

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.2152 OF 2017

ORDER:

This writ petition is filed under Article 226 of the Constitution of India challenging the action of the respondents in laying 220/11 KV line from Molagavalli to Nunsuralla through the petitioners' agricultural lands for the purpose of 100 MV Wind Power Project set up by the 7th respondent herein.

2. Heard the learned counsel for the petitioners, Sri K.V.Raghuveer, learned Government Pleader for Revenue for the respondent Nos.1 to 3, Sri N.Siva Reddy for respondent Nos.4 to 6 and Sri.O.Manohar Reddy, learned counsel for the 7th respondent.

3. According to the petitioners, they are all small farmers and eking out their livelihood by way of cultivation of their lands situated in Sy.Nos.454/2, admeasuring Ac.1.86 cents, Sy.No.466/4 admeasuring Ac.1.85 cents, Sy.No.466/5 admeasuring Ac.3.00 cents, Sy.No.463/7 admeasuring Ac.1.36 cents, Sy.No.472 admeasuring Ac.1.86 cents, Sy.No.562/2 admeasuring Ac.1.06 cents, Sy.No.570/2 admeasuring Ac.2.00 cents, Sy.No.570/3 admeasuring Ac.2.86 cents, Sy.No.470/1 admeasuring Ac.4.12 cents, Sy.No.464/3 admeasuring Ac.2.35 cents and Sy.No.494 admeasuring Ac.3.00 cents and the said lands are situated

at Pandikona Village, Pattikonda Mandal, Kurnool District. It is stated in the affidavit filed in support of the writ petition that earlier the Government, for the purpose of HNSS Reservoir, acquired certain extents of land by passing an award under the provisions of Land Acquisition Act, 1894 and similarly their lands were acquired for HNSS main canal and they had to forego their lands for the purpose of water resources to the agriculture lands in the surrounding villages. It is further stated that 4th respondent had accorded approval for laying towers for 220 KV and 132 KV towers from Mulagavalli to Nunsuralla via Pandikona Village i.e., village of the petitioners herein and the said permission was accorded for connectivity of 100 MW wind power project set up by 7th respondent herein. It is further stated that 4th respondent has approved the route proposals for erection of 200 KV DC/SE Line from the 220 KV Pooling Station, Molagavalli to the existing 220/11 KV Sub Station at Nunsuralla via upcoming 400 KV Aspari SS under construction circle, Kurnool. The grievance of the petitioners in the present writ petition precisely is that for erection of the said line, their lands are being occupied by the respondent Nos.4 to 6. The objection taken by the petitioners is that without their consent, the above work is sought to be done. It is further stated that 4th respondent through Memo No.CPT 130/SE/PM/ROW/Kadapa

Zone/D.No.788/2015, dated 15-06-2015 informed that APTRANSCO accorded approval for payment of compensation on prorata basis towards diminution of land value for tower area for 220 KV and 132 KV for an amount of Rs.99,500/- and Rs.55,000/- respectively to the farmers. According to the petitioners, fixing of the compensation by the respondents is totally low and also without their consent.

4. A counter-affidavit deposited by the Assistant Executive Engineer, Construction Sub Division-II, APTRANSCO, Kurnool-6th respondent is filed on behalf of the respondent Nos.4 to 6, stating that 7th respondent is laying the proposed 220 KV line from its pooling station to the existing A.P. Transco Sub-station under the supervision of the APTRANSCO. The counter further states that at present APTRANSCO is paying Rs.99,500/- per 220 KV tower as compensation towards land diminution vide instructions Memo No.CPT 130/SE/PM/ROW/Kadapa Zone/D.No.788/15, dated.15.06.16. It is further stated that as on today not even a single foundation of a tower is laid in Pandikona Village limits by the 7th respondent. It is further stated that there is no harm either to the land or to the human beings and cattle on account of the 220 KV tower and 220 KV line is strung at the height of minimum 7.0 Mtr from the ground and 220 KV tower is earthed and hence there are no

hazards for living beings. It is the submission of the learned Standing Counsel for APTRANSCO, on instructions, that at the time of erection of towers, compensation will be paid to the petitioners herein as per law. It is also the submission of the learned Standing Counsel that since the respondents herein have taken all the precautions, the petitioners herein cannot object for the impugned action and technical aspects cannot be subjected to judicial review under Article 226 of the Constitution of India. The learned Standing Counsel, in support of his contention as regards the power of the respondent company with regard to laying of the lines, seeks to place reliance on the judgment of this Court in *Devisetty Ramaswamy Vs. Chief Engineer, 400 KV Line AP Transco (APSPDCL), Hyderabad and others*¹. In the said judgment, at paragraphs 27 to 29, this Court held as under:

