



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.06.2017

Coram:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.17784 of 2016

and

W.M.P (MD) No.12821 of 2016

P.Chellappandian

...Petitioner

-Vs-

1.The Chairman,
Tamil Nadu Electricity Board,
Chennai.

2.The Chairman,
Tamil Nadu Transmission Corporation,
Chennai.

3.The Director/Transmission Projects,
Tamil Nadu Transmission Corporation,
Chennai.

4.The District Collector-cum-District Magistrate,
Theni District.

5.The Superintendent Engineer,
Tamil Nadu Transmission Corporation,
K.Pudur, Madurai.

6.The Assistant Engineer,
Transmission and Construction,
Tamil Nadu Transmission Corporation,
K.Pudur, Madurai.

...Respondents

Prayer: This Writ Petition filed under Article 226 of the Constitution of India, issue a writ of Mandamus to direct the respondent to assess and pay reasonable and adequate compensation for damages caused by the respondents by way of causing damages to the petitioner's well, house and trees stand in the petitioner's lands and in Survey No.315/2 to the extent of 0.52.0 hectare of land, in Survey No.328/5A to an extent of 0.14.0 hectare, in Survey No.328/5B to an extent of 0.13.0 hectare, in survey No.328/5C to an extent of 0.14.0 hectare, in survey No.328/5D to an extent of 0.26.0 hectare, in survey No.330 to the extent of 0.45.5 hectare of land, situated at Dharmathupatty, Pullimankombai Village, Aundipatty Taluk, Theni District.



Assisted by
Mrs.S.Srimathy
Standing counsel for TNEB
ORDER

This writ petition is filed only for issuance of writ of Mandamus directing the respondents to assess and pay the reasonable and adequate compensation for the damages caused by the respondents in view of the fact that the High Tension Electricity Service Line is going above the petitioner's house and standing trees.

2.It is not in dispute that the petitioner is the owner of the property measuring an extent of 0.52.0 hectares in Survey No.315/2 and other portion of land, in all measuring about 25 acres. The petitioner has got buildings, standing trees and residential building apart from a well in the lands. The respondents have installed Transmission line of 400 KV power from Thappakundu to Anaikadavu. On account of installation of High Tension electricity transmission line, over the petitioner's land, the contention of the petitioner is that he should be adequately compensated. According to the learned counsel for the petitioner though, the provisions of Telegraphs Act contemplate payment of compensation by referring to the District Collector, no amount was paid towards compensation for the building, for the well and some of the trees identified by the respondents themselves coming within the project area. It is also admitted by the petitioner that the petitioner has been awarded compensation to the tune of Rs.9,41,000/- for 92 coconut trees.

3.Admittedly, the respondents have not followed the procedure contemplated under the Telegraphs Act. Sections 10 and 16 of Telegraphs Act are relevant and hence the Sections are extracted for convenience:-

"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:

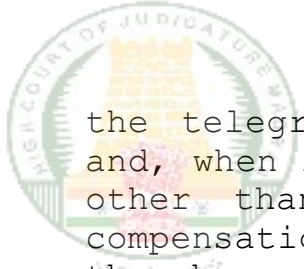
Provided that

(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 telegraph authority places any telegraph line or post, and

© 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.

16.Exercise of powers conferred by Section 10, and disputes as to compensation, in case of property other than that of a local authority:- (1) If the exercise of the powers mentioned in Section 10 in respect of property referred to in clause(d) of that section is resisted or obstructed, the District Magistrate may, in his discretion, order that the telegraph authority shall be permitted to exercise them.

(2) If, after the making of an order under sub-Section(1), any person resists the exercise of those powers, or, having control over the property, does not give all facilities for their being exercised, he shall be deemed to have committed an offence under Section 188 of the Indian Penal Code, 1860 (45 of 1860).

(3) If any dispute arises concerning the sufficiency of the compensation to be paid under Section 10, clause (d), it shall, on application for that purpose by either of the disputing parties to the District Judge within whose jurisdiction the property is situate, be determined by him.

(4) If any dispute arises as to the persons entitled to receive compensation, or as to the proportions in which the persons interested are entitled to share in it, the telegraph authority may pay into the Court of the District Judge such amount as he deems sufficient or, where all the disputing parties have in writing admitted the amount tendered to be sufficient or the amount has been determined under sub-section (3), that amount; and the District Judge, after giving notice to the parties and hearing such of them as desire to be heard, shall determine the persons entitled to receive the compensation or, as the case may be, the proportions in which the persons interested are entitled to share in it.

