrs. This is in gross difference from what was reported by the Assistant Executive Engineer (8.43 mtrs). The petitioner made a representation with regard to the deviation caused while using roller pulley in tower-44C/0. Since, there were practical difficulties in considering the petitioner's representation, yet another methodology appears to have been adopted using threaded plumb bam dropping from point of rope in pulley. This attempt appears to have been unsuccessful on account of heavy winds. Thus, the authorities had used the survey instrument, namely, total stations with GPS facility to measure such deviation focusing the fixing point at Tower 44C/0 and it is reported that the distance between the rope line and the open yard bathroom in the south east corner of the petitioner's building was 6.10mtrs. However, the actual distance when the High Tension line is drawn is mentioned as 5.619mtrs. Thus, as against the required clearance of 5.22mtrs, the distances shown are 8.43 mtrs, 6.10mtrs and 5.619mtrs.

33. One more factor to be noted is that the vertical measurements could not be measured, because the curvature of the rope would not match with curvature of conductor, which will be tensioned with designed force for maintaining the sag curvature. The question would be as to how the safety distance is to be reckoned. Are we required to apply mathematical precession or consider the distance bearing in mind the object of the safety rules.

34. In the considered view of this Court that the correct manner in which the safety distance is to be considered is bearing in mind the object of the Rule, that is to ensure safety. If any other interpretation is given, it would obviously defeat the very purpose of the safety measure. From the report of the District Collector, dated 02.01.2017, it is evidently clear that the distance reported based on a dummy line can at best be approximate. It is admitted that when the actual line is drawn, the distance would be 5.619mtrs and going by the said statement, the difference between the required distance would be 0.399mtrs. In such circumstances, this Court is of the considered view that the benefit ought to lean in favour of the petitioner/landowner. This is so

because, it is the safety of the landowner and her house property, which would be germane and not the location of the tower or its alignment. The alignment and location of the tower should yield to the prescription under the Safety Rules. There is every possibility that the marginal difference may increase or decrease. Assuming it may increase when the actual power line is drawn, yet that would not be a reason to state that the petitioner's grievance has been vindicated. One more factor that has to be considered is that the petitioner is entitled to develop her house property in accordance with the Rules. Such contingency is also required to be taken into consideration and the respondent Board cannot take a stand that in the south west corner of the property there is only a bathroom. Therefore, on facts, this Court is of the clear view that the line if drawn as proposed would definitely impinge upon the Safety Rules, thereby jeopardizing the interest of the petitioner.

35. The learned counsel for the petitioner as well as the learned Additional Advocate General referred to the various decisions of this Court while considering the manner in which the Courts have considered the objection of the landowner to the drawal of the transmission lines. All the decisions, which were referred to on either side do not match the peculiar fact situation before this Court.

36. In the case of Sri Vignesh Yarns Pvt., Ltd., (supra) referred by the learned Additional Advocate General, it was found that there was a deviation from the original route. In the instant case, the Advocate Commissioner reports that there is a deviation. Nevertheless, this Court being satisfied that the proposal, as put forth by the respondent Board does not satisfy the norms under the Safety Rules, the alignment requires to be altered. Therefore, this Court holds that the fact situation in the instant case is unique and any alteration or adjustment or change in alignment of the proposed line cannot be termed as a deviation, but it would be a requirement to fulfill the norms laid down in the Safety Rules. Therefore, this Court has not elaborated upon the various decisions, which were cited at the bar. Equally the allegation of malafide has not been gone into, as this Court is satisfied that the proposed line if drawn would violate the safety norms.

37. One more aspect that has to be noted is with regard to the vertical distance. This could not be measured for the reasons stated in the report of the District Collector and therefore, this also has to be kept in mind considering the fact that the area is prone to heavy winds and there is every possibility of the conductor to swing during such times.

38. An argument was advanced by the learned Additional Advocate General that the project is of utmost public importance and any attempt to stall the project would be

detrimental to the interest of all. However, the interest of the petitioner cannot be ignored, more particularly, when the concern is with regard to the safety. This being a pre-requisite, concept of safety would be paramount and that is also an aspect of public interest though there may be only one person before this Court raising such a plea. In the instant case, the petitioner has gone on record to state that she does not object to the laying of one more tower in her land, infact, this is precisely the reason, she did not object at the first instance. She has realised that the project is of eminent necessity, but what has made her to approach this Court is only when she realised that the line as proposed would be a serious threat to herself, her family and her residential house. There can be no latches attributable to the petitioner. At the earliest point of time, she had submitted representations and the District Collector being prima facie satisfied about the merits of her claim had appointed a four Member Committee. However, it is not known as to why subsequently the matter took a different turn.

39. Undoubtedly, the attempt of the revenue officials to convene a peace meeting was uncalled for. There is nothing on record to show that on account of the petitioner's conduct there was a breach of peace to the locality. Therefore, it is high time that the District Administration is sensitized on this aspect. Infact, in the decision of the Hon'ble Chief Justice in the case of S.Tamil Selvan & Perumal Murugan vs. Government of Tamil Nadu [W.P.Nos.1215 and 20372 of 2015, dated 05.07.2016] very pertinent observations have been made on the aspect of convening Peace Committee meeting.

40. A landowner is entitled to express his/her grievances when they feel there is threat to life and property. There may not be a fundamental right to property, but its a statutory right and deprivation of such a right cannot be without adhering to the procedure contemplated under law.

41. Thus, for all the above reasons, it is held that the High Tension Power Line if drawn through the route proposed would impinge upon the Safety Rules and consequently, there will be a direction to the respondent Board to make such alterations so as to ensure that "clear safety distance" is maintained without giving room for technicalities.

42. The Writ Petition is allowed to the extent indicated with directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

- 1.The District Collector,
Erode District,
Erode - 638 011.
 - 2.The Chairman,
Tamil Nadu Electricity Board,
800, Anna Salai,
Chennai - 600 003.
 - 3.The Executive Engineer,
Transmission Line Construction Wing,
Tamil Nadu Transmission Corpn., Ltd.,
Tamil Nadu Electricity Board,
Salem, Salem District.
 - 4.The Assistant Executive Engineer,
Transmission Line Construction Wing,
Tamil Nadu Transmission Corpn., Ltd.,
Tamil Nadu Electricity Board,
Salem, Salem District.
 - 5.The Tahsildar,
Bhavani Taluk,
Bhavani,
Erode District.
 - 6.M/s.C.Mahendran,advocate Commissioner,
Old.No.125, New No.257, 4th Floor,
Canara Bank Building, Angappanaickan st.,
Chennai-1
 - 7.M/s.C.Manishankar,Additional Advocate General,
High Court, Madras.
- +4 cc's to Mr.N.Manokaran,advocate,sr.24109, 23593
- +1 cc to Mr.S.K.Rameshuwar,advocate,sr.23706.

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WP.No.20360 of 2016
WMP.No.17481, 19671 & 31794 of 2016