

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1200 of 2017**

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1. Raju Chaudhary S/o late Tappu Chaudhary
 2. Gyanti Devi W/o late Babunandan Yadav
 3. Sunil Yadav
 4. Rohit Yadav Both S/o late Babunandan Yadav All are R/o Village- Atarsua, P.O. Siwan, P.S. Sahyak, Sarai, District- Siwan.

... .. Petitioner/s

Versus

1. G. M. Bihar Grid Company Limited
2. A.G.M. Bihar Grid Company Ltd.
3. N.K. Sharma, A.G.M. Bihar Grid Company Ltd., All are R/o Alankar Place, Second Floor, Boaring , Patna, P.S. Budhu Colony, Patna, District- Patna.
4. Dharmendra Yadav
5. Abhitabh Yadav Both are S/o late Tappu Yadav both are R/o Village Atarsua, P.O. Siwan, P.S. Sahyak Sarai, District- Siwan.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Chandra Kant
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT**

Date : 19-11-2018

The petitioners filed this civil miscellaneous petition to set aside the order dated 07.06.2017 passed by District Judge, Siwan in Misc. Appeal No.11 of 2017 by which the learned District Judge set aside the order dated 09.03.2017 passed by Sub Judge in Title Suit No.840 of 2016 restraining the respondents from erecting electric pole for transmission of electric energy on the land of the petitioners.

The brief facts which can be summarised as follows:

The petitioners are the plaintiffs. The petitioners filed Title Suit No.840 of 2016 for declaration of title over the land



and for injunction restraining the defendants from fixing electric pole for transmission of 1,32,000 volt electric current on the land of the petitioners bearing Plot No.775 and 776 whereon cattle sheds and several trees are standing. The case of the petitioners is that the petitioners constructed brick built house but the construction remained incomplete due to paucity of fund but nevertheless plaintiffs started residing and gradually completed the house. The defendants wanted to install the electric pole on the land of the petitioners for transmission of electric energy of 1,32,000 volt which crosses over the roof of the house of the petitioners. The electric pole can be adjusted at some distance from the house of the petitioners which is lying vacant but the defendants are adamant to fix pole on the residential and homestead land of the petitioners. The plaintiffs also filed petition under Order 39 Rule 1 and 2 of the C.P.C. restraining the defendants from cutting trees and demolition of houses as well as hut and from installation of electric pole. The defendants appeared and filed written statement as well as the rejoinder to the petition of the petitioners filed under Order 39 Rule 1 and 2 C.P.C. Pleader Commissioner was appointed and on the basis of the report of the Pleader Commissioner, the learned Sub Judge, Siwan vide his order dated 09.03.2017



restrained the defendants from fixing the electric pole on the residential plot of the plaintiffs-petitioners for transmission of electric energy. The defendants being aggrieved by the order dated 09.03.2017 filed Misc. Appeal No.11 of 2017 and the learned District Judge set aside the order restraining the defendants from fixing the pole on the residential land of the petitioners and for restraining the defendants from demolition or cutting trees holding that the plaintiffs-petitioners have got no prima facie case for grant of injunction as the plaintiffs would not suffer any irreparable loss and the balance of convenience also does not lie in favour of the petitioners. The petitioners-plaintiffs being aggrieved by the order impugned dated 07.06.2017 passed in Misc. Appeal No.11 of 2017 filed this civil miscellaneous petition.

Mr. Chandra Kant, learned counsel for the petitioners submits that learned District Judge recorded a finding considering the documents of the parties during the pendency of the suit and the finding shall affect the outcome of the suit. It is further submitted that District Judge has not considered the photographs showing the house constructed over the land. The house is standing for last more than 30 years and this fact has not denied by the defendants-respondents. The Pleader



Commissioner has given the report but the report of the Pleader Commissioner was brushed aside merely because the age of the construction was not made on the report. The transmission of electric wire over the roof of the house of the petitioners shall cause irreparable loss and may endanger the human life residing in the house. It is further submitted that the defendants have not denied the statement made by the petitioners in the plaint about the construction of house and also did not deny the report of the Pleader Commissioner. It is further submitted that Hon'ble Supreme Court in S.L.P. (c) No.34382 of 2010, which was filed as Annexure E, held that the building, religious place and ponds will have to be avoided from transmission line and the transmission line should be drawn through the agricultural land and the pole should be fixed on the agricultural land and not on the residential plots. Therefore, the order passed by the learned District Judge setting aside the order granting injunction by the Sub Judge is erroneous, illegal and not sustainable.

