

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:30.01.2018

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

AND

THE HONOURABLE Mr. JUSTICE S.VAIDYANATHAN

W.A.No.1545 of 2017

K.C.Sukumaran

.. Appellant/Petitioner

Vs.

1.The Secretary to Government
Energy (A1) Department,
Secretariat, Chennai - 600 009.

2.The Chairman/Managing Director,
Tamil Nadu Electricity Generation and
Distribution Corporation, TANGEDCO,
144, Anna Salai, Chennai - 2.

3.The Chief Engineer,
Distribution, Chennai North Region,
Tamil Nadu Electricity Generation and
Distribution Corporation, TANGEDCO,
144, Anna Salai, Chennai - 2.

4.The Superintending Engineer,
Operation - I/Chennai,
Tamil Nadu Transmission Corporation,
TANTRANSO, Korattur 230 KV SS Complex,
Chennai - 600 054.

5.The Assistant Engineer, Operation & Maintenance
Tamil Nadu Electricity Generation and
Distribution Corporation,
TANGEDCO/CEDC/WEST,
Veerapuram, Chennai - 55.

..Respondents

Prayer: Appeal under Clause 15 of the Letters Patent, to set aside the order in W.P.No.31649 of 2015 dated 10.04.2017 passed by this Court. Writ Petition No.31649 of 2015 has been filed under 226 of the constitution of India praying for the issuance of writ of certiorarified Mandamus to call for the records of the impugned order passed by the 1st respondent in Letter No. 250/A1/2015 dt 19.3.2015 and quash the same and consequently direct the 1st and 2nd respondents to pay compensation to the petitioner as per the market value for the entire landed property at Plot No.16 Vellanur Sri Vinayagapuram Extension No.38 Vellanur Village Ambattur Taluk Tiruvallur District comprised in S. No.16/3 to the extent of 2982 sq.ft.

For Appellant : Mr.S.T.Natramil Kaviarasan
for Mr.A. Rajesh Kanna

For 1st Respondent : Mr.A.N.Thambidurai
Special Government Pleader

For RR 2 to 5 : Mr.P.R.Dhilip Kumar

JUDGMENT

[Judgment of the Court was delivered by M.VENUGOPAL, J.]

Heard the Learned Counsel for the Appellant; Mr.A.N.Thambidurai, Learned Special Government Pleader for the 1st Respondent and the Learned Standing Counsel for Respondents 2 to 5.

2.Earlier, the Learned Single Judge, while passing the impugned order in W.P.No.31649 of 2015, on 10.04.2017 at paragraph 3 to 5, had observed the following:

"3.The order impugned was passed in pursuant to the direction issued by this Court in W.P.No.32699 of 2014 dated 12.12.2014, rejecting the request made by the petitioner. Challenging the same, the present writ petition has been filed.

4.The learned counsel for the petitioner would submit that as per the circular dated 15.10.2015, issued by the Joint Secretary, Government of India, Ministry of Power, New Delhi, the petitioner is entitled for the relief sought for.

5.The said contention cannot be accepted by this Court for more than one reason. The line was laid between January 2006 and June 2006. Therefore, the circular cannot be relied upon by the petitioner having issued on 15.10.2015. The petitioner did not raise any objection at the relevant point of time. His first representation was in the year 2014. The law also does not mandate service of notice on the petitioner. It merely states compensation for usage, if any, which cannot be termed as acquisition of land. The petitioner has come before this Court nearly a decade, after the towers have been laid."

and ultimately, came to the conclusion that the order impugned in the writ petition was not to be set aside and resultantly, dismissed the Writ Petition.

3.Assailing the Correctness, Legality and Validity of the impugned order dated 10.04.2017 in W.P.No.31649 of 2015 of

dismissing the Writ Petition passed by the Learned Single Judge, the Appellant/Writ Petitioner has filed the present Writ Appeal mainly by taking a plea that the Learned Single Judge had failed to take into consideration of a very essential fact that as per land acquisition proceedings, statutory notice to the land owners should have been issued to the Appellant for the land which is in need of the Electricity Department. However, without following any of the proceedings and regulations, the Respondents 2 to 4 had unauthorisedly made intrusion into the lands belonging to the Appellant/Writ Petitioner and laid the high tension lines.

4.The Learned Counsel for the Appellant projects an argument that the Respondents 2 to 5 never in earlier circumstances preferred nor submitted the report to the 1st Respondent about the lands acquired for the project of laying cables from 400 KV Alamathy substation to 110 Avadi Substation was laid during the period between January 2006 to June 2006 with malafide intention, arbitrarily and against the principles of Law and Justice, refused to pay the compensation as it was unwritten law to reject the applications of the poor people and on the other side not even single application will be rejected in respect of high and mighty persons in the State.

