

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2018

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN

W.P.No.12783 of 2016
and
W.M.P.No.11179 of 2016

D.Srinivasan

...Petitioner

Vs.

- 1.The Chairman
Tamil Nadu Electricity Generation &
Distribution Corporation
Chennai.
- 2.The Superintending Engineer
Transmission Line Construction
Tamil Nadu Electricity Generation &
Distribution Corporation
Villupuram.
- 3.The Junior Engineer
Transmission Line Construction
Tamil Nadu Electricity Generation &
Distribution Corporation
Villupuram.
- 4.The Superintending Engineer
Transmission Line Construction
Tamil Nadu Electricity Generation &
Distribution Corporation
Cuddalore.
- 5.The Collector/District Magistrate
Cuddalore District, Cuddalore.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, call for the records and quash the order passed by the Fifth Respondent in his Na.Ka.L1/19749//2016 dated 20.03.2016 and consequently, forbearing respondents 1 to 4 and their agents from laying any transformer, overhead transmission lines, electric posts or other structures upon any portion of S.No.196/1A Hec.2.09.0 and S.No.194/3B Hec 0.48.50 in Thiruvamur Village, Panruti Taluk, Cuddalore District, except by due process of law.

For Petitioner : Mr.R.Gururaj
For Respondents : Mr.C.Manishankar
Addl. Advocate General
Asst. by Mr.M.Varun Kumar
[For R1 to R4]
Mr.T.M.Pappiah
Special Govt. Pleader [For R5]

O R D E R

The Petitioner is the owner of the properties bearing Survey No.196/1A measuring to an extent of 2.09.00 hectares and Survey No.194/3B measuring to an extent of 0.48.50 hectares located in Thiruvamur Village, Panruti Taluk, Cuddalore District. The Petitioner is raising casuarina in the lines and he could not raise any crop since there was no rain. Already there is overhead high tension line going across the petitioner's land and 3 electric posts have been installed. There is another set of high tension lines going over the petitioner's land and 9 electric posts have been erected. Because of the erection of the electric posts, the petitioner is unable to cultivate about 1/6th of his lands. There was an attempt to take further overhead line across the petitioner's land. Since the respondents attempted to take further overhead lines across the petitioner's land in the year 1999 a suit in O.S. No.112 of 1999 on the file of the District Munsif Court, Panruti was filed against the First to Fourth Respondents and subsequently, the transmission line was taken in different route. When things stand so, the first to fourth respondents attempted to take high voltage line to establish a sub-station in Periapattu Village, near Thiruvamur Village on 29.07.2015. The respondents workmen dug a pit in the petitioner's property and fixed short poles for the purpose of drawing overhead lines. Therefore, the Petitioner objected and W.P.No.23980/2015 was filed by the petitioner, seeking writ of Mandamus forbearing the respondents from interfering with petitioner's possession in the above land except under due process of law. The said Writ Petition was disposed of on 05.08.2015, directing the respondents to get permission from the concerned District Magistrate as per Sections 10 and 12 of the Indian Telegraphic Act, 1885 and to proceed with the work. Pursuant to the order passed by this Court, the petitioner allegedly filed objection on 16.03.2016 in writing. However without conducting any enquiry the fifth respondent passed an order on 20.03.2016 granting permission to the respondents under Sections 10 and 16 of the Indian Telegraphic Act, 1885 to enter upon the petitioner's property and to erect electric posts to take electric lines over the petitioner's property. The said order has been challenged before this Court.

2.Heard, Mr.R.Gururaj, learned counsel for the Petitioner and Mr.C.Manishankar, learned Additional Advocate General appearing for the Respondents.

3.The learned counsel for the Petitioner would submit that there is an alternate route to take the line through the river and its bank and in that event, the petitioner's land would be saved. In this regard, he relied upon the judgment in Raghbir Singh Sehrawat Vs. State of Haryana and Ors. reported in (2010) 1 Supreme Court Cases 792; Kerala State Electricity Board Vs. Livisha and Others reported in (20017) 6 Supreme Court Cases 792; Patna Electric Supply Co.Ltd. Vs.Patna Municipal Corporation and Ors reported in 1969 STPL (LE) 4813 SC; M.P.Electricity Board, Jabalpur Vs. Vijaya Timber Co. reported in (1997) 1 Supreme Court Cases 68.

