

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 31.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6703 of 2015

- 1.V.S.Guruswamy
- 2.M.V.S.Anantha Krishnan
- 3.S.Somadivakaran
- 4.S.Lalitha Devi
- 5.S.Vijaya Lakshmi
- 6.V.S.Padhma Mala

... Petitioners

vs.

- 1.State of Tamil Nadu
represented by its Secretary,
Department of Electricity,
Fort St. George, Chennai - 600 009.

- 2.The Chairman,
Tamil Nadu Transmission Corporation
(TANTRANSCO)
No.144, Anna Salai,
Chennai - 600 002.

3. The Chief Engineer
Transmission Project-1,
TANTRANSCO,
A-10, Thiru Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032.

4. The Superintending Engineer
Transmission Project,
TANTRANSCO/TNEB
A-10, Thiru Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032.

- 5.The District Collector,
Kancheepuram District,
Kancheepuram.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, forbearing the respondents from in any manner erecting the High Tension Transmission line and/or Towers on the lands of the Petitioners in S.Nos.139, 140, 141, 137, 136, Thalambur Village,

Tirupporur Taluk, Kancheepuram District.

For Petitioners : Mr.M.Vaidyanathan
For Respondents 1 and 5 : Mr.Akhil Akbar Ali
Government Advocate
For Respondents 2 to 4 : Mr.Abdul Saleem

O R D E R

This Writ Petition has been filed to forbear the respondents from in any manner erecting the High Tension Transmission line and/or Towers on the land of the Petitioners in S.Nos.139, 140, 141, 137, 136, Thalambur Village, Tirupporur Taluk, Kancheepuram District.

2. According to the petitioners, a total extent of 24.75 acres of land comprised in S.Nos.136, 137, 139, 140, 141, Thalambur Village, belonged to the father of the first petitioner and other members of the family. An extent of 14.75 acres comprised in S.Nos.137, 140 and 141 was settled on the first petitioner. The balance 10 acres of land comprised in S.Nos.139 and 136 measuring an extent of 5 acres each were jointly owned by all the petitioners herein and they are carrying on agricultural operations on the said lands. The petitioners came to know that some works were being carried out in the adjacent land belonging to some other persons and the respondents were erecting foundation for the Transmission Towers of a 200 KV line to the proposed sub-station in the area. They were informed that their lands will not be affected, as already the lines are being taken in a pre-determined route. On 04.09.2014, the first petitioner was informed through a letter by the respondents seeking his permission for the erection of a Transmission Tower of a 230 KV line and he sent his objection to the Director, Chief Engineer and Assistant Engineer of the Tamil Nadu Transmission Corporation on 05.09.2014.

3. According to the petitioners, if construction of Transmission Towers is allowed, then the entire lands will be rendered waste. Moreover, as the High Tension 400 KV line needs a clear space of 300 feet, they would have to leave a clear open corridor of nearly 300 feet, otherwise the nearby structures will be totally unfit for use in view of the possibility of electrocution. Also, as the tower that is proposed to be erected will occupy the lands permanently and the area under the same cannot be used by anyone, the petitioners objected to the said proposal by way of sending a representation by Registered Post on 05.09.2014. Subsequently, the petitioners found that the respondents are planning to lay the transmission lines on their lands as per the powers vested under the Electricity Act, 2003

read with provisions of Indian Telegraph Act, 1885 and therefore, the petitioners seek reasonable compensation to be paid to them.

4. Learned counsel for the petitioners contended that firstly, no opportunity was given to the petitioners before erecting tower by paying overhead charges and compensation and secondly, there is no provision for compensation under the Electricity Act and that no Rule has been framed in terms of Section 67(2) of the Electricity Act. He submitted that there is no yardstick for arriving at compensation and hence, pleaded that this Court may direct the respondents to adopt the principle that has been extended in cases of land acquisition.

5. Per contra, learned counsel appearing for respondents 2 to 4/Electricity Board, submitted that dehors Sections 67 and 164 of the Electricity Act, the Electricity Board has got power to apply the provisions of Indian Telegraph Act and decide with regard to placing of over head lines to be established and maintained. He drew the attention of this Court to Sections 10, 11 and 16 of the Indian Telegraph Act, 1885 and contended that in the absence of Rules, dehors Section 67 or in case of non-existence of Rules, powers under the Telegraph Act cannot be curtailed.

