

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NOS.41406, 41410, 41412, 41426, 41453 AND 41344 OF 2017

COMMON ORDER

These matters were listed yesterday and as there was no representation for the petitioners, they were adjourned to today. Today also in the forenoon there is no representation for the petitioners and the Standing Counsel for A.P. TRANSCO pleaded urgency stating that laying of transmission lines is time bound and sought to take up the matters. Hence, it was passed over and taken up at 2.30 p.m. Again there is no representation for the petitioners. In these circumstances, the writ petitions are being taken up for disposal.

2. The grievance of the petitioners in all these writ petitions is that the respondents are erecting towers for laying transmission lines in the subject lands of the petitioners highhandedly, without issuing any notices, acquiring the lands and paying compensation. Hence the writ petitions.

3. The respondent No.3 – The Assistant Divisional Engineer, AP TRANSCO, Vizianagaram filed counter affidavits in all the writ petitions. For convenience, the averments made in the counter affidavit filed in W.P.No.41406 of 2017 are being referred to. In the counter affidavit the allegation of highhandedness on the part of the respondents, is denied. While admitting the erection of towers for laying Garividi (Maradam) 400/220 KV Sub Station in Vizianagaram District by the 3rd respondent, it is stated *inter alia* that provisions of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 are not applicable. As per the provisions of the Electricity Act, 2003, no prior consent of the petitioners is required for laying electricity lines.

However, the petitioners were issued notices under the provisions of the Indian Telegraph Act, 1885 read with Section 164 of Electricity Act, 2003 and G.O.Ms.No.115 dated 7.10.2013, informing that the crops and trees falling under the line corridor are going to be removed and they will be handed over to them if no compensation is claimed and otherwise compensation will be paid as fixed by the revenue authorities for the removed crops and trees and the same will be sold in public auction. As per the guidelines framed under G.O.Rt.No.83 Energy, Infrastructure and Investment Department dated 20-06-2017, the A.P. TRANSCO is ready to pay compensation as fixed by the District Collector/ Magistrate, Visakhapatnam. With these averments, the writ petitions are sought to be dismissed.

4. No reply affidavits are filed.

5. The learned Standing Counsel for the 3rd respondent – A.P. TRANSCO while reiterating the averments made in the counter affidavits would submit that the issue raised in the present writ petitions, is squarely covered by the judgment of a learned single judge of this court in *DEVISETTY RAMASWAMY v. CHIEF ENGINEER, A.P. TRANSCO*¹, wherein it is held that for laying transmission lines and for erection of towers in the land of the writ petitioners, A.P. TRANSCO is not required either to initiate acquisition of land or obtain consent from owners and that the petitioners would be entitled to compensation only at a later date.

6. In *Devisetty Ramaswamy's* case (supra), this court considering Sections 10, 16(1) and 17 of Telegraph Act, 1885 and Section 164 of Electricity Act, 2013, framed the following issue for consideration:

¹ 2013(4) ALD 88

11. The key issue that arises for consideration is whether any legal obligation is cast upon the A.P. TRANSCO to publish a notification with regard to the transmission scheme and call for objections from those affected thereby. In consequence, the issue would also arise as to whether the A.P. TRANSCO is required to obtain the consent of the owners/occupiers of the land affected by such transmission scheme.

7. Considering the above issue, the learned single of this court concluded as under:

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 liens or posts and upon the failure of the authority concerned to act upon a requisition to remove or relocate such liens or posts etc.

29. Insofar as Section 164 of the Act of 2003 is concerned, the judgment of this Court in *G.V.S Rama Krishna's case* (2009(3) ALD 343) and *K.Subba Raju's case* (2010(4) ALD 358) put it beyond doubt that while exercising powers thereunder, the A.P. TRANSCO 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.

30. Viewed from any angle, the petitioners failed to establish any failure on the part of the A.P. TRANSCO 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."

From the above judgment of this court it is clear that in exercise of powers under Section 164 of the Act of 2003, the A.P. TRANSCO is not required either to initiate acquisition of land or obtain consent from owners and that issue of petitioner's entitlement of compensation would arise only at a later date and it cannot, therefore, be a ground to hinder the completion of the scheme for erection of towers and laying of transmission lines.

8. In view of the above facts and circumstance, I do not find any merit in the writ petitions and the same are accordingly dismissed.

9. However, respondent No.5 – AP TRANSCO shall pay compensation as stated in the counter affidavit and if the petitioners are not satisfied with the same, they are at liberty avail the remedies available under law.

10. Miscellaneous petitions pending if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:14—12—2017

Avs