(5) Every determination of a dispute by a District Judge under sub-Section (3) or sub-section (4) shall be final

Provided that nothing in this sub-Section shall affect the right of any person to recover by suit the whole or any part of any compensation paid by the telegraph authority, from the person who has received the same."

4.As per Section 10(c), 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. When the power is exercised, the authorities are expected to pay the full compensation for any damage sustained by them by the reason of authorities exercising the power under Section 10(d) of the Indian Telegraphs Act.

<https://hccservices.com/docs/hccservices> Section 10(d) confers the power on the District Magistrate namely the District Collector in this case to decide whether such permission shall be given to the Electricity Department after considering the

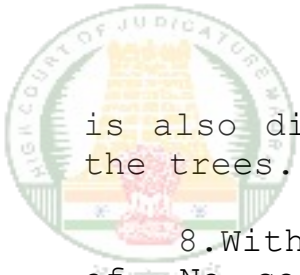


resistance or obstruction by the new land owner. As per Section 16 (3) any dispute regarding the sufficiency of the compensation can be ultimately decided by the District Judge within whose jurisdiction the properties were situated.

5. Having regard to the provisions of Telegraphs Act, this Court prima facie is of the opinion that the compensation fixed by the respondent for the 92 trees is sufficient and the petitioner is not entitled to any amount more than the amount, which is already granted to the petitioner towards the value of 92 coconut trees, which were removed for the purpose of drawing high tension Transmission. However, if any more tree, is required to be removed for the purpose of completing the project, the petitioner shall approach the fourth respondent for appropriate compensation and the fourth respondent shall determine the same after giving notice to the Electricity Department. Since the petitioner states that there is a building which has been constructed by the petitioner, the petitioner is likely to be deprived of utilizing the building for any purpose in view of the high Tension Electricity Transmission just going above the building. Hence, the building which is in existence beneath the Electricity Transmission line, shall be identified and the fourth respondent also is directed to determine the compensation for the building constructed by the petitioner and which was an extension at the time of drawing high tension transmission line above the same. The petitioner is therefore entitled to get compensation as determined by the fourth respondent in terms of provisions of Telegraphs Act. If the petitioner is aggrieved by the quantum of compensation determined, liberty is given to the petitioner to prefer an appeal before the District Court concerned in the manner as provided under law. The petitioner also seeks compensation for the well. The well cannot be considered as a building. By virtue of the drawal of high tension transmission line, it cannot said that the petitioner cannot use the well for the irrigation purpose.

6. This Court does not find any merit in the submission of the learned counsel for the petitioner that the petitioner is entitled to compensation towards well. However, taking into account the fact that the petitioner may experience some inconvenience in view of passing of high tension transmission line above the well, the fourth respondent may also determine the amount for compensating the petitioner for the inconvenience on account of passage of high tension transmission line over the well.

7. The learned counsel for the respondents submitted that the 92 trees they have earmarked, they have not been cut and removed by them and that therefore, permission may be granted to them to cut the trees. The learned counsel for the petitioner has no objection for cutting the trees for which, the compensation has been provided to the petitioner. In case, the respondent is required to remove any more tree and the same shall be reported to the petitioner by the fifth respondent and the fourth respondent



is also directed to assess the compensation, which is payable to the trees.

8. With the above observation, the writ petition is disposed of. No costs. Consequently, Connected miscellaneous petition is Closed.

Sd/-
Assistant Registrar(writs)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

1. The Chairman,
Tamil Nadu Electricity Board,
Chennai.
2. The Chairman,
Tamil Nadu Transmission Corporation,
Chennai.
3. The Director/Transmission Projects,
Tamil Nadu Transmission Corporation,
Chennai.
4. The District Collector-cum-District Magistrate,
Theni District.
5. The Superintendent Engineer,
Tamil Nadu Transmission Corporation,
K.Pudur, Madurai.
6. The Assistant Engineer,
Transmission and Construction,
Tamil Nadu Transmission Corporation,
K.Pudur, Madurai.

+1cc to M/S.R.RAJARAMAN, Advocate SR.No.61538

+1cc to M/S.S.SRIMATHY, Advocate SR.No.61576

Am

MAS/MR-KKR/SAR2:06.07.2017:5P-9C

W.P. (MD) No.17784 of 2016
22.06.2017