6. He further submitted that the 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 the telegraph authority should ensure that powers in respect of any property vested in or under the control or management of any local authority and without the permission of that authority and in the exercise of the powers conferred by the said 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), it shall pay full compensation to all persons interested for any damages sustained by them by reason of the exercise of those powers and the Telegraph authority is empowered to enter into the property in order to repair or remove telegraph lines or posts and that if there is any compensation payable to the persons who are likely to be affected, the Collector may consider the same and he is entitled to decide the same for granting sufficient compensation.

7. Learned counsel appearing for the Electricity Board drew the attention of this Court to the decision rendered by this Court in W.P. No.17840 of 2016 etc. dated 08.03.2017, wherein it has been held as follows:

"6. In such view to the matter, liberty is

given to the respondent Corporation to approach the District Magistrate for appropriate orders as the petitioners are resisting and obstructing the completion of the project by the respondent Corporation. As and when the respondent Corporation approaches the District Magistrate, the said authority is expected to exercise its power under Section 16 of the Act within a period of six weeks thereafter, after due notice to the petitioners and any other obstructor as the case may be."

8. Learned counsel also drew the attention of this Court to the decision rendered by this Court in W.P.Nos.26858 and 26859 of 2016, dated 16.08.2016, wherein it has been held as follows:

"6.Since the entire project is almost completed and only a few towers are yet to be erected, it may not be appropriate to dissolve the scheme at this stage. Therefore, permission is granted to enter upon the property of the petitioners and to erect the towers. However, the Assessment Committee which has been constituted by the second respondent and the third respondent District Collector, shall determine the compensation, based on the guidelines of the circular of the fifth respondent, Union of India dated 15.10.2015 within a period of one week from the date of receipt of a copy of this order and on such determination, the respective petitioners shall be paid the compensation within a period of 10 days thereafter."

9. Considering the submissions made by the learned counsel on either side, this Court is of the view that the aforesaid powers of the respondents/Electricity Board have not been curtailed, however, reasonable compensation payable to the petitioners has to be decided. This Court, without rendering a finding on the merits of the matter, which might affect any one of the parties, is inclined to direct the respondents/Electricity Board to pay reasonable compensation to the petitioners.

10. As the District Collector concerned is empowered to award compensation in the light of the scheme evolved, more particularly, in the light of the orders of this Court stated supra and considering the fact that the petitioners were not given any opportunity of being heard with regard to compensation, this Writ Petition is disposed of with the

following directions:

(i) The petitioners are directed to make an application to the District Collector/5th respondent herein and he shall forward the same to the Assessment Committee, which shall decide about the compensation that may be payable to the petitioners as in W.P. Nos.26858 and 26859 of 2016;

(ii) The petitioners are further directed to produce a copy of the documents to the Assessment Committee as well as to the Commissioner to show as to whether the lands are urban lands or not and based on the documents to be produced by the petitioners, the Committee shall decide the issue within a period of 30 days from the date of receipt of the applications from the petitioners;

(iii) As the respondents have erected Transmission Tower, they shall extend compensation to the petitioners;

(iv) The District Collector shall decide about awarding of compensation taking into account the details regarding the lands;

11. It is needless to mention that there is no hard and fast rule to grant compensation like the one where the land is acquired in terms of Section 165 of the Electricity Act and compensation shall be granted in case of acquisition of land as per the provisions laid down in the Land Acquisition Act, which are illustrative in nature. It is made clear that any fair and reasonable compensation that may be decided by the Committee, shall be granted and after extending the benefit of compensation, the Committee, in terms of Section 16 of the Act and in view of the decisions rendered by this Court as stated supra, shall inspect and start commissioning the work. The said exercise of commissioning the work shall commence after offering compensation to the petitioners, as determined by the Committee.

No costs. Consequently, connected M.P.No.1 of 2015 is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

vga/aeb

To:

1. The Secretary, State of Tamil Nadu,
Department of Electricity,
Fort St. George, Chennai - 600 009.
2. The Chairman,
Tamil Nadu Transmission Corporation (TANTRASCO)
No.144, Anna Salai, Chennai - 600 002.
3. The Chief Engineer
Transmission Project-1, TANTRASCO,
A-10, Thiru Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032.
4. The Superintending Engineer
Transmission Project, TANTRASCO/TNEB
A-10, Thiru Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032.
5. The District Collector,
Kancheepuram District, Kancheepuram.

+1 Cc to Mr.M. Vaidyanathan, Advocate sr 54519

SJ(CO)
sp(28/09/2017)

W.P.No.6703 of 2015

सत्यमेव जयते

WEB COPY