

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

WRIT PETITION No.2572 OF 2017

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, for the following relief:

“to issue a writ order or direction more particularly in the nature of writ of Mandamus declaring the action of the Respondents, in making Attempts to install High Tension Pole across the Agricultural Land in Sy.No.589/1A of Nallapadu Village and Mandal, An extent of Acs 03-29 Cents belongs to the First Petitioner and an extent of Acs 03-87 Cents in Sy.No.589/2A of Nallapadu Village and Mandal, belongs to the Second Petitioner, and not considering the representation made by the Petitioners on 09-09-2016, without following the Due Process of Law, without consent from the Petitioners, in a forcible manner, is illegal, without mentioning any reasons and Contrary to Articles 14,16,and 21 of the Constitution of India, and against the principals of natural justice, and consequently direct the respondents not to lay the High Tension Poles through the Agricultural lands of the Petitioners in Sy.No.589/1A and 589/2A of Nallapadu Village And Mandal, Guntur District.”

2. Heard Sri S.S.N.Moorthy, learned counsel for the petitioners and Sri N.Siva Reddy, learned standing counsel for the A.P.Transco.

3. According to the petitioners, they are the absolute owners of the agricultural land admeasuring Acres 7.17 cents in Survey Nos.589/1A and 589/2A of Nallapadu Village and Mandal, Guntur District. In the present writ petition, the grievance of the petitioners is that the respondents are laying high tension wires by erecting the poles through the fields of the petitioners herein in contravention of the due process of law. It is also stated in the writ affidavit that the petitioners are not against the erection of poles by the respondents, but they are against the erection of the poles diagonally through the fields. According to the petitioners, the said poles can be erected in a straight line through the lands of the petitioners.

4. A counter affidavit deposited by the Executive Engineer Electrical – 4th respondent herein is filed, on behalf of the respondents 2 to 4. It is stated in the said counter affidavit that in exercise of the powers conferred under Electricity Act, 2003 and the orders of the State Government vide G.O.Ms.No.115, Energy Department, dated 07.10.2003, the A.P.Transco, has notified an approved scheme in A.P.Gazette, for erection of 132 KV DC (2 phase) DC/SC line from proposed 132 KV Nallapadu (Vengalayapalem) Sub-station to 132/25 KV Railway Traction Sub-station (RTSS) at Nallapadu of A.P.Transco, for extension of power supply to the Indian Railways for electrification of train route between Nallapadu and Diguvamitta in Guntur District and the said scheme is being executed with the financial assistance from the Indian Railways with an estimated cost of Rs.8.89 crores. It further

stated that the said scheme was also published in A.P.Gazette and in two daily newspapers on 28.09.2015 and despite inviting objections, no objections were received from anybody including the writ petitioners, as such, the route survey for the proposed erection of 132 KV DC/SC line and line corridor became final and that the respondents are entitled for laying the towers. The Counter affidavit further avers that the line is passing through the dry lands duly avoiding the existing constructions and living areas and all the precautions are taken in laying the towers and lines as per the Electricity Safety Rules. It is further stated that as per the Rules, the minimum ground clearance, at a height of 6.10 meters (more than 20 feet), has to be maintained for 132 KV voltage system and that during the survey, the petitioners did not object for erecting the towers. It is further stated that the direction of present line was designed in an economic way and to reduce the power line losses i.e., near to the bee line (shortest route) as far as possible by taking all the technical parameters into consideration. It is also stated in the counter affidavit that the 2nd petitioner personally met the engineers of the A.P.Transco and he was explained about the proposed place for laying the tower in their lands during September, 2016. It is also stated that in view of existence of standing crop of cotton, the work was deferred with a view to avoid crop loss to the petitioners.

5. Reiterating the averments in the counter affidavit filed on behalf of the respondents 2 to 4, it is submitted by the

learned standing counsel for the respondent company that the tower foundation at the petitioner place has not yet commenced and that all precautions will be taken to lay down foundation in the land of the petitioners by using narrow based towers, which occupy less space as per the request of the land owners in the corridor. In the counter, it is also stated that one time compensation will be paid by the respondents for the tower area, which includes land diminution value and for the petitioners land, one time land compensation is fixed at Rs.5 lakhs per tower by the District Collector, Guntur, vide proceedings bearing No.3496/2016-G1, dated 26.10.2016 and the same was approved by the A.P.Transco, vide letter dated 14.12.2016. It is also the submission of the learned standing counsel that since the respondents herein have taken all the precautions, the petitioner 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 order, 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

¹ 2013 (4) ALD 88

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, 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."

6. A perusal of the material available on record discloses, in clear and vivid terms, that the respondents are proceeding in accordance with law and in fact, no statutory violation could be pointed out in the writ petition, warranting interference of this Court under Article 226 of the Constitution of India. This Court is in agreement with the submission of the learned standing counsel for the respondents that the technical aspects cannot be subjected to judicial scrutiny under Article 226 of the Constitution of India. It is also the submission of the learned standing counsel for the petitioner that there is a standing crop of cotton in the subject fields and on hearing the same, it is suggested by the learned standing counsel that a representation can be made to the respondent authorities for the said grievance and the same will be considered as per law.

7. With the above observations, the writ petition is disposed of, keeping it open for the petitioners herein to make a representation as regards the existence of the standing crop

in the subject lands, within a period of one week from the date of receipt of a copy of this order and if any such representation is made, the same be considered and appropriate action be taken, in accordance with law, after putting the petitioners on notice. It is also made clear that the respondents herein shall proceed in accordance with law and as per the averments made in the counter affidavit.

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

01.02.2017
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A.V.SESHA SAI, J