

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO. 3690 OF 2017

ANIL RAMESHWAR MORE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
WRIT PETITION NO. 3691 OF 2017

DEEPAK ASHOK SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
WRIT PETITION NO. 3692 OF 2017

SATISH RAMESHWAR MORE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH
WRIT PETITION NO. 3693 OF 2017

GANESH RAMESH SHINDE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioners : Mr. Thigale Girish K. (Naik)

AGP for Respondent-State: Mr. S. N. Kendre

Advocate for Respondent No.2 : Mr. D. P. Palodkar

.....

CORAM : V. K. JADHAV, J.
DATED : 4th MAY, 2018

PER COURT:-

1. All these writ petitions have been filed under Section 16 of

Indian Telegraph Act, 1885 challenging the order passed by the District Magistrate, Beed.

2. Both the counsel agree that during pendency of these writ petitions, towers have already been erected and stringing is also completed. In view of the same, at this stage recourse to the provisions of Section 16 of the Act would be a futile exercise. It further appears from the submissions made on behalf of the petitioner that only grievance is that before passing an order under Section 16, the District Magistrate has not given an opportunity of being heard to the petitioners. In the change circumstance, even if, such opportunity is given to the petitioners, that would be an entirely futile exercise.

3. Learned counsel for the petitioners submits that liberty may be granted to the petitioners to submit the requisition to the Telegraph authority to remove or alter the line of poles to another part of his or their property or to a higher or lower level or alter in form and in case, the requisition is not considered by the Telegraph authority favorably then liberty may further be granted to the petitioners to approach the District Magistrate

under the provisions of Section 17 of the Telegraph Act, 1885.

4. Learned counsel for respondent No.2 has strongly resisted this submission. Learned counsel submits that now the towers have already been erected and stringing is also completed. In view of the same, it is not possible for respondent No.2 to consider such a requisition if made under the provisions of Section 17 of the Act.

5. In view of above submission, the provisions of Section 17 of the Indian Telegraph Act, 1985 is reproduced herein below :

Section 17 :- Removal or alteration of telegraph line or post, on property other than that of a local authority : (1) When, under the foregoing provisions of this Act, a telegraph line or post has been placed by the telegraph authority under, over, along, across, in or upon any property, not being property vested in or under the control or management of a local authority, and any person entitled to do so desires to deal with that property in such a manner as to render it necessary or convenient that the telegraph line or post should be removed to another part thereof or to a higher

or lower level or altered in form, he may require the telegraph authority to remove or alter the line of post accordingly:

Provided that, if compensation has been paid under section 10, clause (d), he shall, when making the requisition, tender to the telegraph authority the amount requisite to defray the expense of the removal or alteration, or half of the amount paid as compensation, whichever may be the smaller sum.

(2) If the telegraph authority omits to comply with the requisition, the person making it may apply to the District Magistrate within whose jurisdiction the property is situate to order the removal or alteration.

(3) A District Magistrate receiving an application under sub-section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.

6. It appears from provisions of Section 17 of the said Act that no time limit is prescribed for filing such a requisition under the provisions of Section 17(1) requiring the telegraph authority to

remove, alter the line of poles to another part of the property or to a higher or lower level or alter in form. In terms of proviso to Sub-Section (1) the issue of expenses is also taken care of. In terms of Sub-Section 2 of Section 17 if the telegraph authority omits to comply with the requisition, the person (the petitioners herein) may apply to the District Magistrate within whose jurisdiction the property situates to order the removal or alteration. In view of the provisions of Sub-Section (3) of Section 17, the District Magistrate receiving an application under Sub-Section (2) may, in his discretion, reject the same or make an order, absolutely or subject to conditions, for the removal of the telegraph line or post to any other part of the property or to a higher or lower level or for the alteration of its form; and the order so made shall be final.

7. In case, by submitting the requisition if petitioners satisfy the telegraph authority that the present location of the towers would cause any inconvenience in cultivation of the land or any other difficulty likely to be faced at the erection of the towers at a particular place, the same may be considered by the telegraph authority and in case it is not considered, then it is for the

District Magistrate to consider the same on its own merits. I do not find any hurdle as such to grant such liberty to the petitioners to take recourse to the provisions of Section 17 of the Indian Telegraph Act, 1885.

8. In view of the same, writ petitions are disposed of with a liberty to the petitioners to submit the requisition to the respondent No.2 under the provisions of Section 17(1) of the Indian Telegraph Act, 1885 and in case, if respondent No.2, has not considered the said requisition favourably, further the petitioners may approach the District Magistrate, Beed. In case, respondent No.2 has not considered favourably the requisition made by the petitioners and if the petitioners approach the District Magistrate, Beed then the learned District Magistrate, Beed shall decide such requisition on its own merits.

9. It is made clear that this court has not observed anything on merits and it is for respondent No.2 telegraph authority, initially to consider the requisition on its own merits and then it is for the learned District Magistrate, Beed to consider it on its own merits, if the telegraph authority has not considered it

favourably.

10. With the above observations, all the writ petitions are disposed of. No costs.

(V. K. JADHAV, J.)

vsm/