5.The Learned Counsel for the Appellant comes out with a plea that the 1st Respondent has raised the ground of belated claim made by the Appellant/Writ Petitioner and in fact, they themselves had not exhibited the acquisitions and the payment of compensation in their official website and for the namesake, it is functioning without any honest transparency in their administration. Further, as per the Limitation Act, 1963 if the delay had occurred, it shall be condoned after due reasons assigned by the concerned party in respect of the ignorance and inadvertent act of not questioning the same in time.

6.Continuing further, it is represented on behalf of the Appellant that the 1st Respondent/Secretary to Government, Energy (A1) Department, Secretariat, Chennai - 600 009 had placed reliance upon the Newspaper and Tamil Nadu Government Gazette Publication effected on 27.07.2005, which is the age old practice without availability of any modern day inventions like uploading facilities in the official website etc.

7.According to the Appellant/Petitioner, he had purchased the landed property on 25.01.1996 at Plot No.16, Vellanur Sri Vinayagapuram Extension, No.38, Vellanur Village, Ambattur Taluk, Tiruvallur District comprised in S.No.16/3 measuring an extent of 2,982 sq.ft. by means of the Sale Deed dated 25.01.1996, viz., registered Document No.258/1996 in the office of the Sub Registrar, Avadi.

8.The grievance of the Appellant is that he sent several representations to the Respondents to remove the cable from the land belonging to the Petitioner and sought for realign the cable route in between the period from 08.05.2012 and 22.06.2014. In fact, the Appellant filed W.P.No.32699 of 2014 on earlier occasion and this Court on 12.12.2014 had directed the 1st Respondent therein to consider and pass orders based on his representation dated 22.06.2014 within a period of eight weeks.

9.It comes to be known that the 3rd Respondent/Chief Engineer, Distribution, Chennai North Region, Anna Salai, Chennai on 19.01.2015 had served summons upon the Appellant to appear for an enquiry on 30.01.2015 and that the 1st Respondent had not conducted enquiry, but the Subordinate Officer conducted the enquiry and requested to write and gave explanation, which was made on 04.02.2015. On 22.01.2015, the 5th Respondent had requested the Appellant to identify the disputed land, but several times, the land was identified, but the authorities had taken a stand of not identifying the land for which they had grabbed the land and erected the HT line junction pole.

10.The core contention advanced on behalf of the Appellant is that the 1st Respondent without considering the representation of the Appellant/Petitioner had simply passed rejection order and that the Appellant filed W.P.No.31649 of 2015 by challenging the order of the 1st Respondent dated 19.03.2015 and this Court on 10.04.2017 had dismissed the Writ Petition.

11.In the counter filed by the 4th Respondent, it is made clear that the 5th Respondent is an unnecessary party, since he does not maintain the Extra High Tension lines passing through the Appellant /Petitioner's property. Further, it is the stand of the Respondents that the Learned Single Judge on 10.04.2017 had rightly dismissed W.P.No.31649 of 2015.

12.At this stage, the Learned Counsel for the 4th Respondent submits that the 110KV Double Circuit (DC) line from 400KV Alamathy SS to 110KV Avadi SS (110KV Alamathy - Avadi 1 & 2 feeder) was laid between January 2006 and June 2006. Apart from that, the line was laid as per ingredients of Section 164 of the Electricity Act, 2003 and Section 10 of the Telegraph Act, 1885. In view of the larger interest of public for supplying power from 400KV Alamathy SS to 110KV Avadi SS.

13.The Learned Counsel for the 4th Respondent contends that the North Chennai Thermal Power Station (NCTPS) Stage, it was commissioned as under:

UNIT	CAPACITY IN MW	COMMISSIONING DATE
1.	210	October 1994

UNIT	CAPACITY IN MW	COMMISSIONING DATE
2.	210	March 1995
3.	210	February 1996

and further, the Appellant/Petitioner had purchased the property on 25.01.1996 and there is a 230KV DC line viz., 230KV NCTPS - Sriperambudur feeder & 230KV Gummidipoondi Sriperambudur feeder (now 230KV Suryadev - Sriperambudur) laid from North to South across the disputed land during 1994 which is much earlier than the date of purchase of schedule property.