- (1) As far as 2012 (1) SCC 792 is concerned the Hon'ble Supreme Court deprecated large scale acquisition of agricultural land;
- (2) The decision reported in (1997) 1 Supreme Court Cases 68 deals with the jurisdiction of the civil court in the matters which are covered by Electricity Act and the Hon'ble Supreme Court held that the jurisdiction of the Civil Court is not ousted.
- (3) The judgment in (2007) 6 SCC 792 deals with compensation payable for the trees cut down and removed by the Kerala State Electricity Board while electric line were drawn over the agricultural lands.
- (4) The decision reported in 1969 STPL(LE) 4813 SC holds that merely because some of the powers conferred under the Indian Telegraph Act on the telegraph authority could be conferred on a licensee under the Indian Electricity Act, it does not follow that all the rights and liabilities of a licensee under the Indian Electricity Act are governed by the provisions of the Indian Telegraph Act.

Therefore, the above judgments are not relevant to the facts of the case except with regard to the compensation as stated in (2007) 6 Supreme Court Cases 792. As pointed out by Mr.C.Manisankar, learned Additional Advocate General, it is not possible to change the line for the purpose of exempting the petitioner as the entire scheme proposal has to be changed. Moreover, only one electric line is required to be erected, which has to be erected on the petitioner's land. As per the scheme all other posts have been erected by the Electricity Board already.

4.Considering the infrastructure, building exercise

undertaken by the Government authorities in the public interest, the Fifth Respondent, viz., the District Magistrate, had rightly granted permission to enter upon the petitioner's property and to erect tower, as public interest would over ride the private interest. That apart, even as per the impugned order all other electric posts have been erected except one pole at the petitioner's land. Because of that, the sub-station to the capacity of 110/22 KV could not be commissioned at Thirunavalur Village, Ulundurpet Taluk, Villupuram District. The public project should not be delayed and it would cause loss to the Government as well as injury to the public interest. Therefore, the District Magistrate, Cuddalore had rightly given permission to the respondents to enter upon and to erect the electric poll and to draw a overhead line in the property of the petitioner comprised in Survey Nos.196/4A and 196/3B forthwith. Therefore, the Writ Petition is liable to be dismissed.

5.The photographs produced by the learned Additional Advocate General would prove that in the entire Thirunavalur Village, 110/22 KV lines were already drawn and all the towers were erected. In those circumstances, any further delay would go against the public interest.

6.The respondents are directed to complete the project at the earliest. Further, the respondents are directed to calculate the compensation payable to the petitioner as per the Central Government notification dated 15.10.2015, which reads as follows:

"No. 3/7/2015 - Trans
Government of India
Ministry of Power
Shram Shakti Bhawan
Rafi Marg, New Delhi - 110 001.

Dated: 15.10.2015

To

1. Chief Secretaries/Administrators of all the States/UTs
(As per list attached)
2. Chairperson, CEA, New Delhi, with th request to disseminate the above guidelines to all the stateholders
3. CMD, PGCIL, Gurgaon.
4. CEO, POSOCO, New Delhi.
5. Secretary, CERC, New Delhi.
6. CMD of State Power Utilities/SEBs.

Subject: Guidelines for payment of compensation towards damages in regard to Right of Way for Transmission lines.

During the Power Ministers' Conference held on April, 9 -10, 2015, at Guwahati with States/UTs, it has, inter alia, been decided to constitute a Committee under the chairship of Special Secretary, Ministry of power to analyze the issues related Right of Way for laying of transmission lines in the country and to suggest a uniform methodology for payment of compensation on this count. Subsequently, this Ministry had constituted a Committee with representatives from various State Governmnets and others. The Committee held several meetings to obtain the views of the State Governments on the issue and submitted its report along with the recommendations (copy of the Report is at Annex-1).

2. The recommendations made by the Committee are hereby formulated in the form of following guidelines for determining the compensation towards damages as stipulated in sections 67 and 68 of the Electricity Act, 2003 read with Sections 10 and 16 of Indian Telegraph Act, 1885, which will be in addition to the compensation towards normal crop and tree damages. This amount will be payable only for transmission lines supported by a tower base of 66 KV and above, and not for sub transmission and distribution lines below 66 KV:-

(i) Compensation @ 85% of land value as determined by District Magistrate or any other authority based on Circle rate/Guideline Value/Stamp Act rates for tower base area (between four legs) impacted severely due to installation of tower/pylone structure.