On the contrary, contending the submissions of the learned counsel for the petitioners, learned counsel for the respondents submits that one tower has to be installed in the land of the plaintiffs at location 56/0 which is part of 132 kv D/C, Chapra Siwan transmission line for transmission under the



scheme. The survey work was completed and foundation and erection work have also been completed. 90% of the foundation and erection work have already been completed. Out of 211 towers, 205 towers have already been erected. It is further submitted that right, title and possession of the plaintiffs over the lands is not denied. The transmission company has only user right and for using such land for construction of poles for transmission of electric line prior consent is not required. There is no need of acquisition of the land in which the towers or poles are to be erected as per the provisions of Indian Telegraph Act read with Section 164 of the Electricity Act, 2003. During the course of construction of the transmission line, the company may cause least damage to the properties, trees, crops and remove trees obstructing the transmission line as per the relevant standards stipulated. The damages are handed over to the owners for the loss incurred in the process for completion of transmission line of the company fixed by the relevant Government authorities. Prior to approval of the project detail survey is conducted and after considering the most suitable route feasibility report is prepared and only thereafter the project is approved by the Government. The transmission line cannot be laid in zigzag manner and the interest of the individuals have to



give way to larger interest of the project meant for the benefit of the people at large and the State. Learned District Judge has considered the law and the facts and has correctly held that the plaintiffs would neither suffer irreparable loss and the plaintiffs got no balance of convenience in their favour. The construction was made over the land of the plaintiffs after the survey work was done by the company.

Learned counsel for the respondents drew my attention that the learned Sub Judge has considered the petition shown to be signed on 09.12.2016 for grant of injunction whereas the suit was instituted on 14.12.2016. On 04.1.2017, an application was filed on behalf of the plaintiffs praying to get the service of notice to defendant through special peon as well as for appointment of Survey Knowing Pleader Commissioner to report about existence of the house, trees and the suit land and the same was allowed. The Pleader Commissioner visited the spot submitted his report stating that there is no objection of the report of the Commissioner on behalf of the defendant. It is submitted that defendant was not at all noticed at the time of appointment of Pleader Commissioner and the report of the Pleader Commissioner itself is collusive.

Having considered the submission of both sides, it is



evident that the petitioners filed the suit for declaration of title and possession over the land and also prayed for injunction restraining the defendants from laying any pole for transmission of electric wires on the land of the petitioners. The petitioners claimed that on the disputed land, the house of the petitioners was standing from before but it appears that prior to laying the transmission line from Chapra to Siwan, a survey was made by the Department and the report drawing the transmission line was approved. Object of the company is that less amount of damage be caused to the residential house, orchard and pond. At the time of survey, there was no residential house on the plots and the pole was to be fixed at the boundary of the land of the petitioners. The petitioners never raised any objection at the time of survey undertaken for laying the transmission line and for fixing the poles for the transmission line but when more than 90% work was completed and more than 2,000 poles were fixed, the petitioners filed suit making prayer therein for restraining the defendants, the transmission company from erecting/fixing any electric pole over the lands of the petitioners for transmission of electric energy but at that fag end of the project, the line of transmission cannot be redrawn or changed. There appears that the petitioners made construction over the



plots after the survey work was over only with a view to put hindrance in drawing the transmission line. According to the provisions of the Telegraph Act and the provisions of Electricity Act, the land for drawing the transmission line is not required to be acquired and the transmission company has got right of users for which the compensation is to be paid for the damages caused to the owner of the land according to the amount fixed by the Government. Therefore, although the petitioners have got the title over the land but in view of the provisions as contained in Indian Telegraph Act as well as Electricity Act, the transmission company has got preferential right of users on payment of compensation to lay the transmission line for smooth transmission of electric energy from one part to another part in the larger interest of the public and the State and right of individuals cannot override the larger interest of the public and the State. Therefore, I find that petitioners have got no case for grant of injunction and the petitioners would not suffer any irreparable loss. The balance of convenience on the facts of the case also does not lie in favour of the petitioners and the learned District Judge has rightly set aside the order of the Sub Judge granting injunction restraining the transmission company from laying transmission line and erecting poles on the land of the



petitioners.

Having considered the facts aforesaid, I do not find any merit in this civil miscellaneous petition. Accordingly, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03.12.2018
Transmission Date	