14. In sum and substance, the plea taken on behalf of the Respondents is that 110KV Alamathy - Avadi 1 & 2 feeder was erected across west to east and crossing under the 230KV DC Line viz., 230KV NCTPS - Sriperambudur feeder & 230KV Gummidipoondi - Sriperambudur feeder (now 230KV Suryadev - Sriperambudur) across the Petitioner's land between January 2006 and June 2006, a 230KV EHT line was passing across the land. According to the Respondents, the Appellant is well aware that there exists a DC 230KV line passing over the property at the time of purchasing the property in question and hiding the fact as if only during 2016 the 110KV EHT line was crossing his land, he is claiming compensation. Besides these, according to the Respondents, 110 KV EHT line through the tripole down point (DP) structure was raised by Right of Way (ROW) right under the 230KV EHT DC line and therefore, during erection there was no compound wall, building, agricultural farming or any other activity in the Appellant/Petitioner's land and also that, no objection was raised by the Appellant/Petitioner during the execution of the aforesaid work.

15. On behalf of the Respondents, it is represented before this Court that a lower voltage line is always laid under the higher voltage line, which is the current scenario because of the fact that higher voltage 230KV EHT line passes above the ground and the lower voltage 110KV line is made to pass beneath it.

16. It would be known that 110KV DC line was laid after newspaper publications & notifications in Part VI Section 3(b) of the Tamil Nadu Gazette dated 27.07.2005 and at that point of time, the website of Tamil Nadu Electricity Board was not developed and as such, it was not possible to publish the notification in regard to the laying of 110KV DC line in the internet and as per the procedure, in vogue, gazette publication and newspaper publication were effected.

17. The clear-cut stand of the Respondents that raising an objection after the erection of 110KV DP structure right underneath the 230KV DC Line ROW seems totally illogical one and in the instant case, there is no issue of land grabbing

and the grievance of the Appellant/Petitioner is not similar and there is no relevancy in regard to the orders passed by this Court in W.P.Nos.26858 and 26859 of 2016. In short, the primary plea taken on behalf of the Respondents is that the Learned Single Judge had rightly dismissed the Writ Petition and as such, the present Writ Appeal is also to be dismissed, in the interest of Justice.

18. It is to be pointed out that Section 164 of the Electricity Act, 2003 speaks of "Exercise of powers of Telegraph Authority in certain cases". It is to be remembered that 'Public Interest' is always superior to the interest of a person. When the Corporation exercises powers as per Section 164 of the Electricity Act, 2003 read with Section 10 of the Indian Telegraph Act, 1885, they are not acquiring the land, but, they are only making use of it.

19. It is to be noted that in the decision *Ramgir Uttamgir Goswami V. State of Gujarat* and another reported in (1988) 1 GLR 502 (SC), the assessment of suitability of the land proposed to be acquired for the concerned public purpose is primarily for the authority to consider.

20. In so far as Section 10 of the Indian Telegraph Act, 1885 is concerned, undoubtedly, this Section gives legal sanction for committing trespass or the telegraph authorities would not have been entitled to commit, but for such sanction.

21. At this stage, this Court aptly points out the decision *The Patna Electric Supply Co. Ltd. V. Patna Municipal Corporation, New Capital Circle and others*, AIR 1971 Pat 354 at 361, whereby and whereunder, at paragraph 18, it is observed as follows:

"18. After close scrutiny of the various provisions of the Electricity Act and the Telegraph Act, it is clear that by fixing poles on the streets or the lands which are under the control of the Patna Municipal Corporation, the petitioner has not committed any unauthorised act. Evidently, therefore, the contesting respondents could not have removed the poles or in lieu of such removal could not have collected any rent for the area of lands occupied by the electric poles, under Section 262 of the Corporation Act. In that view of the matter, I am constrained to hold that the demand of rent made on behalf of the Patna Municipal Corporation under Annexures H and K cannot be sustained."

22. As a matter of fact, the powers under Section 10 of the Indian Telegraph Act, 1885 are not independent, as such, but are circumscribed by Section 16(1) by means of specific recital, as per decision *M.A. Abdulla V. Assistant Executive*

Engineer, KSEB, AIR 2001 Ker. 111 at 115. Suffice it for this Court to point out that the powers under Part III of the Telegraph Act, 1885, the Board is entitled to proceed for laying lines etc.

23.As per Section 164 of the Electricity Act, 2003, the Corporation is empowered to exercise the powers of the electric authorities including the power under Section 10 of the Telegraph Act, 1885 and it can also erect towers on any immovable property and lay overhead electrical lines over any immovable property, as per decision Power Grid Corporation of India Limited V. Ajay Kumar Gupta and others, AIR 2012 Allahabad 62.

