

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

WRIT PETITION No.295 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 one in the nature of WRIT OF MANDAMUS declaring the action of the Respondents in trying to erect H.T. Electricity tower in my agricultural land to an extent of Ac.4-92 cents situated in survey No.306/12 of Vinukonda Town, Vinukonda Mandal, Guntur District, Andhra Pradesh without following due procedure of law, as arbitrary, illegal, unconstitutional, violation of Principles of Natural Justice, Violation of Article 300-A of Constitution of India and colorable exercise and misuse of powers of authorities and consequently direct the respondents to fix and pay compensation as per new Land acquisition Act.”

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

3. According to the petitioner, he is the absolute owner and possessor of the agricultural land admeasuring Acres 4.92 cents in Survey No.306/12 of Vinukonda Town, Vinukonda Mandal, Guntur District. In the present writ petition, the grievance of the petitioner is that the

respondents are laying high tension wires by erecting the poles through the petitioner's land in contravention of the due process of law.

4. A counter affidavit deposited by the Executive Engineer Electrical – 5th respondent herein is filed, on behalf of the respondents 2 to 5. 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 (2 phase) DC/SC line from proposed 132/33 KV Vinukonda Sub-station to 132/25 KV Railway Traction Sub-station (RTSS) at Savalyapuram, 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 and other financial institutions with an estimated cost of Rs.10.58 crores. It is 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 petitioner, 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 petitioner 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.

5. Reiterating the averments in the counter affidavit filed on behalf of the respondents 2 to 5, it is submitted by the learned standing counsel for the respondent company that only one tower is laid in the petitioner's land bearing location No.AP5/1 and that all precautions are taken to lay the tower foundation at the edge of the land of the petitioner by using narrow based towers, which occupy less space as per the request of all the farmers and after obtaining their oral consent through negotiations with them and the same was appraised to higher authorities at Vidyut Soudha, Hyderabad and approval was obtained vide letter dated 15.11.2016 and memo dated 03.12.2016 was issued for the modified proposal.

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 petitioner land, one time land compensation is fixed at Rs.1.50 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. In the counter, it is stated that the tower foundation work in the petitioner's land has already been completed and the compensation will be paid to the petitioner as fixed by the competent authority for the loss of crops and trees. 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 for judicial scrutiny under Article 226 of the Constitution of India.

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