(ii) Compensation towards diminution of land value in the width of right of way (ROW) Corridor due to laying of transmission line and imposing certain restriction would be decided by the States as per categorization/type of land in different places of States, subject to a maximum of 15% of land value as determined based on circle rate/guidelines value/stamp Act rates.

(iii) In areas, where the landowner/owners have been offered/accepted alternate mode of compensation by concerned corporation/ Municipality under Transfer Development Rights (TDR) Policy of State, the licensee/Utility shall deposit compensation amount as per (i) and (ii) above with the

concerned Corporation/Municipality / Local Body or the State Government.

(iv) For this purpose, the width of ROW corridor shall not be more than that prescribed in the table at Annex-2 and shall not be less than the width directly below the conductors.

3. Necessary action may kindly be taken accordingly. These guidelines may not only facilitate in early resolution of ROW issues and also facilitate completion of the vital transmission lines through active support of State/UT Administration.

4. All the States/UTs etc., are requested to take suitable decision regarding adoption of the guidelines considering that acquisition of land is a State subject."

The compensation amount so calculated shall be paid within a period of six months from the date of receipt of a copy of this order.

7. With the above direction, this writ petition is dismissed. The Fifth Respondent is directed to calculate the compensation amount and direct the other respondents to pay the compensation amount within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

may

To

1. The Chairman
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2. The Superintending Engineer
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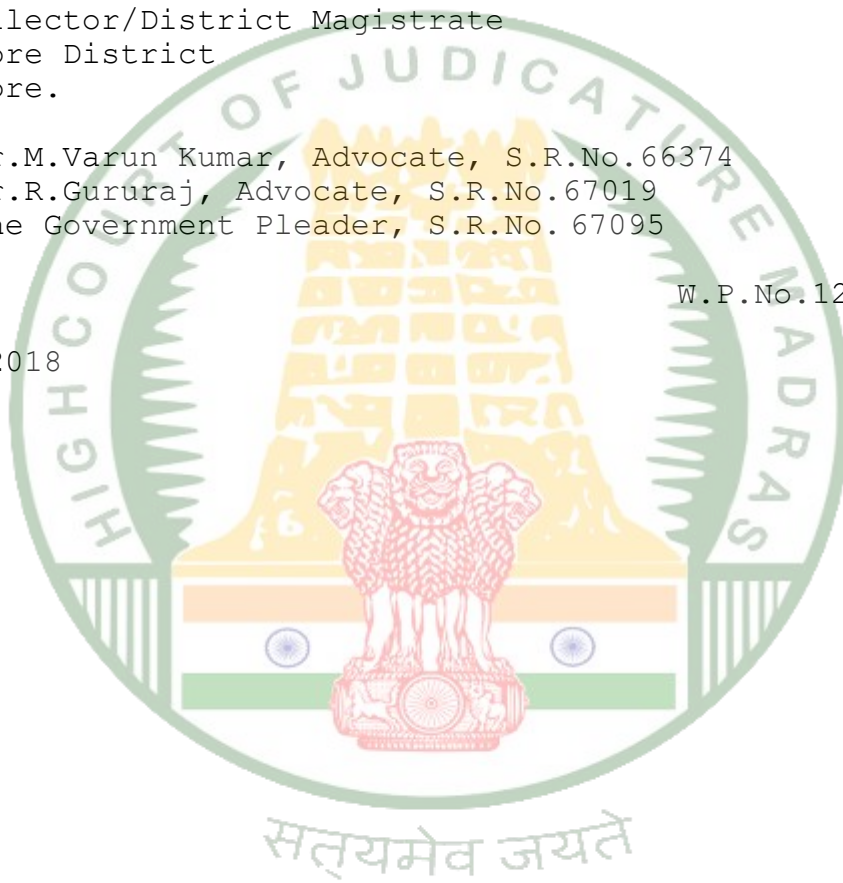
4. The Superintending Engineer
Transmission Line Construction
Tamil Nadu Electricity Generation &
Distribution Corporation
Cuddalore.

5. The Collector/District Magistrate
Cuddalore District
Cuddalore.

+1cc to Mr.M.Varun Kumar, Advocate, S.R.No.66374
+1cc to Mr.R.Gururaj, Advocate, S.R.No.67019
+1cc to the Government Pleader, S.R.No. 67095

W.P.No.12783 of 2016

rsv(co)
cs/15/10/2018



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