24.The powers under Section 10 of the Indian Telegraph Act, 1885 can be exercised by an authority once an order is passed by the appropriate Government under Section 164 of the Indian Electricity Act, 2003 neither the acquisition of land nor consent of owner is necessary. By virtue of the act erection of poles and transmission of lines on private land can be made. Moreover, the powers of the Electricity Board as 'State Transmission Utility' is that of Telegraph Authority as seen from Section 10 of the Indian Telegraph Act, 1885 and in regard to a dispute pertaining to properties to claim compensation a procedure is specified under Section 16 of the Indian Telegraph Act, 1885 is to be adhered to.

25.Section 10 proviso (d) of the Indian Telegraph Act, 1885 clearly mandates that while drawing the line through any property in exercise of the powers given under Section 10, the authority shall pay full compensation to all persons interested for any damage sustained by them, by reason of exercise of such power.

26.In the instant case, this Court, on going through the impugned order passed by the Learned Single Judge in W.P.No.31649 of 2015 on 10.04.2017, is of the considered view that the Appellant/Petitioner had not raised any objection at any point of time and his first representation was only in the year 2014 and in fact, there is no legal obligation mandated on the part of the authorities to serve notice on the Appellant/Petitioner. Also that, in the present case, it cannot be lost sight of a Government Gazette was published on 27.07.05 and at relevant point of time of technical study, there was no building compound, fencing agricultural farming or any other activities and therefore, the line was laid in terms of Section 164 of the Electricity Act, 2003 coupled with Section 10 of the Telegraph Act, 1885. It is to be remembered that the compensation for usage cannot be any stretch of imagination to be construed as one of 'Acquisition of Land' and that the Appellant in any event had approached the Learned Single Judge after much delay viz., 10 years after laying of the towers.

27.Looking at from any angle, the Learned Single Judge had rightly dismissed the Writ Petition by passing the impugned order on 10.04.2017 which, in the considered opinion of this Court, is free from legal flaws. Consequently, the Writ Appeal fails.

28.In fine, the Writ Appeal is dismissed, leaving the parties to bear their own costs.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

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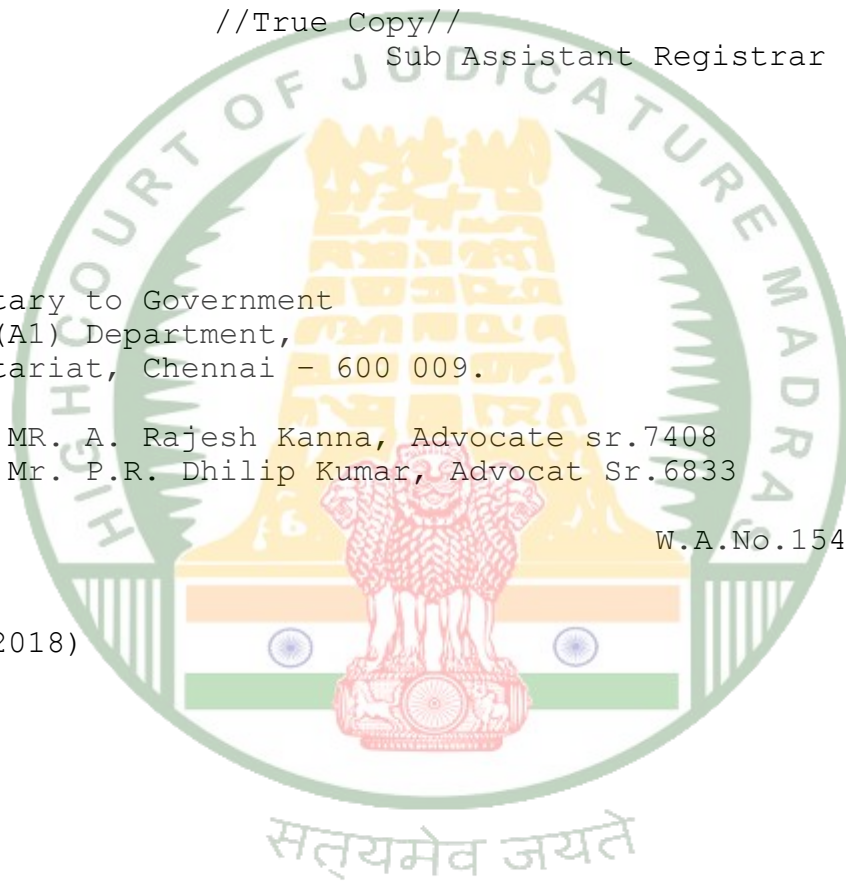
To

The Secretary to Government
Energy (A1) Department,
Secretariat, Chennai - 600 009.

+1 cc to MR. A. Rajesh Kanna, Advocate sr.7408
+ 1 cc to Mr. P.R. Dhilip Kumar, Advocat Sr.6833

W.A.No.1545 of 2017

(CCC)
EU(23/02/2018)



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