“27. Reading these provisions together, it is clear that the power of the District Magistrate to hear a party whose land is affected would arise only after the laying of the line or post and upon the failure of the authority concerned to act upon his request for removal of the line or post etc. The discretion referred to in Section 16 (1) of the Act of 1885, which is to be exercised by the District Magistrate while ordering that the authority shall be permitted to act in pursuance of the powers conferred by Section 10 thereof, cannot be interpreted to mean that the District Magistrate should, at that stage,

¹ 2013 (4) ALD 88

give notice to and entertain objections from the person affected by such exercise of powers. To hold so would render superfluous the provisions of Section 17, which specifically state that the power of the District Magistrate to act upon a complaint from an affected person would arise only after the laying of the line or post in his lands and upon the failure of the authority concerned in acting upon his requisition for removal of such line or post etc. Harmonious construction of these provisions leads to the inevitable conclusion that while exercising his discretion under Section 16 (1) of the Act of 1885, the District Magistrate is not required to issue notice to the person objecting to or resisting the exercise of powers by the authority under Section 10 of the Act of 1885 or give him an opportunity of hearing.

28. *On the above analysis, this Court finds that there is no provision in the Act of 1885 which mandates prior notice or an opportunity of hearing to be provided to the owner/occupier of a premises affected by the laying of lines or posts and therefore, there is no question of such owner/occupier being put on notice or demanding an opportunity of hearing before the grounding of the scheme. Section 17 postulates that such a right would arise only after laying of the lines or posts and upon the failure of the authority concerned to act upon a requisition to remove or relocate such lines or posts etc.*

29. *Insofar as Section 164 of the Act of 2003 is concerned, the judgments of this Court in G.V.S.RAMA KRISHNA 4 and K.SUBBA RAJU 5 put it beyond doubt that while exercising powers thereunder, the APTRANSCO would not be required to either initiate acquisition of land or obtain consent from the owner. It was also held that in such a*

situation, Section 67 of the Act of 2003 and the Rules of 2006 framed thereunder would have no application. This Court respectfully agrees. Viewed from any angle, the petitioner failed to establish any failure on the part of the APTRANSCO in following the due procedure in the case on hand. The issue of the petitioner's entitlement to compensation would arise only at a later date and it cannot therefore be a ground at this stage to hinder the completion of the scheme."

5. It is the submission of the learned counsel for the petitioners that without adhering to the guidelines issued by the Government of India, Ministry of Power, New Delhi vide Memo No.3/7/2015-Trans, dated 15-10-2015 the respondents herein have fixed the compensation.

6. On the other hand, it is the submission of the learned Government Pleader for Revenue that if there is any dissatisfaction with regard to quantum of compensation fixed by the District Collector, it is open for the petitioners herein to raise a dispute before the concerned District Judge having jurisdiction. In this connection, it may be appropriate to refer to the provisions of Section 16 of the Indian Telegraph Act, 1885, which reads as under:-

"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 (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 the 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."

7. In view of the judgment referred to supra, the contention of the learned counsel for the petitioners that consent of the owner is necessary falls to the ground. In view of the express provisions of Section 16 of the Indian Telegraph Act, 1885, if the petitioners are aggrieved by the quantum of compensation fixed by the District Collector, it is always open for them to avail the alternative remedy as provided under sub-section (3) of Section 16 of the Indian Telegraph Act, 1885. In fact, no statutory violation is pointed out in the writ petition, warranting interference by this court under Article 226 of the Constitution of India. This court is also in agreement with the contention of the learned Standing Counsel for the respondents that technical

aspects cannot be subjected to judicial review under Article 226 of the Constitution of India.

8. With the above observations, the writ petition is disposed of, keeping it open for the petitioners to avail the alternative remedy available under Section 16 of the Indian Telegraph Act, 1885. It is also made clear that the respondents shall proceed strictly in accordance with law.

9. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

01.03.2017
TSNR



A.V.SESHA SAI, J